

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

AND

TO THE SENATE COMMITTEE ON WAYS AND MEANS

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Thursday, March 30, 2017
9:50 a.m.

WRITTEN TESTIMONY

**TESTIMONY ON HOUSE BILL NO. 1499, H.D. 1, S.D. 1, RELATING TO
CONDOMINIUM ASSOCIATIONS.**

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
TO THE HONORABLE JILL N. TOKUDA, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Nikki Senter, Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission takes no position on Parts I to IV of this bill, and limits its comments and proposed revisions to Part V of the bill.

Part V of this bill authorizes the use of condominium education trust fund fees to pay arbitrators' fees. The bill also creates a new section to allow permitted parties to enter into voluntary binding arbitration if a mediation fails to resolve a dispute.

The Commission supports the concept of alternative dispute resolution as an avenue for handling condominium disputes.

In order to fulfill the purpose and intent of this measure to authorize the use of the Condominium Education Trust Fund to pay for arbitration of

condominium disputes, the Commission requests that Section 514B-72, Hawaii Revised Statutes, and Act 187, Session Laws of Hawaii 2013, be revised to reflect the expanded use of the fund, as follows:

Section 514B-72, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each project or association with more than five units, including any project or association with more than five units subject to chapter 514A, shall pay to the department of commerce and consumer affairs:

(1) A condominium education trust fund fee within one year after the recordation of the purchase of the first unit or within thirty days of the association's first meeting, and thereafter, on or before June 30 of every odd-numbered year, as prescribed by rules adopted pursuant to chapter 91; and

(2) Beginning with the July 1, 2015, biennium registration, an additional annual condominium education trust fund fee in an amount equal to the product of \$1.50 times the number of condominium units included in the registered project or association to be dedicated to supporting mediation or voluntary binding arbitration of condominium related disputes. The additional condominium education trust fund fee shall total \$3 per unit until the commission adopts rules pursuant to chapter 91. On June 30 of every odd-numbered year, any unexpended additional amounts paid into the condominium education trust fund and initially dedicated to supporting mediation or voluntary binding arbitration of

condominium related disputes, as required by this paragraph, shall be used for educational purposes as provided in section 514B-71(a)(1), (2), and (3)."

Act 187, Session Laws of Hawaii 2013, is amended by amending section 5 to read as follows:

"SECTION 5. The department of commerce and consumer affairs professional and vocational licensing division's budget ceiling shall be amended to reflect the additional annual condominium education trust fund fee required by section 514B-72(a)(2), Hawaii Revised Statutes, and paid into the condominium education trust fund, established by section 514B-71, Hawaii Revised Statutes. On June 30 of every odd-numbered year, any unexpended additional amounts paid into the condominium education trust fund and initially dedicated to supporting mediation or voluntary binding arbitration of condominium related disputes, as required by section 514B-72(a)(2), Hawaii Revised Statutes, shall be used for educational purposes as provided in section 514B-71(a) (1), (2) and (3), Hawaii Revised Statutes."

Arbitration can be more costly than mediation. Thus, should this bill pass, the Commission requests that it retain discretion regarding allocation of funds to each program.

Finally, regarding the language on page 38, line 12 of the bill that would authorize mediation of a dispute involving the interpretation or enforcement of "this chapter," the Commission is concerned that such language is too broad and

Testimony on House Bill No. 1499, H.D. 1, S.D. 1
Thursday, March 30, 2017
Page 4

would expand mediation beyond the intent of the statute. The Commission previously submitted testimony and opposes the over broadness of this expansion. The Commission requests that this phrase be deleted.

Thank you for the opportunity to provide written testimony on House Bill No. 1499, H.D. 1, S.D. 1.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: [J](#)
Subject: Submitted testimony for HB1499 on Mar 30, 2017 09:50AM
Date: Sunday, March 26, 2017 7:10:53 PM

HB1499

Submitted on: 3/26/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

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

Comments: Strong support.

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The Maui Lani Community Association

P.O. Box 1642
Kahului, HI 96733-1642

March 28, 2017

Senator, Keith - Agaran, Chair
Senator, Tokuda, Chair
Senator, Rhoads, Vice Chair
Senator, Dela Cruz, Vice Chair
House of Representatives

Re: Opposition to the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of H.B. 1499, H.D.1, S.D.1.

Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees:

As a condominium Owner, I oppose the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of H.B. 1499, H.D.1, S.D.1.

