

**PRESENTATION OF THE  
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON  
INTRASTATE COMMERCE

TWENTY-NINTH LEGISLATURE  
Regular Session of 2017

Wednesday, February 15, 2017  
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 1524, RELATING TO REAL ESTATE.**

TO THE HONORABLE TAKASHI OHNO, CHAIR,  
AND MEMBERS OF THE COMMITTEE:



My name is Nikki Senter and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony in support of House Bill No. 1524, Relating to Real Estate.


House Bill No. 1524 provides an additional measure of protection for the consumer in requiring the principal broker in a real estate brokerage firm to ensure that associated licensees and other staff who assist in common interest communities are responsive to requests from owners and to assist the Commission in distributing Commission generated information.

The Commission believes that generally principal brokers are required to assist the Commission. This measure however strengthens and clarifies the current requirement.

Thank you for the opportunity to provide testimony in support of House Bill No. 1524.



 | 808-733-7060  
 | 808-737-4977

 | 1259 A'ala Street, Suite 300  
Honolulu, HI 96817

February 15, 2017

**The Honorable Takashi Ohno, Chair**  
House Committee on Intrastate Commerce  
State Capitol, Room 429  
Honolulu, Hawaii 96813

**RE: H.B. 1524, Relating to Real Estate**

**HEARING: Wednesday, February 15, 2017, at 9:00 a.m.**

Aloha Chair Ohno, Vice Chair Choy, and Members of the Committee,

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 9,000 members. HAR **opposes** H.B. 1524.

This measure requires principal brokers in a real estate brokerage firm to ensure that all associated real estate licensees and other staff who assist common interest communities are responsive to requests from owners regarding association-related finances, documents, records, and information. It also provides that any request from the Real Estate Commission to distribute Commission-generated information, materials, or documents to an association, a Board of Directors, or a unit owner in a common interest community is completed within ten days after receiving the request.


HAR has serious concerns that this measure would unnecessarily expose principal brokers to Regulated Industries Complaints Office (RICO) complaints, for actions that are outside of their control or knowledge.


**This measure assumes that real estate licensees are managing agents of common-interest communities (planned community, condominium, co-op). If the intent is to ensure that association documents are provided to unit owners upon request, then it is the association's responsibility to deliver documents in a timely manner through a "resident manager" or "managing agent." It is not the responsibility of the real estate licensee outside of the fiduciary role provided during a real estate transaction.**


HAR would note that in 2014, the Legislature passed Act 188, which requires that documents, records and information be made available to condominium (Hawai'i Revised Statutes 514A and 514B) unit owners and the owner's authorized agents by the managing agents, resident manager, Board (through a Board member) or the





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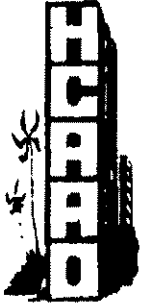
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Honolulu, HI 96817

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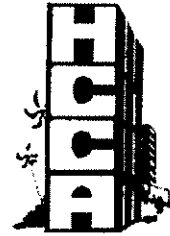
Association's representatives. Act 188 also provided that these documents must be provided no later than 30 days after receipt of written request, unless otherwise specified. As such, this measure may not be necessary for condominium units as the law already requires these documents be made available upon request.

Mahalo for the opportunity to testify.





**Hawaii Council of Associations  
of Apartment Owners**  
**DBA: Hawaii Council of Community Associations**  
1050 Bishop Street, #366, Honolulu, Hawaii 96813



February 11, 2017

Rep. Takashi Ohno, Chair  
Rep. Isaac Choy, Vice-Chair  
House Committee on Intrastate Commerce

Re: Testimony in Opposition to  
HB1524 RELATING TO REAL ESTATE  
Hearing: Wed., February 15, 2017, 9 a.m., Conf. Rm. #429

Chair Ohno, Vice-Chair Choy and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA). This organization represents the interests of condominium and community association members.

HCAAO has always supported and has affirmatively advocated for legislation that allows condominium unit owners to receive association-related (i.e., as specified in HRS 514B-154) in a timely manner; however, this bill seems to be placing the responsibility on the managing agent to ensure that the association complies with the existing law. This emphasis and reliance is misplaced and therefore, HCAAO opposes this bill. HCAAO also incorporates by reference the testimony in opposition to this bill by Richard Emery of Associa Hawaii.

The responsibility for compliance with any provision of HRS 514B and especially with HRS514B0154 lies squarely with the Board of Directors and not with its managing agent for the following reasons:

- The Managing Agent has no authority to make decisions for the Board and therefore should not be liable or held responsible for the Board's failure or refusal to comply with the HRS Chapter 514B. Under the condominium's Declaration of Horizontal (or Condominium) Property Regime, the Board is empowered to hire a managing agent to assist it in managing the project. The Board hires and fires the managing agent and also instructs the managing agent what to do. Under the management agreement, the managing agent is supposed to advise the Board of Directors – not make decisions for the Board (and if the managing agent is making decisions for the Board then the Board is in breach of its fiduciary duty to the association and the members should be removed.) In fact, in some cases, the Board will not even listen to advice given them by their managing agent and those Boards do so at their peril.

- Some associations are self-managed and don't have a managing agent.
- Some management agreements between association and management companies may be limited to fiscal management and not to governance and property administration.

If the intent of this bill is to establish effective sanctions (or consequences) for failure or refusal to comply with HRS Chapter 514B and especially with HRS 514B-154, then the emphasis or focus should be on establishing sanctions for Board members who do not comply with the law.

I suggest using the following language "any failure or refusal to comply in a timely manner with HRS 514B-154, i.e., within 30 days of an owner's request for documents, shall be a violation thereof and will be deemed to be a breach of the Board's fiduciary duty under HRS 514B-106(a), provided, however, a board member can avoid liability hereunder by taking affirmative action to ensure that association employees and its managing agent act in compliance with the law."

