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**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE HOUSE COMMITTEE ON HOUSING

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Tuesday, February 7, 2017
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 1308, RELATING TO HOMEOWNERS
ASSOCIATIONS.**

TO THE HONORABLE TOM BROWER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Celia Suzuki, Licensing Administrator of the Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs (“Department”). The Department appreciates the opportunity to submit comments on House Bill No. 1308, Relating to Homeowners Associations.

The purpose of House Bill No. 1308 is to require the Department to conduct a study on the necessity and feasibility of establishing an agency within the Department to regulate homeowners associations.

Being that the regulation of homeowners associations would be a new regulatory scheme, it is the Department’s recommendation that the Auditor perform a

sunrise review of the general regulatory oversight of homeowners associations. Section 26H-6, HRS, requires that new regulatory measures being considered for enactment be referred to the Auditor for a sunrise analysis. The statute requires the referral to be made by a concurrent resolution that identifies a specific legislative bill to be analyzed. The statute further requires that the analysis set forth the probable effects of regulation and assess whether its enactment is consistent with the legislative policies of the Hawaii Regulatory Licensing Reform Act, and assess alternative forms of regulation.

We therefore request that the Department be removed from conducting the study.

Thank you for the opportunity to provide comments on House Bill No. 1308.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 2, 2017 11:07 AM
To: HSGtestimony
Cc: richard.emery@associa.us
Subject: Submitted testimony for HB1308 on Feb 7, 2017 09:00AM

HB1308

Submitted on: 2/2/2017

Testimony for HSG on Feb 7, 2017 09:00AM in Conference Room 423

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

Comments: EWach legislative year, numerous Bills are introduced and this study may help put issues to rest. One should recognize that property rights are often private contracts and that not every dispute can be solved by government. Our supreme court previously overturned many cases when the Condo Court pilot program was tested. There is no government cure-all to solve all disputes and preserve property and constitutional rights.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 6, 2017 10:52 AM
To: HSGtestimony
Cc: albertd@hawaiianprop.com
Subject: Submitted testimony for HB1308 on Feb 7, 2017 09:00AM

HB1308

Submitted on: 2/6/2017

Testimony for HSG on Feb 7, 2017 09:00AM in Conference Room 423

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

Comments: Aloha, I support HB 1308 with proposed amendments as submitted by CAI LAC. Mahalo. warmest aloha Al Denys

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P.O. Box 976
Honolulu, Hawaii 96808

February 6, 2017

Honorable Tom Brower
Honorable Nadine K. Nakamura
Committee on Housing
415 South Beretania Street
Honolulu, Hawaii 96813

Re: HB 1308-COMMENTS

Dear Chair Brower, Vice-Chair Nakamura and Committee Members:

I am a member of the Community Associations Institute Legislative Action Committee. CAI offers comments about HB 1308.

HB 1308 proposes a study. CAI supports the idea of basing policy upon objective facts discerned through reasonable and responsible investigation involving all stakeholders in an open process.

HB 1308 is, therefore, in sharp contrast to bills that are far less measured in their approaches to homeowner association issues. The committee may still wish to consider several points.

The term "homeowners associations" is broad. It may be useful to specify whether the proposed scope of the study encompasses both condominium associations (H.R.S. Ch. 514B) and planned community associations (Ch. 421J). Characteristics of each are distinct and merit separate treatment.

CAI supports self-governance for all forms of homeowner associations. Self-governance is a bedrock principle.

It would be helpful if the committee were to explicitly acknowledge the importance of preserving self-governance so CAI proposes the following amendment:

Honorable Tom Brower
Honorable Nadine K. Nakamura
February 6, 2017
Page 2 of 2

SECTION 1. (a) The department of commerce and consumer affairs shall conduct a study on the necessity and feasibility of establishing an agency within the department of commerce and consumer affairs to provide general regulatory oversight of homeowners associations in a manner that is consistent with the principle of association self-governance.

CAI supports education and access to information. The emphasis of HB 1308 should be on how government can help to educate consumers and to offer *information*.

The committee may wish to consider that certain levels of intrusive government involvement with homeowner associations might constitute *state action* and expose the State to potential liability. Regulation to protect *governmental* interests may be distinct from regulating the *private* relations of owners of real property.

With respect to the enumerated purposes of the proposed study, CAI would be particularly concerned about discrimination based on housing type. For example, persons who own real property should have equal access to justice, and should not be deprived of full access to the courts based on whether they live within a homeowner association. HB 1308 may be too directive, then, at least with respect to items 4 and 5.

Thank you for this opportunity to testify.

Community Associations Institute, by

Philip Nerney

For its Legislative Action Committee

February 7, 2017

The Honorable Tom Brower, Chair

House Committee on Housing
State Capitol, Room 423
Honolulu, Hawaii 96813

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

HEARING: Tuesday, February 7, 2017, at 9:00 a.m.

Aloha Chair Brower, Vice Chair Nakamura, and Members of the Committee.

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

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.

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.

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.

February 4, 2017

Representative Tom Brower, Chair
Representative Nadine K. Nakamura, Vice Chair
Committee on Housing
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **Support for HB 1308**

Dear Chair Brower and Vice Chair Nakamura:

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 support of HB 1308. I have voiced opposition to the establishment of a "condo czar" or a position within the Attorney General's office to oversee condominium disputes, since there is a lack of data to support such measures. HB 1308 would be a good start as it seeks to have the Department of Commerce and Consumer Affairs ("DCCA") conduct a study in this area.

I respectfully suggest that as part of this study, the DCCA also reach out to the various stakeholders in the condo association industry, e.g., attorneys, management companies, owners, board members, etc.