As the General Manager for The Maui Lani Community Association, which is a planned community in Kahului/Wailuku, Maui, Hawai'i, currently with 1400 Homeowners and projected to 3700 Homeowners at completion, I oppose the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of H.B. 1499, H.D.1, S.D.1.

The changes to these two sections will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents.

HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are

Association Contact Information
Phone: 808-877-0777
Fax: 808-877-0775

assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-105(c) and 514A-15.1 will prejudice associations by impairing their ability to collect sums due. Finally, many associations have amended their governing documents by a vote of the membership to give the association the authority to apply payments in accordance with an application of payment policy. The changes to HRS Section 514B-105(c) and 514A-15.1, which will invalidate those provisions, will have the effect of substantially impairing contract rights. For these reasons, I urge the committee to strike Sections 3 and 5 from H.B. 1499, H.D.1, S.D 1 and leave HRS Sections 514B-105(c) and 514A-15.1, as they exist in law today, intact.

If you have any questions, please contact me at (808) 877-0777.

Sincerely,

Barbara A. Kojima

Barbara A. Kojima
General Manager

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: [g](#)
Subject: Submitted testimony for HB1499 on Mar 30, 2017 09:50AM
Date: Wednesday, March 29, 2017 10:01:15 AM

HB1499

Submitted on: 3/29/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Farias	Individual	Oppose	No

Comments: Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees: I OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of H.B. 1499, H.D.1, S.D.1. The changes to these two sections will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents. HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-105(c) and 514A-15.1 will prejudice associations by impairing their ability to collect sums due. Finally,

many associations have amended their governing documents by a vote of the membership to give the association the authority to apply payments in accordance with an application of payment policy. The changes to HRS Section 514B-105(c) and 514A-15.1, which will invalidate those provisions, will have the effect of substantially impairing contract rights. For these reasons, I urge the committee to strike Sections 3 and 5 from H.B. 1499, H.D.1, S.D 1 and leave HRS Sections 514B-105(c) and 514A-15.1, as they exist in law today, intact.

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Subject: Submitted testimony for HB1499 on Mar 30, 2017 09:50AM
Date: Tuesday, March 28, 2017 6:36:32 PM

HB1499

Submitted on: 3/28/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Anne Anderson	Individual	Oppose	Yes

Comments: Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees: I am a partner in the law firm of Anderson Lahne & Fujisaki LLP A Limited Liability Law Partnership. I have represented condominium associations in Hawai'i for over thirty years. I OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of H.B. 1499, H.D.1, S.D.1 and have comments on the proposed change to HRS Section 514B-146(g) found in Section 6 of the bill. The proposed changes to HRS Sections 514B-105(c) 514A-15.1 will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents. HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to

apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-105(c) and 514A-15.1 will prejudice associations by impairing their ability to collect sums due. Finally, many associations have amended their governing documents by a vote of the membership to give the association the authority to apply payments in accordance with an application of payment policy. The changes to HRS Section 514B-105(c) and 514A-15.1, which will invalidate those provisions, will have the effect of substantially impairing contract rights. For these reasons, I urge the committee to strike Sections 3 and 5 from H.B. 1499, H.D.1, S.D 1 and leave HRS Sections 514B-105(c) and 514A-15.1, as they exist in law today, intact. Finally, I am concerned about the wording of the last sentence of the new proposed HRS Section 514B-146(g) found in Section 6 of the bill because it could potentially be subject to more than one interpretation. It currently provides that if a mediation is not completed in 60 days or the parties fail to resolve the dispute by mediation, "the association may proceed with collection of all amounts due from the owner for attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charge that is not imposed on all unit owners as a common expense." It is possible that some owners will try to argue that the reference to "any other charge that is not imposed on all unit owners as a common expense," means that the association may not collect common expenses, when clearly this is not the intent of this provision. This could be cleared up by replacing the words "or any other charge that is not imposed on all unit owners as a common expense" at the very end of that sentence with "and any other charge that is subject to this subsection (g)." Sincerely, Anne Anderson

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Subject: *Submitted testimony for HB1499 on Mar 30, 2017 09:50AM*
Date: Saturday, March 25, 2017 2:01:24 PM

HB1499

Submitted on: 3/25/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Benton	Individual	Oppose	No

Comments:

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Date: Tuesday, March 28, 2017 7:04:32 PM

HB1499

Submitted on: 3/28/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Bonnie Lau	Individual	Oppose	No