In the committee report on the amendment to this bill, you can explain that the rationale for this sanction is to make the Board responsible for these decisions to produce or not produce documents with the risk that non-compliance will mean that the association's Directors and Officers insurance carrier will not defend Board members who may be in breach of their fiduciary duty. This also prevents the Board from relying on its managing agent to handle these requests by owners for condominium records. The Board is the one that hires the managing agent and instructs the managing agent (not the other way around) so if the Board tells the managing agent to comply with the law and if it fails to do so, the Board has grounds to terminate the managing agent who causes them to breach their fiduciary duty. A director can avoid liability if he or she votes for compliance at the Board meeting and that vote appears in the minutes.

Based on the foregoing, HCAAO respectfully requests that you defer this bill or you adopt its suggested revisions to this bill. If you have any questions, please feel free to contact me. Thank you for the opportunity to testify on this matter.

  
Jane Sugimura  
President

## IACtestimony

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From: mailinglist@capitol.hawaii.gov  
Sent: Monday, February 13, 2017 12:40 PM  
To: IACtestimony  
Cc: richard.emery@associa.us  
Subject: Submitted testimony for HB1524 on Feb 15, 2017 09:00AM

### **HB1524**

Submitted on: 2/13/2017

Testimony for IAC on Feb 15, 2017 09:00AM in Conference Room 429

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard Emery	Associa	Oppose	Yes

Comments: Many associations are self- managed or hire a managing agent for a limited scope of work such as only producing the financial statement. Brokers with a limited scope of work may not have access to documents. Obligations to provide documents are best placed in HRS 514B. Current proposed HRS 514B legislation is better suited to address document production issues. Importantly, Brokers offer engage in the sale of condominiums. They represent the homeowner or buyer and the purchase contracts provide for detailed lists of documents in a short period of time as well as coordination with escrow companies on pay-off amounts. Often documents requested are multipage custom forms and the documents are not static. Realtors often wait until the last minute to request documents as they want the Buyer qualified for purchase. There contracts are commercial private transactions and neither the association nor the broker should be responsible for the costs. Document production requirements are best served in HRS 514B.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**REVISED**

February 15, 2017

TO: REPRESENTATIVE TAKASHI OHNO, Chair Intrastate Commerce Committee  
REPRESENTATIVE ISAAC CHOY, Vice-Chair Intrastate Commerce Committee

FR: AMERICAN RESORT DEVELOPMENT ASSOCIATION (ARDA)-HAWAII  
Mitch Imanaka, Chair of the Executive Committee  
via Blake Oshiro, Executive Director

RE: HOUSE BILL 1524 RELATING TO REAL ESTATE – **OPPOSE WITH  
SUGGESTED AMENDMENTS**

Dear Chair Ohno, Vice-Chair Choy and Members of the Intrastate Commerce Committee:

Thank you for the opportunity to testify on House Bill (HB1524), which requires principal brokers in a brokerage firm to ensure that associated real estate licensees and other staff who assist common interest communities are responsive to requests from owners regarding association-related finances, documents, records, and information, and responsive to the real estate commission to distribute commission-generated information, materials, or documents to an association. On behalf of the American Resort Development Association (ARDA) Hawaii, the time share association, we respectfully **oppose** this bill in its current form, but provide a suggested amendment which we believe clarifies a potential ambiguity in the language.

In particular, we are concerned that the current language is overbroad and includes personnel who are not, or should not be, covered by the requirements. Page 3 of the bill, lines 16-17 requires that the principal broker ensure that:

“all associated real estate licensees **and other staff** who assist common interest communities,” are responsive to the requests (Emphasis added). The use of “and other staff” is not defined and could affect all personnel in the principal broker’s operation, basically anyone that even remotely or intermittently touches a common interest community issue. On its face, this not only covers assistants, secretaries, clerical and other ministerial staff who have no direct decision-making authority. In addition, it would appear that the legislation is intended to apply to licensees performing the functions of the property manager, but the language does not make this explicit.

For the foregoing reasons, we respectfully request that the Committee change this clause to read as follows:

(10) Ensuring that all associated real estate licensees who are responsible to provide property management services to community associations, including \* \* \*

With these revisions, the principal broker and the real estate licensees responsible for servicing the community association would still ultimately be responsible for the responsiveness of any other associated staff, which we believe is sufficient to meet the probable intent of this measure. With that amendment, ARDA would thereafter, be in a neutral position on this proposal.

Please contact us if you have any questions or need any additional information.

Thank you for the opportunity to testify.



IACtestimony

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From: mailinglist@capitol.hawaii.gov  
Sent: Monday, February 13, 2017 1:56 PM  
To: IACtestimony  
Cc: cporter@hawaiiilegal.com  
Subject: Submitted testimony for HB1524 on Feb 15, 2017 09:00AM

**HB1524**

Submitted on: 2/13/2017

Testimony for IAC on Feb 15, 2017 09:00AM in Conference Room 429

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Christian Porter	Individual	Oppose	No

Comments: There are already procedures and processes in place for owner document requests to associations, and this suggested language could be used to confuse the issue, and the time frame noted in not reasonable. For these reasons I oppose HB1524. Thank you.

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From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, February 14, 2017 10:28 AM  
To: IACtestimony  
Cc: lynnehi@aol.com  
Subject: \*Submitted testimony for HB1524 on Feb 15, 2017 09:00AM\*

**HB1524**

Submitted on: 2/14/2017

Testimony for IAC on Feb 15, 2017 09:00AM in Conference Room 429

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
lynne matusow	Individual	Support	No

Comments:

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