Thank you for your consideration.

Very truly yours,



Christian P. Porter

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 7, 2017 10:16 AM
To: HSGtestimony
Cc: hawaiimarti@gmail.com
Subject: Submitted testimony for HB1308 on Feb 7, 2017 09:00AM

HB1308

Submitted on: 2/7/2017
Testimony for HSG on Feb 7, 2017 09:00AM in Conference Room 423

Submitted By	Organization	Testifier Position	Present at Hearing
Martha Morishige	Individual	Support	No

Comments: I support the need to have oversight of local home owner associations. There are some association boards who are not democratic and manipulate the bylaws to suit them. Also proxy voting is a scam on the membership since the board is in total control with proxies. This is especially a problem if the proxies are from people who don't live in the association subdivision and just own a piece of property. Those people are not aware of the true problems that exist in the subdivision for those who have a home and live in the subdivision.

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Sent: Tuesday, February 7, 2017 8:54 AM
To: HSGtestimony
Cc: dmnstill@aol.com
Subject: Submitted testimony for HB1308 on Feb 7, 2017 09:00AM

HB1308

Submitted on: 2/7/2017

Testimony for HSG on Feb 7, 2017 09:00AM in Conference Room 423

Submitted By	Organization	Testifier Position	Present at Hearing
Mayelin Stillwell	Hawaiian Paradise Park Homeowners Association	Support	No

Comments: Private subdivisions are held hostage when they get a corrupt board. We need accountability and a means to enforce our bylaws when the board is mismanaging our money and laws.

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Sent: Tuesday, February 7, 2017 6:02 AM
To: HSGtestimony
Cc: mango14th@msn.com
Subject: Submitted testimony for HB1308 on Feb 7, 2017 09:00AM

HB1308

Submitted on: 2/7/2017

Testimony for HSG on Feb 7, 2017 09:00AM in Conference Room 423

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

Comments: We in HPP are in despirate need of oversight of our BOD which is constantly abusing their power by not following he laws in regards to 414 D . This is endangering the security of over 8,000 lot owners by causing numerous law suits, waste of collected Road fees. We have tried everything including arbitration that landowners paid for out of their own pockets, to come to terms with the BOD, but they refuse to even meet with us to discuss issues and used our Road Maintainance monies to hire lawyers to fight Membership. Our votes are ignored, our money mismanaged, elections are not legal. Members who object are targeted for mistreatment and threats and public humiliation. We have begged AG for help to no avail. We need help in order to be treated fairly. We are being led to ruin and cannot afford to fight an Association with over 2 million dollars annually of OUR money used to hire lawyers to protect this Rogue BOD. Please pass this bill !

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 7, 2017 12:23 AM
To: HSGtestimony
Cc: mkhan@hawaiiantel.net
Subject: Submitted testimony for HB1308 on Feb 7, 2017 09:00AM

HB1308

Submitted on: 2/7/2017
 Testimony for HSG on Feb 7, 2017 09:00AM in Conference Room 423

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

Comments: Recommend that the 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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Sent: Monday, February 6, 2017 10:33 PM
To: HSGtestimony
Cc: shaw.geoff5@gmail.com
Subject: Submitted testimony for HB1308 on Feb 7, 2017 09:00AM

HB1308

Submitted on: 2/6/2017

Testimony for HSG on Feb 7, 2017 09:00AM in Conference Room 423

Submitted By	Organization	Testifier Position	Present at Hearing
Geoffrey Shaw	Individual	Comments Only	No

Comments: I would prefer that so-called private subdivisions that were only created to put the burden of building infrastructure on the backs of people who don't have the resources be abolished but if the state can't do what is right then at least ensure the HOAs aren't corrupt.

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Sent: Monday, February 6, 2017 9:59 PM
To: HSGtestimony
Cc: bobarthurs@me.com
Subject: Submitted testimony for HB1308 on Feb 7, 2017 09:00AM

HB1308

Submitted on: 2/6/2017
Testimony for HSG on Feb 7, 2017 09:00AM in Conference Room 423

Submitted By	Organization	Testifier Position	Present at Hearing
bob Arthurs	Individual	Comments Only	No

Comments: The agony OLCA is going through and the EXPENSE over court cases of financial mismanagement, a plea for Receivership to the court and a year of disabled financial accountability is a travesty without protection or assistance from DCCA, the prosecutor, or the police for any community Association! Directors need training, the need to understand and abide by the ByLaws and HRS 414D -- no timely penalties for fiduciary mismanagement. Court cases drag on with attendant expense. This insurance companies and attorneys strategize to get the legal expenses so high that one of the parties will fold before trial! We are experiencing this travesty in Orchidland. Please regulate these organizations that assess property owners with no accountability! The substandard community associations are crying for help! Thank you.

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Sent: Monday, February 6, 2017 9:34 PM
To: HSGtestimony
Cc: Karen@RedwoodGames.com
Subject: Submitted testimony for HB1308 on Feb 7, 2017 09:00AM

HB1308

Submitted on: 2/6/2017
Testimony for HSG on Feb 7, 2017 09:00AM in Conference Room 423

Submitted By	Organization	Testifier Position	Present at Hearing
Karen Chun	Individual	Support	No

Comments: Thank you so much for considering this. Bad HOAs can make our lives miserable. In Kuau Bayview, the Board has hired an unlicensed property manager who refuses to give out contact information of the members for purposes of soliciting proxies. Our only recourse is to spend thousands of dollars hiring an attorney to get them to obey the law. Considering that many of us bought into this planned community when it was an affordable housing development, we do not have the means to fight this. Leaving us at the mercy of illegally behaving HOAs is making our lives hell. Please help us.

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