

HB1873 HD1

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums; Associations; Unit Owners; Annual Distribution; Mandatory Disclosure; Demand for Payment

Description: Requires annual distribution of any policy stating that the association may deduct and apply portions of common expense assessments to unpaid late fees, legal fees, fines, and interest and that such policy be included in any agreement by an owner that allows the association to automatically withdraw assessments from an owner's bank account. Requires an association to disclose certain information upon demand for payment of an assessment. (HB1873 HD1)

Companion: [SB2054](#)

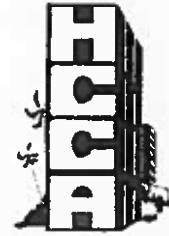
Package: None

Current Referral: CPH

Introducer(s): TAKUMI, ICHIYAM



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



March 19, 2018

Sen. Rosalyn Baker, Chair
Sen. Jill Tokuda, Vice-Chair
Senate Committee on Commerce, Consumer Protection and Health

Re: Testimony in support of
HB1873, HD1 RELATING TO CONDOMINIUMS
Hearing: Thursday, March 22, 2018, 9 a.m., Conf. Rm. #229

Chair Baker, Vice-Chair Tokuda and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA).

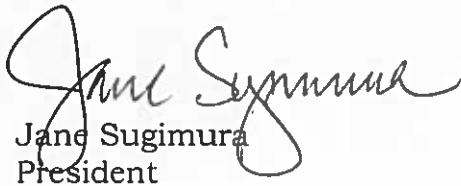
HCCA prefers the original language of this bill (i.e., see Senate companion SB2054).

HB1873 provides important safeguards to unit owners so that they do not lose their homes to foreclosure while ensuring that the Association is able to collect its maintenance fees. With respect to the “pay now and dispute later”, HD1 requires annual written notice to be given to owners describing the priority of payment policy (i.e., that allows that owners monthly maintenance fee payment to be applied first to late charges, interest, penalties including legal fees before it is applied to the monthly assessment. HD1 also requires the notice and information regarding the priority of payments policy to be included on any renewal or application for a direct payment (by the owners to the Association) program that automatically deducts the monthly assessment from the owner’s bank account. If this Committee is inclined to retain the language of HD1, it needs to add additional language to the provision requiring annual written notice describing the priority of payments policy since **HRS§ 514B-105 requires an association to “adopt” the policy before it can issue the annual notice.** Accordingly, the annual notice to owners should include the date of the Board meeting where the policy was adopted by the Board as reflected in the minutes of that meeting¹.

¹ I have learned that Hawaiiana Management, one of the largest property management firms in the state has notified its Surepay (automatic bank withdrawal) users that it will only deduct assessments, i.e., monthly maintenance and special assessment and electrical payments from payments and that any fines and late charges and legal fees will have to be paid by check.

HCCA would prefer the original language of the bill that allowed owners to pay only the assessment (i.e., and not the accrued late charges and legal fees incurred) and allowed owners to mediate the payment of late charges and legal fees. The original language provided that the mediation by the owner would have to be initiated within 30 days of the demand (for payment) by the association and it would have to be resolved within 60 days. In the interim, the owner has to pay the monthly assessments (i.e., maintenance fees) as and when the payment is due otherwise it will not be allowed to continue with the mediation. We suggest that a 2-year sunset provision be added to address the concern of the proponent of HD1, who believes that this original language would allow an owner to abuse the alternative dispute resolution process that would result in delay in resolving the non-payment issue.

Thank you for the opportunity to testify on this matter.