Comments: Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees: I STRONGLY OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of H.B. 1499, H.D.1, S.D.1. As a newly elected board of director, I am still learning how my association handles its fiscal matters under the HRS Section 514B-149, and once again, I'm trouble learning the proposed measurements. The changes to these two sections will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents. HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to

make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-105(c) and 514A-15.1 will prejudice associations by impairing their ability to collect sums due. Finally, many associations have amended their governing documents by a vote of the membership to give the association the authority to apply payments in accordance with an application of payment policy. The changes to HRS Section 514B-105(c) and 514A-15.1, which will invalidate those provisions, will have the effect of substantially impairing contract rights. For these reasons, I urge the committee to strike Sections 3 and 5 from H.B. 1499, H.D.1, S.D 1 and leave HRS Sections 514B-105(c) and 514A-15.1, as they exist in law today, intact. Thank you.

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Subject: Submitted testimony for HB1499 on Mar 30, 2017 09:50AM
Date: Tuesday, March 28, 2017 12:34:28 PM

HB1499

Submitted on: 3/28/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Bradford Lee Hair	Individual	Oppose	No

Comments: Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees: I OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of S.B. 1499, H.D.1, S.D.1. The changes to these two sections will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents. HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-105(c) and 514A-15.1 will prejudice associations by impairing their ability to collect sums due. Finally,

many associations have amended their governing documents by a vote of the membership to give the association the authority to apply payments in accordance with an application of payment policy. The changes to HRS Section 514B-105(c) and 514A-15.1, which will invalidate those provisions, will have the effect of substantially impairing contract rights. For these reasons, I urge the committee to strike Sections 3 and 5 from H.B. 1499, H.D.1, S.D 1 and leave HRS Sections 514B-105(c) and 514A-15.1, as they exist in law today, intact.

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Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees:

I OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of S.B. 1499, H.D.1, S.D.1. The changes to these two sections will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents.

HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-105(c) and 514A-15.1 will prejudice associations by impairing their ability to collect sums due. Finally, many associations have amended their governing documents by a vote of the membership to give the association the authority to apply payments in accordance with an application of payment policy. The changes to HRS Section 514B-105(c) and 514A-15.1, which will invalidate those provisions, will have the effect of substantially impairing contract rights. For these reasons, I urge the committee to strike Sections 3 and 5 from H.B. 1499, H.D.1, S.D. 1 and leave HRS Sections 514B-105(c) and 514A-15.1, as they exist in law today, intact.

Submitted by Chandra R.N. Kanemaru

Honolulu, Hawaii 96818

Dante K. Carpenter

Honolulu, HI 96818

COMMITTEES ON JUDICIARY & LABOR AND WAYS & MEANS

Subject: HB1499 HD1 SD1 – RELATING TO CONDOMINIUM ASSOCIATIONS

Dear Chairs Keith-Agaran and Tokuda, Vice-Chairs Rhodes and Dela Cruz and Committee Members:

Good Afternoon. My name is Dante K. Carpenter. I am an elected member of the BOD of the AOA Country Club Village, Phase 2, located in Moanalua – Salt Lake area of O’ahu. I have previously served as the Past BOD President for over 20 years. This condominium Complex is comprised of Two (2) – 21 Story Buildings with 469 2 & 3 BR Apartments.

I am strongly opposed to proposed language changes to HRS Sections 514B-105(c) and 514A-15.1 as set forth in HB 1499 HD1 SD1; Sections 3 and 5 for the following reasons:

1. The proposed changes will invalidate the application of payment policies that have already been adopted by a very large number, if not a majority, of condominium associations in Hawai’i.
2. Properly enacted payment policies have been in use by our association for over 20 years with much success and virtually no negative reaction by homeowners! They have been very effective in enabling condo associations like ours to collect late fees, legal fees, fines, and interest from owners who have failed to pay assessments or to comply with the associations’ governing documents. This has facilitated a healthy operation while alleviating onerous financial burdens on members who pay their assessments on a timely basis and otherwise comply with the governing documents.
3. Sections 514B-105(c) and 514A-15.1, as currently written in law, allows for the application of payment policies as long as the Board of Directors adopt a policy and informs and distributes it to the owners with advance notice prior to implementation. This has certainly worked well for all these past 20 years so there is absolutely no compelling reason for the proposed change! Condo associations need an effective means of collecting late fees, fines, interest, and attorney’s fees and the application of payment policies have proven to be very effective.
4. Further, if associations are not able to collect these sums thru a payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgement against the owners, thereby leaving the association with no effective means of collecting arrears, if the payment policies are disallowed.

