

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 8:25 PM
To: FINTestimony
Cc: lila.mower@gmail.com
Subject: *Submitted testimony for HB1308 on Feb 23, 2017 12:00PM*

HB1308

Submitted on: 2/21/2017

Testimony for FIN on Feb 23, 2017 12:00PM in Conference Room 308

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

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 1:01 PM
To: FINTestimony
Cc: richard.emery@associa.us
Subject: Submitted testimony for HB1308 on Feb 23, 2017 12:00PM

HB1308

Submitted on: 2/21/2017

Testimony for FIN on Feb 23, 2017 12:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Oppose	No

Comments: The number of complaints by owners are very small resulting mediations. This issue seems to be brought up every year and prior legislative studies have been conducted. A bad use of tax payer dollars. Other Bills this session improve management of associations and should be given a chance to work.

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February 23, 2017

The Honorable Sylvia Luke, Chair

House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

RE: H.B. 1308, H.D.2, Relating to Homeowners Associations

HEARING: AGENDA #2: Thursday, February 23, 2017, at 12:00 p.m.

Aloha Chair Luke, Vice Chair Cullen, and Members of the Committee.

I am Myoung Oh, testifying on behalf of myself in **support** of H.B. 1308, H.D.2 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.

As you may know, HRS Chapter 421J regulates homeowners associations (planned community associations or PCA) while HRS Chapters 514A and 514B oversees the condominium associations. While not identical structures, all are forms of ownership.

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.

This is in contrast to condominiums which vest ownership in individual units in each owner, coupled with tenancies-in-common in the common elements, which are then governed by the owners' association. Ownership is the common glue in a condominium development.

Although condominiums and planned communities are based on differing arrangements of ownership, they function on the practical level pretty much identically. They have the same critical phases creation, financing, management and termination. Both depend upon an owners' association for governance. Usually, the owners are assessed regularly for the maintenance of the development. Similar amenities can be, and are, offered to buyers to make life in these developments attractive. Conversely, most of the potential problems are identical, including inordinate developer control, difficulties with management, and long-term maintenance.

The condominium recodification took many years in early 2000 and I believe we should look at the recodification that took place and utilize it using the Planned Community Act of the Uniform Commission Laws.

Mahalo for the opportunity to testify in support.

Myoung Oh, Self



Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws



Contact Us: **312.450.6600**

Planned Community Act Summary

Although American property law allows an infinite variety of ownership and financing arrangements for real property, little variety appeared in residential real property development until the decade of the 1970s. Sales were characterized by transfers of fee simple ownership. The other alternative was renting.

In the 1970s, the term "condominium" changed all of that. It introduced the American public to a kind of multiple ownership that has become as familiar as the simpler, traditional forms of real estate development. The condominium movement created other opportunities. New ideas, such as real estate time-sharing, followed, but old ideas which had never fully caught on have, also, been dusted off. There is growing interest in real estate cooperatives, for example.

One form to be dusted off for the future is the multiunit residential "planned community." 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.

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Although condominiums and planned communities are based on differing arrangements of ownership, they function on the practical level pretty much identically. They have the same critical phases -creation, financing, management and termination. Both depend upon an owners' association for governance. Usually, the owners are assessed regularly for the maintenance of the development. Similar amenities can be, and are, offered to buyers to make life in these developments attractive. Conversely, most of the potential problems are identical, including inordinate developer control, difficulties with management, and long-term maintenance.

Once the NCCUSL addressed condominiums in the Uniform Condominium Act (UCA), it had to consider planned communities. It has now promulgated the Uniform Planned Community Act (UPCA).

UCA served as the direct model for UPCA. Creation of a planned community occurs when a declaration is recorded in the same manner as a deed. This is exactly the way a condominium development is begun under UCA. The declaration contains the location of the planned community, the name of the planned community, a description of the real estate, and a description of relevant development rights. The declaration is the fundamental instrument in both UPCA and UCA.

For lenders, the basic concern in both Acts is priority between all lenders and those with other liens against the property. The basic principle is simple, that is, reliance upon the existing priorities except where necessary for the operation of the Act. As in the Uniform Condominium Act, UPCA gives a very limited first priority for the owners' association's lien for assessments due. This priority, which exists for only six months of past due assessments, is meant to protect the solvency of the owners' association. Its solvency is essential to the security for all other mortgages and liens on units in the development. This priority, therefore, protects lenders' interests in the whole development.