Jane Sugimura
President

HB-1873-HD-1

Submitted on: 3/18/2018 1:00:25 PM

Testimony for CPH on 3/22/2018 9:15:00 AM

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

Comments:

Hui `Oia`i`o **OPPOSES THIS AMENDED VERSION, HB1873 HD1**, for the following reasons and urges you to reintroduce the ORIGINAL UNAMENDED HB1873 (companion, SB2054):

In reference to Hawaii:

- Percentage of residents with \$0 saved: 47%,
- Percentage of residents with less than \$1,000 saved: 66%.
- Hawaii is the No. 1 state where you're most likely to live paycheck to paycheck.*

And, again in reference to Hawaii:

- Median household income per paycheck: \$2,768.35
Total leftover income after cost of living expenses: -\$738.04
Percentage of leftover income: -26.66%
- Hawaii has the fourth-highest median household income. But even a big paycheck doesn't go far in one of the states with the highest cost of living.
- Hawaii is the only state...where residents have a **deficit** after covering their cost of living expenses.**

Against this background and under the existing rule of “pay first, dispute later,” while automatic payments may appear to prevent “late payment penalties,” NON-essential condo expenses such as a House Rules fine debited from a condo owner’s savings/checking account in excess of the budgeted common expense assessment (maintenance fees) can initiate a cascade of “bounced” checks meant to cover TRUE essentials such as food and medical expenses. And owners may still suffer an expensive “non-sufficient fund penalty” charge by their banks for each “bounced” check.

Those without automated common expenses assessment payment plans will also suffer under the payment scheme supported by HB1873 HD1. The following comes from an association which adopted this payment scheme:

*“At any time there are unpaid Legal Fees, Late Fees, Fines, Bad Check Charges, Agreement of Sale Payments, or Special Assessment Fees on an Association Member’s account ledge, the next Association/Maintenance Fee payment received from that Association Member will be first applied to liquidating these fees **in the order as stated above**. After these fees are paid, the remaining amount, if any, will be credited to the Association’s Association/Maintenance Fee assessment account.*

Owners should be aware that as a result of the Priority of Payments outlined above:

- 1. Failure to pay Late fees, Legal Fees, House rule Violations Fines, and interest from an Owner’s future Common Expense (Maintenance Fee) payments for as long as a delinquency continues to exist. Those deductions will continue for as long as the Owner fails to pay all such fees and fines in full.*
- 2. Late Fees may be imposed against any future Common Expense (Maintenance Fee) payment that is less than the full amount owed because of the deduction of unpaid Late Fees, Legal Fees, House Rule Violation Fines, and interest from the payment.”*

The following simplified example of the payment scheme described above which is supported by HB1873 HD1:

MONTH ONE:

- Parking violation of \$50 (your guests allegedly overstayed the 4-hour guest parking limit)

MONTH TWO:

- You pay your recurring maintenance fees that is due this month in the full amount of \$700
- You notice that you are being charged an additional \$50 and ask the association or management company for clarification
- You receive a letter from the association’s attorney notifying you that you are in violation of the House Rules; that letter costs the association \$150
- The attorney’s fees and the parking violation fine are taken out of your maintenance fees, so it looks like you only paid \$500 (\$700 minus \$150 attorney’s fees and minus \$50 parking fine)

MONTH THREE:

- You’re charged a late fee of \$50 for not paying the previous month’s \$700 maintenance fees in full
- You write a letter to complain about the charges which you haven’t been given a chance to contest, and the association reacts by asking its attorney to respond to you and you are now charged \$250 for this legal response
- You again pay your recurring \$700 maintenance fee

- But the attorney's legal fee of \$250 and the \$50 late fee are taken out of your maintenance fees again, plus the management company's books show that you're still \$200 behind for the previous month. According to their books, you're now behind by \$500, so only \$200 is credited to your maintenance fee account (\$700 minus \$250 attorney's fee, minus \$50 late fees, minus the \$200 you owed for last month's maintenance fees)

MONTH FOUR, etc.

- Another late fee is charged for appearing to have paid only \$200 for the prior month's maintenance fees, so add \$50 to what you owe.
- As this goes on, legal fees for collecting the supposed delinquent payments and late payment fines accrue, and the supposed deficiencies of your maintenance fees (common expense assessments) grows even larger. Now, the association can file a lien, initiating the foreclosure process.