Testimony of Dante K. Carpenter

5. Once owners realize the Legislature has taken away the ability of the association to apply common expense payments to their late fees, fines, attorney's fees and interest, they will be less likely to make timely payments or to promptly cure covenant violations!
6. Section 3 & 5 of this measure as proposed, will definitely adversely affect almost every condominium association in Hawai'i, and will complicate and impede the ability of homeowners associations to function as primarily non-profit entities.

Therefore, I oppose any effort to destabilize Chapters 514B and 514A as proposed and strongly urge the committee(s) to strike/remove Section 3 & 5 of HB 1499.

Thank you for your attention to this urgent matter

Respectfully submitted,

/s/ Dante K. Carpenter

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for HB1499 on Mar 30, 2017 09:50AM
Date: Wednesday, March 29, 2017 8:55:17 AM

HB1499

Submitted on: 3/29/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Glenn S. Horio	Individual	Oppose	No

Comments: Dear Chairs Gilbert S.C. Keith-Agaran and Jill N. Tokuda, Vice Chairs Karl Rhoads and Donovan M. Dela Cruz, and Members of the Committee on Judiciary and Labor, and Committee on Ways and Means: I OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of H.B. 1499, H.D.1, S.D.1. The changes to these two sections will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents. HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-

105(c) and 514A-15.1 will prejudice associations by impairing their ability to collect sums due. Finally, many associations have amended their governing documents by a vote of the membership to give the association the authority to apply payments in accordance with an application of payment policy. The changes to HRS Section 514B-105(c) and 514A-15.1, which will invalidate those provisions, will have the effect of substantially impairing contract rights. For these reasons, I urge the committee to strike Sections 3 and 5 from H.B. 1499, H.D.1, S.D 1 and leave HRS Sections 514B-105(c) and 514A-15.1, as they exist in law today, intact. Thank you for the opportunity to submit the testimony above.

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Subject: Submitted testimony for HB1499 on Mar 30, 2017 09:50AM
Date: Wednesday, March 29, 2017 8:31:20 AM

HB1499

Submitted on: 3/29/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Hugh Klipp	Association of Unit Owners Kipuka at Hoakalei	Oppose	No

Comments: I OPPOSE the propose changes to Section 3 & 5 Removing the ability to collect costs directly attributed to a unit's obligations within the Association and an owner's compliance with the Master Declaration significantly effects and shifts actual costs to all other owners within the Association. As proposed, the language removes any needs for timely payment of debts and neuters the Board's enforcement powers which are limited by the Master Declaration and By-Laws to imposing fines and collecting costs in resolving non-payments and covenant violations. The State's allowance of Condo laws for multi-single home developments (Kipuka at Hoakalei) forces Associations to act as a pass-thru agent for contracted services under their existing Master Declarations. An example, The Board of Water & DES will only bill a single main meter for the property even though units have sub-meters and do not share walls. When owners miss payments or default, the costs of these individual services are prorated to other owners potentially leading to special assessments. The financial burden on current owners mounts unseen since common assessments are less than half of a unit's monthly obligation to the Association. Add to this legal fees to pursue and collect moneys owed to the Association, and this proposed revision dramatically effects the lives of the Association's owners.

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Date: Tuesday, March 28, 2017 1:51:41 PM

HB1499

Submitted on: 3/28/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
James Dittmar	Individual	Oppose	Yes

Comments: Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees: My name is James Dittmar and I am a condominium board member. I strongly OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of S.B. 1499, H.D.1, S.D.1. The changes to these two sections will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents. HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-105(c) and 514A-

15.1 will prejudice associations by impairing their ability to collect sums due. Finally, many associations have amended their governing documents by a vote of the membership to give the association the authority to apply payments in accordance with an application of payment policy. The changes to HRS Section 514B-105(c) and 514A-15.1, which will invalidate those provisions, will have the effect of substantially impairing contract rights. For these reasons, I urge the committee to strike Sections 3 and 5 from H.B. 1499, H.D.1, S.D 1 and leave HRS Sections 514B-105(c) and 514A-15.1, as they exist in law today, intact.

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Date: Tuesday, March 28, 2017 1:43:24 PM

HB1499

Submitted on: 3/28/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Joanna L. Miranda	Individual	Oppose	No

Comments: Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees: I OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of H.B. 1499, H.D.1, S.D.1. The changes to these two sections will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents. HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-105(c) and 514A-15.1 will prejudice associations by impairing their ability to collect sums due. Finally,

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My name is John Morris and I am attorney who practices in the area of condominium and homeowner association. I also spent three years (1988-91) as the state's first condominium specialist with the real estate commission, which provided a more well-rounded perspective of the problems of condominium living. I am submitting testimony in support of HB 1499, SD1.