Power over a planned community transfers from the developer to an owners' association in UPCA exactly as it does under UCA. All power transfers by a set time, when 75% of the units have been sold or two years after essential developer interests end. Management vests in the owners' association. It has broad powers to operate the development. Both Acts handle liability and insurance in a similar fashion.

Termination provisions are, also, nearly identical. Termination cannot occur without the concurrence of at least 80% of the owners. There are similar provisions in each Act for carrying out the termination, including sale of property, taking care of creditors, and distributing proceeds to owners. Again, the parallels between the Acts are very close.

Consumer protection in UPCA follows the basic pattern of UCA. There are two basic concepts -disclosures and warranties. Disclosure is accomplished through the public offering statement, a detailed listing of facts and figures pertinent to purchasing a unit. Special disclosure provisions apply to buildings converted from other uses. Warranties in UPCA include both express and implied warranties of sale. Any affirmation of fact or a promise made by the seller to the buyer is the basis of express warranties. Implied warranties of fitness will apply, without overt affirmation by the seller. Implied warranties may be disclaimed, however, if done clearly for specific defects. The UCA does not vary these provisions in any significant way from UPCA.

Both UCA and UPCA, also, have optional articles which establish an administrative agency for condominiums and planned communities. All projects are registered with the agency. It can investigate complaints, issue cease and desist orders, and sue for violations of the Act. This article is optional, because it is recognized that new administrative agencies or new duties given to old administrative agencies may not be fiscally feasible in many jurisdictions. The Act provides for individual enforcement through the courts so that the need for an agency is minimized.

The differences between UPCA and UCA are rooted in the basic distinction between a planned community annealed by conditions, covenants, and restrictions, and a condominium development bound together by tenancies-in-common. Because a planned community may have limited common elements, physically and fiscally, an exception is created for planned communities with fewer than twelve units, or for which the liability for common expenses is less than \$100 per year per unit. These kinds of planned communities are not subject to the Act except for the provisions on separate titles and taxation, applicability of building codes, and eminent domain. A de minimus planned community is no more than a group of individual units with a minor commitment to some common property or use. For such a planned community, the total application of this Act is overkill.

Condominiums, in contrast, vest ownership rights in all common elements. This kind of joint ownership makes a de minimus condominium not feasible. A planned community is easily tailored to a de minimus regime.

Of course, common elements cannot be dealt with identically under these two forms of ownership, either. Since common elements are owned by the association in a planned community, the declaration and public offering statement must reflect this. Also, in a planned community, owners must have a statutory easement to protect their individual interests in the common elements.

Under UPCA, as opposed to UCA, real estate may be added without describing its location in the original declaration. An addition may not exceed 10% of the total designated development area, and the declarant cannot increase the number of units established in the original declaration. In effect, it allows added real estate to the common elements. In a condominium development, adding real estate requires adjustment for each unit owner's share. In a planned community, since the owners' association owns the common elements" no such adjustment is necessary, and adding small amounts of real estate to the common elements is feasible.

The UPCA and UCA parallels and identical organization are very much intended. The law should favor no particular development scheme over another. Each scheme should stand on the merits of its own advantages versus its own disadvantages. The way UPCA and UCA are structured guarantees this neutrality in the law. It puts the emphasis upon real advantages when a developer contemplates a project and sales to consumers.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 11:26 PM
To: FINTestimony
Cc: sunnymakaha@yahoo.com
Subject: Submitted testimony for HB1308 on Feb 23, 2017 12:00PM

HB1308

Submitted on: 2/21/2017

Testimony for FIN on Feb 23, 2017 12:00PM in Conference Room 308

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

Comments: I am in favor of this bill. Presently too often there is misconduct by Board members who do so with full knowledge that there is no state agency for owners to turn to for justice. Oftentimes 'mediation' and 'arbitration' are the wrong venue to deal with false accusations made for political gain. Going to Civil Court (\$40,000 to \$200,000+) is beyond the reach of 99%+ of owners. We are fed up with being treated like '2nd class' citizens. Associations are NOT sovereign little countries within our state borders, but are treated as such.

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FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 22, 2017 6:02 PM
To: FINTestimony
Cc: lourdes10@me.com
Subject: Submitted testimony for HB1308 on Feb 23, 2017 12:00PM



HB1308

Submitted on: 2/22/2017

Testimony for FIN on Feb 23, 2017 12:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Lourdes Scheibert	Individual	Support	Yes

Comments: My name is Lourdes Scheibert a condominium owner in support of HB1308 HD2

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