Neither the condo association nor the owner will benefit from such aggressive collection behaviors. Foreclosures tend to dampen property values and hurt the entire association. Aggressive collection methods cause distress, dismay, and disharmony among owners. And discredited owners are in position to lose equity and damage their credit for years to come. Under the payment scheme supported by HB1873 HD1, many lives are needlessly destroyed for NON-essential payments.

Worse, some association attorneys charge whatever they want because they know that associations can force owners to pay. Without any limitation to what association attorneys can charge, if an owner didn't or couldn't pay, attorneys were assured that associations could pay their fees by simply increasing maintenance fees or charging a special assessment to raise those necessary funds, thus punishing all members of the association.

A bill, HB2542, which proposed to limit association attorneys' fees to 25% of principal, would have ended this abusive treatment of condo owners. If, as proposed in HB2542, an attorney was limited to collecting 25% of the principal, then a \$50 House Rules violation fine will yield that attorney no more than \$12.50. For that small amount, an attorney would probably decline pursuing payment of this \$50 fine and the association would be encouraged to settle the matter without legal assistance.

* <https://www.gobankingrates.com/saving-money/americans-savings-state/#13>

** <https://www.gobankingrates.com/making-money/states-most-likely-to-live-paycheck-to-paycheck/#2>

HB-1873-HD-1

Submitted on: 3/18/2018 8:04:41 PM

Testimony for CPH on 3/22/2018 9:15:00 AM

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

Comments:

The original bill contained better language to assure homeowners if due process through mediation. I have no issues with the notification requirement but believe it would be better to add Vick the original language.

HB-1873-HD-1

Submitted on: 3/20/2018 3:08:14 PM

Testimony for CPH on 3/22/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Chandra Kanemaru	Testifying for CCV2 Board	Support	No

Comments:

Dear Senator Rosalyn H. Baker, Chair, and Senator Jill N. Tokuda, Vice Chair, and Members of the Committee:

I SUPPORT the language set forth in Section 1 of H.B. 1873 H.D.1, which would amend HRS Section 514B-105(c) to require associations to distribute their priority of payment policies annually and to include the same in any agreement to automatically withdraw assessments from an owner's bank account. While it is my understanding that most condominium associations already distribute their priority of payment policy to their members on a yearly or other periodic basis, this statutory requirement is reasonable and will ensure that owners are informed.

The changes to Section 514B-105(c) in H.B. 1873 H.D.1 are much better than the original draft. The previous language would have invalidated priority of payment policies which have been in place for years and have proven as an effective means of collecting late fees, fines, interest, and attorneys' fees. If condominium associations are not able to collect these sums via a priority 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 priority 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 priority of payment policy in place.

The changes made to HRS Section 514B-105(c) in H.B. 1873 H.D. 1 are good changes and I urge your committee to pass the bill without modification to those changes.

Sincerely,

Chandra R.N. Kanemaru, CWDP

Country Club Village, Phase 2, BOD Secretary

Vice Chair, Neighborhood Board 18 (Salt Lake, Aliamanu, Foster Village)

HB-1873-HD-1

Submitted on: 3/17/2018 11:10:44 AM

Testimony for CPH on 3/22/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Marcia Kimura	Individual	Oppose	Yes

Comments:

I am left to wonder whether or not the lawmakers fully comprehend the ramifications of this bill, as their actions to move it forward certainly suggest that they do not. Either that, or the condo legal and management industry forces have exerted extreme pressure on the legislators to push for this blatantly self-serving (to the legal industry) measure that would force so many condo owners into devastating financial and property loss. It is likely both conditions, the lack of genuine understanding of the consequences of this becoming law, and undue industry influence are suspect.

HB2542 which would have capped legal collection fees at 25% never saw the light of day, probably due to more industry pressure against it. Thus free rein has been given to attorneys to charge limitless, often baseless fees on an ongoing basis throughout the struggles of owners to pay off debts - owners who need to be given every opportunity to recover from debt burdens.

I am sure that the condo attorneys have no concern, to put it mildly, for the well-being of condo owners many of whom, through circumstances beyond their control, find themselves in financial straits, and need a reasonable chance to rectify delinquency in payment of core assessments. But what has our society come to, when greed and opportunistic forces rule over common decency?