The bill attempts to address a number of the problems that lead to disputes and to the large number of bills that are introduced in the legislature every year. Owners pressure legislators to introduce those bills because the owners are often unable to resolve the disputes in a fair and efficient manner. Therefore, it is worthwhile moving this bill forward in the hope that it will eliminate the disputes or at least allow them to be resolved more effectively.

One common problem is disputes about fines and other charges imposed on owners. Payment of maintenance fees (common expenses) is essential to the financial viability of a condominium association, and the bill recognizes that by continuing to require that such payments must be paid and not withheld. In contrast, fines and other charges are not necessary to the financial viability of a condominium association and, in many cases, are open to disputes about their justification or validity.

The bill recognizes that issue by allowing owners to demand mediation of fines and other charges prior to payment. Mediation has the benefit of bringing the association and the owners together with a neutral third party. In that way, each side may learn more about the opinion that the other and possibly resolve the dispute more simply and without confrontation. In the long run, that will be a better outcome than continuous disputes.

The bill also eliminates the priority of payments process whereby an owner's payments of maintenance fees are first used to pay fines and other charges before being applied to maintenance fees, thereby creating a maintenance fee delinquency that can escalate quickly. Again, the bill recognizes that in the long run, since fines and other charges are not necessary to the financial viability of the association, it makes sense to try to resolve those charges through mediation.

The other major aspect of the bill is expanding the dispute resolution options available to condominium owners and boards. More specifically, the bill proposes to allow the fund that was created to resolve disputes through mediation to also be used for resolving disputes through binding arbitration.

Ideally, every dispute should be resolved through mediation. On that basis, for a number of years the law has provided that every condominium owner must contribute a small amount to a dispute resolution fund to help pay for "evaluative" mediation. Evaluative mediation has the benefit of allowing the parties to use a mediator with subject matter knowledge, to help educate the parties on the

relative merits of their claims and possible solutions. In other words, rather than just helping to facilitate resolution of a dispute, the evaluative mediator has the background and knowledge to twist arms to try to force the parties to recognize the relative merits of their claims.

HB 1499, SD1 recognizes, however, that not every dispute can be resolved by mediation. Therefore, it proposes to use the same dispute resolution fund to promote binding arbitration of disputes. Many condominium disputes are ideal for binding arbitration. They do not involve earth-shattering issues – although the issues are important to the parties – and often just require some decision be made so the parties can move on. Recognizing this, HB 1499, SD1 proposes to facilitate the use of binding arbitration for those types of disputes.

In summary, the provisions of HB 1499, SD1 will help resolve a number of problem areas of condominium management and operations in an effective and straightforward manner. Therefore, the bill should be passed to eliminate or at least reduce some of the most common problems that generate bills year after year in the legislature.

Thank you for this opportunity to testify.

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Date: Tuesday, March 28, 2017 1:29:15 PM

HB1499

Submitted on: 3/28/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
John Toalson	Individual	Oppose	No

Comments: Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees: I OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of H.B. 1499, H.D.1, S.D.1. The changes to these two sections will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents. HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-105(c) and 514A-15.1 will prejudice associations by impairing their ability to collect sums due. Finally,

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HB1499

Submitted on: 3/28/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Joyce Baker	Individual	Oppose	No

Comments: Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees: I OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of H.B. 1499, H.D.1, S.D.1. The changes to these two sections will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents. HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-105(c) and 514A-15.1 will prejudice associations by impairing their ability to collect sums due. Finally,

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Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees:

I OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of H.B. 1499, H.D.1, S.D.1. The changes to these two sections will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents.

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Julie Wassel

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HB1499

Submitted on: 3/29/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Katherine Stringham	Individual	Oppose	No

Comments: Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees: I OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of H.B. 1499, H.D.1, S.D.1. The changes to these two sections will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents. HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-105(c) and 514A-15.1 will prejudice associations by impairing their ability to collect sums due. Finally,

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HB1499

Submitted on: 3/28/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Lonnie Atchley	Individual	Oppose	No

Comments: Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees: I OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of H.B. 1499, H.D.1, S.D.1. The changes to these two sections will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents. HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-105(c) and 514A-15.1 will prejudice associations by impairing their ability to collect sums due. Finally,

many associations have amended their governing documents by a vote of the membership to give the association the authority to apply payments in accordance with an application of payment policy. The changes to HRS Section 514B-105(c) and 514A-15.1, which will invalidate those provisions, will have the effect of substantially impairing contract rights. For these reasons, I urge the committee to strike Sections 3 and 5 from H.B. 1499, H.D.1, S.D 1 and leave HRS Sections 514B-105(c) and 514A-15.1, as they exist in law today, intact.

