

LATE TESTIMONY

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.

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 to the detriment of the rest of the owners. 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, again, to the detriment of the rest of the owners. 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 already in place. Once some 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, in contrast to the rest of the owners who have been paying all along in good faith. 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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