I pray this measure and those like it will never prevail.

HB-1873-HD-1

Submitted on: 3/17/2018 6:06:21 PM

Testimony for CPH on 3/22/2018 9:15:00 AM

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

Comments:

This bill reinforces the predatory management industry in their sophisticated intrigues to rip people off with absurd fees and fines. The bill is offensive just as bogus fines and fees are. Legislators should STOP pandering to these business interests.

Condo owners should not be at risk for losing their home over travail fines and absurd 'legal fees'.

HB-1873-HD-1

Submitted on: 3/18/2018 9:02:44 PM

Testimony for CPH on 3/22/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Harendra Panalal	Individual	Oppose	No

Comments:

Committee Members:

I have been living in Honolulu continuously for over 45 years.

I hold following positions on AOUC BOD.

President of AOUC in Makiki (96 Units)

VP of AOUC in Ala Moana (80 Units)

Director of AOUC in Waialua (12 Units)

HD 1873 HD1, as written, can be abused by managing agents, BOD and attorneys some of who charge up to \$700 per hour.

We need more transparency in condo business, and not hide behind attorney-client privilege.. In my humble opinion, all condo owners pay attorneys' fees so all their clients.

Please refer to social media web sites like yelp.com and ripoffreport.com to see how condo owners feel about their helpless situation.

Complaints to RICO do not seem to be very effective.

Lawmakers have not yet established Office of Ombudsman.

Conflicts of interest among some lawmakers and condo industry seem to be ignored, to the detriment of condo owners.

Mahalo

Harendra Panalal, MSE, PE, RME

Off 792-0455, Home 538-6202

harenp2009@hotmail.com

HB-1873-HD-1

Submitted on: 3/19/2018 9:25:55 PM

Testimony for CPH on 3/22/2018 9:15:00 AM

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

Comments:

I am both a condo owner and board member. I have several concerns with this bill. The first is that the priority of payments info must be sent to owners annually. That is an undue burden, both costly and administratively. My associaton has passed a priority of payments resolution. It was sent to all owners and is given to new owners. I have other bills that are paid for out of my bank accounts monthly. They include the newspaper, cable, Netflix, telephone, etc. Some of these amounts vary monthly. They don't send me a noitce every year. They just send me monthly bills.

Associaitons pass an annual budget. It has little room for error. When owners are delinquent everyone suffers. If we do not collect the monthly maintenance we have to cut other costs. Maybe employees will be fired. Maybe needed maintenance will be deferred. We must be able to collect maintenance fees when due.

I am also concerned with the language that talks about maintenance and other fees and ignores talk of electrical reimbursement. Many associaotns have insittuted submetering, whereby HECO bills the assciation in bul, and the ocndo charges each owner for the electric actually consumed. This in bulk purchasing reduces our costs as HECO sends one bill and doesn't have to deal with seaprte collections. Electric charges can run from \$40 or \$50 for those who consume little electricy to many hundred of dollars for those who run the air conditioners 24/7 and have wine coolers. The associaton pays the money up front, and it needs to be reimbursed. My Surepay account only covers maintenance and electric.

I ask you to add electric reimbursement to the maintenance fee payment so we do not lose out and to delete the requirement that the priority of payment policy be sent to owners annually.

lynne matusow

531-4260

HB-1873-HD-1

Submitted on: 3/20/2018 12:33:46 PM

Testimony for CPH on 3/22/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Paul A. Ireland Koftinow	Individual	Support	Yes

Comments:

Dear Senator Rosalyn H. Baker, Chair, and Senator Jill N. Tokuda, Vice Chair, and Members of the Committee:

I SUPPORT the language set forth in Section 1 of H.B. 1873 H.D. 1, which would amend HRS Section 514B-105(c) to require associations to distribute their priority of payment policies annually and to include the same in any agreement to automatically withdraw assessments from an owner's bank account. While I am informed and believe many condominium associations distribute their priority of payment policy annually, this would ensure an additional means for owners to receive notice of their association's priority of payment policy.