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Subject: Submitted testimony for HB1499 on Mar 30, 2017 09:50AM
Date: Tuesday, March 28, 2017 1:26:19 PM

HB1499

Submitted on: 3/28/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Oppose	No

Comments: I am both a condo owner and board member. This bill, which I had dubbed "the keep attorneys in business in Hawaii Bill" will cause great hardship to many associations. Some owners refuse to pay their common expenses. Some owners withhold payment for several billing cycles until they know that a lien will be placed on their unit(s). It is only through the application of payment policies that we are able to get payment in a timely manner. What you may not know is that mortgage providers review an association's financial records, and pay particular attention to delinquencies. If the numbers are too high in their estimation, they will not grant a mortgage. They also look at the percentage of owner occupied units when making a decision of whether to grant a mortgage. This bill will cause financial hardship on condo associations and also fewer buyers of units because qualified mortgages will not be available. Fortunately my association does not have too many of these "bad" owners, but the bad owners owe a lot of money. Sometimes delinquencies run to \$50,000. That is a lot of months of unpaid fees. If the money does not come in, funds will not be available to pay salaries, do maintenance, and major capital improvement projects. It is a trade off. No funds, no services or reduced services. Should we lay off employees, cut their hours, cancel repair work or high risk inspections? We cannot print dollars. We had one owner actually say that she could not believe we would send her delinquent account to an attorney? She paid up. Quickly. The application of payment policies has worked well for years. It alleviates additional financial burdens for members who pay on time and comply with the declaration, bylaws, and house rules. Doing away with it only emboldens those who want a free ride. I implore you to kill Sections 3 and 5 of H.B. 1499, H. D. 1, S.D. 1. and leave HRS Sections 514B-105(c) and 514A-15.1 as they exist in law today. Lynne Matusow

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Date: Tuesday, March 28, 2017 12:23:25 PM

HB1499

Submitted on: 3/28/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Mark McKellar	Individual	Oppose	No

Comments: I OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of H.B. 1499, H.D.1, S.D.1. The changes to these two sections will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents. HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-105(c) and 514A-15.1 will prejudice associations by impairing their ability to collect sums due. Finally, many associations have amended their governing documents by a vote of the

membership to give the association the authority to apply payments in accordance with an application of payment policy. The changes to HRS Section 514B-105(c) and 514A-15.1, which will invalidate those provisions, will have the effect of substantially impairing contract rights. For these reasons, I urge the committee to strike Sections 3 and 5 from H.B. 1499, H.D.1, S.D 1 and leave HRS Sections 514B-105(c) and 514A-15.1, as they exist in law today, intact.

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Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees:

I STRONGLY OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of S.B. 1499, H.D.1, S.D.1. The condominium associations are responsible for the upkeep and repair of their grounds and buildings. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents.

The changes to these two sections will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. Were the condominium associations unable to make repairs and upgrades property values could be adversely affected. I moved into a unit within a condominium association because I want my neighborhood to reflect care and pride of ownership.

HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these

amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-105(c) and 514A-15.1 will prejudice associations by impairing their ability to collect sums due. Finally, many associations have amended their governing documents by a vote of the membership to give the association the authority to apply payments in accordance with an application of payment policy. The changes to HRS Section 514B-105(c) and 514A-15.1, which will invalidate those provisions, will have the effect of substantially impairing contract rights. For these reasons, I urge the committee to strike Sections 3 and 5 from H.B. 1499, H.D.1, S.D 1 and leave HRS Sections 514B-105(c) and 514A-15.1, as they exist in law today, intact.

Mary Freeman

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Subject: Submitted testimony for HB1499 on Mar 30, 2017 09:50AM
Date: Tuesday, March 28, 2017 12:45:05 PM

HB1499

Submitted on: 3/28/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Targgart	Individual	Oppose	No

Comments: Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees: I OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of S.B. 1499, H.D.1, S.D.1. The changes to these two sections will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents. HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-105(c) and 514A-15.1 will prejudice associations by impairing their ability to collect sums due. Finally,

many associations have amended their governing documents by a vote of the membership to give the association the authority to apply payments in accordance with an application of payment policy. The changes to HRS Section 514B-105(c) and 514A-15.1, which will invalidate those provisions, will have the effect of substantially impairing contract rights. For these reasons, I urge the committee to strike Sections 3 and 5 from H.B. 1499, H.D.1, S.D 1 and leave HRS Sections 514B-105(c) and 514A-15.1, as they exist in law today, intact.

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Date: Tuesday, March 28, 2017 1:20:11 PM
Attachments: [Testimony HD 1499 HD1 SD1 Wheeler.pdf](#)

HB1499

Submitted on: 3/28/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Wheeler	Individual	Oppose	No

Comments:

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Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees:

I OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of S.B. 1499, H.D.1, S.D.1. The changes to these two sections will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents.

HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-105(c) and 514A-15.1 will prejudice associations by impairing their ability to collect sums due. Finally, many associations have amended their governing documents by a vote of the membership to give the association the authority to apply payments in accordance with an application of payment policy. The changes to HRS Section 514B-105(c) and 514A-15.1, which will invalidate those provisions, will have the effect of substantially impairing contract rights. For these reasons, I urge the committee to strike Sections 3 and 5 from H.B. 1499, H.D.1, S.D.1 and leave HRS Sections 514B-105(c) and 514A-15.1, as they exist in law today, intact.

Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees:

I OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of H.B. 1499, H.D.1, S.D.1. The changes to these two sections will invalidate application of partial payment policies adopted by a vast majority of condominium associations in this state. Application of partial payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who consistently do pay their assessments on time and comply with the governing documents.

HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of partial payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This notice is typically included as a reminder in annual budget letters sent to owners and has worked well for years. There is no compelling reason for the proposed change but there are many reasons not to eliminate this valuable association assessment collection tool. Condominium associations need an effective means of collecting assessments and enforcing the other provisions of their governing documents. Association policies enacted to assess late fees, fines, and interest, and to charge attorneys' fees to the owners who have caused the Association to incur the fees for legal enforcement services motivates owners to pay the assessments on time and reduces the negative effect of nonpayment on all of the other Association members who support their association by paying their share of the common expenses. Application of payment policies are necessary to effect the purposes of the late fees, fines, interest, and attorneys' fees and costs, namely to foster compliance with the duty to pay common expenses and to assess the cost of non-payment to the persons violating the provisions of the governing documents. Especially the most chronic and egregious non-common expense paying owner members will opt to pay only their common expenses if given the opportunity to "opt out" of the association's collection policies. If condominium associations are not able to collect these sums via an application of partial payment policy, owners will have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, which likely means that the non-payment of assessments is a repeated pattern or has occurred over a substantial period of time, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to satisfy the late fees, fines, attorneys' fees, and interest first, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-105(c) and

514A-15.1 will prejudice associations by impairing their ability to collect sums due and enforce the other owner obligations in the project documents. Finally, many associations have amended their governing documents by a vote of the membership to give the association the authority to apply payments in accordance with an application of payment policy. The changes to HRS Section 514B-105(c) and 514A-15.1, which will invalidate those provisions, will have the effect of substantially impairing contract rights. For these reasons, I urge the committee to strike Sections 3 and 5 from H.B. 1499, H.D.1, S.D 1 and leave HRS Sections 514B-105(c) and 514A-15.1, as they exist in law today, intact.

PAUL A. IRELAND KOFTINOW, ESQ.

Honolulu, Hawai'i 96813

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair
Senate Committee on Judiciary and Labor
415 South Beretania Street
Honolulu, Hawai'i 96813

Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair
Committee on Ways and Means
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: Testimony in **OPPOSITION** to H.B. 1499, H.D. 1, S.D. 1
Hearing Date: March 30, 2017, at 9:50 a.m., Conference Room 211
The Twenty-Ninth Legislature; Regular Session of 2017

Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees:

My name is Paul A. Ireland Koftinow, and I am an attorney who primarily represents condominium associations and planned community associations in Hawai'i. I am also a graduate of William S. Richardson School of Law, University of Hawai'i at Mānoa. I am respectfully providing my testimony in **OPPOSITION** to H.B. 1499, H.D. 1, S.D. 1. I oppose the proposed changes to HRS Sections 514B-105(c) and 514A-15.1, as set forth in Sections 3 and 5 of H.B. 1499, H.D.1, S.D.1. I also have comments regarding the proposed change to HRS Section 514B-146(g) found in Section 6 of the bill.

HRS Sections 514B-105(c) and 514A-15.1, as currently written, are notice provisions. These sections allow for application of payment policies so long as the board of directors has adopted a policy and distributed it to owners giving them advance notice of the policy. If owners of a condominium association disagree with an application of payment policy, they are free to pass amendments to their governing instruments or participate in association elections. This has worked well for years and there are compelling reasons for Sections 514B-105(c) and 514A-15.1 to remain unchanged.

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair
Senate Committee on Judiciary and Labor
Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair
Committee on Ways and Means
March 29, 2017
Page 2

The changes to HRS Sections 514B-105(c) and 514A-15.1 will prohibit associations from applying common expense payments pursuant to the provisions of their governing instruments. This will completely undermine the efforts of associations and their members to encourage timely payment of assessments and fairly distribute administrative burdens on delinquent and noncomplying owners. The changes to HRS Sections 514B-105(c) and 514A-15.1 will also have the effect of substantially impairing the contract rights of associations. For these reasons, I urge the committee to strike Sections 3 and 5 from H.B. 1499, H.D.1, S.D 1 and leave HRS Sections 514B-105(c) and 514A-15.1, as they exist in law today, intact.

Many associations have amended their governing documents by a vote of the membership to clarify the association's authority to apply payments in accordance with an application of payment policy. When owners in a condominium association become delinquent and fail to comply with their association's governing instruments, the association faces additional administrative burdens to collect unpaid sums and enforce its governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association by reducing administrative burdens and it alleviates additional financial burdens on members who timely pay their assessments and comply with the association's governing documents.

Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when assessed to their account. In many cases, these sums will not rise to a dollar amount that might not be worth incurring additional costs to collect (e.g., by filing a legal action to obtain a judgment against the owners). This measure will thereby substantially impede condominium associations' ability to collect these sums because their application of payment policies will not be allowed. Also, as a result, the administrative burdens to collect amounts and enforce governing documents will have a greater financial impact on all owners.

Finally, I am concerned about the wording of the last sentence of the new proposed HRS Section 514B-146(g) found in Section 6 of the bill because it could potentially be subject to more than one interpretation. It currently provides that if a mediation is not completed in 60 days or the parties fail to resolve the dispute by mediation, "the association may proceed with collection of all amounts due from the owner for attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charge that is not imposed on all unit owners as a common expense." It is

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair
Senate Committee on Judiciary and Labor
Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair
Committee on Ways and Means
March 29, 2017
Page 3

possible that some owners will try to argue that the reference to “any other charge that is not imposed on all unit owners as a common expense,” means that the association may not collect common expenses, when clearly this is not the intent of this provision. This could be cleared up by replacing the words “or any other charge that is not imposed on all unit owners as a common expense” at the very end of that sentence with “and any other charge that is subject to this subsection (g).”

Thank you for this opportunity to provide written testimony.

Sincerely,



Paul A. Ireland Koftinow

Dear Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees:

I as a board member of a large Waikiki condominium OPPOSE the proposed change to HRS Sections 514B-105(c) and 514A-15.1 as set forth in Sections 3 and 5 of H.B. 1499, H.D.1, S.D.1. Based on my board experience with owners who disregard House Rules, fail to meet/short cut renovation agreements, substitute inferior materials, disrespect the common areas, neglect their units, chronically late in paying maintenance fees, possibly putting the AOA in liability positions and places an unfair undue responsibility on the other owners. The changes to these two sections will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents.

HRS Sections 514B-105(c) and 514A-15.1, as currently written in the law, allow for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. **We have had 3 owners who accumulated high four figures amounts and it cost the AOA attorney fees to collect the past due. We have renters who just don't give a dam about our property and continuously break/disregard our House Rules. Our only remedy is to fine the owner of the unit.** Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Sections 514B-105(c) and 514A-15.1 will prejudice associations by impairing their ability to collect sums due. Finally, many associations have amended their governing documents by a vote of the membership to give the association the authority to apply payments in accordance with an application of payment policy. The changes to HRS Section 514B-105(c) and 514A-15.1, which will invalidate those provisions, will have the effect of substantially impairing contract rights. For these reasons, I

urge the committee to strike Sections 3 and 5 from H.B. 1499, H.D.1, S.D 1 and leave HRS Sections 514B-105(c) and 514A-15.1, as they exist in law today, intact.

I AGREE WITH ALL OF THE ABOVE.

Raymond Tremblay, AOA President, Waikiki Sunset

28Mar17