The changes to Section 514B-105(c) proposed in this bill are much better than the changes set forth in Section 3 of S.B. 2054, the companion bill. Section 3 of S.B. 2054 would 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. When owners default on their payment of assessments, all the other owners are obligated to pay additional expenses and costs as a result. 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 in H.B. 1873 H.D. 1 are good, and I respectfully encourage your Committee to pass the amendment to HRS Section 514B-105(c), without further amendment.

Sincerely,

Paul A. Ireland Koftinow

HB-1873-HD-1

Submitted on: 3/20/2018 1:41:24 PM

Testimony for CPH on 3/22/2018 9:15:00 AM

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

Comments:

Dear Senator Rosalyn H. Baker, Chair, and Senator Jill N. Tokuda, Vice Chair, and Members of the Committee:

I SUPPORT the language set forth in Section 1 of H.B. 1873 H.D.1, which would amend HRS Section 514B-105(c) to require associations to distribute their priority of payment policies annually and to include the same in any agreement to automatically withdraw assessments from an owner's bank account. While it is my understanding that most condominium associations already distribute their priority of payment policy to their members on a yearly or other periodic basis, this statutory requirement is reasonable and will ensure that owners are informed.

The changes to Section 514B-105(c) in H.B. 1873 H.D.1 are much better than the original draft. The previous language would have invalidated priority of payment policies which have been in place for years and have proven as an effective means of collecting late fees, fines, interest, and attorneys' fees. If condominium associations are not able to collect these sums via a priority 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 priority 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 priority of payment policy in place.

The changes made to HRS Section 514B-105(c) in H.B. 1873 H.D. 1 are good changes and I urge your committee to pass the bill without modification to those changes.

Sincerely,

M. Anne Anderson

HB-1873-HD-1

Submitted on: 3/20/2018 3:59:10 PM

Testimony for CPH on 3/22/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Freeman	Individual	Support	No

Comments:

Dear Senator Rosalyn H. Baker, Chair, and Senator Jill N. Tokuda, Vice Chair, and Members of the Committee:

I SUPPORT the new language set forth in Section 1 of H.B. 1873 H.D.1, which would amend HRS Section 514B-105(c) to require associations to distribute their priority of payment policies annually and to include the same in any agreement to automatically withdraw assessments from an owner's bank account. While it is my understanding that most condominium associations already distribute their priority of payment policy to their members on a yearly or other periodic basis, this statutory requirement is reasonable and will ensure that owners are informed.

I approve the changes to 514B-105(c) in H.B. 1873 H.D.1. The previous language would have invalidated priority of payment policies which have been in place for years and have proven as an effective means of collecting late fees, fines, interest, and attorneys' fees. If condominium associations are not able to collect these sums via a priority 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 priority 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 priority of payment policy in place.

The changes made to HRS Section 514B-105(c) in H.B. 1873 H.D. 1 are good changes and I urge your committee to pass the bill without modification to those changes.

Sincerely,

Mary S. Freeman

Steve Glanstein
P. O. Box 29213
Honolulu, HI 96820-1613

March 21, 2018

Honorable Senator Rosalyn H. Baker, Chair
Honorable Senator Jill N. Tokuda, Vice-Chair
Senate Committee on Commerce, Consumer Protection, and Health (CPH)
Hawaii State Capitol, Room 230
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in SUPPORT of HB1873 HD1; Hearing Date: March 22, 2018 at 9:15 a.m. in Senate conference room 229; sent via Internet

Aloha Chair Baker, Vice-Chair Tokuda, and Committee members,

Thank you for the opportunity to provide testimony on this bill.

This testimony is presented in SUPPORT of HB1873 HD1.

Currently a condominium association's only realistic collection option for late fees, legal fees, fines, and interest is through a priority of payments policy. Without this policy, it can become inequitable for the association and its members to attempt any collection of these amounts.

Unrecoverable or uncollectable costs are financially passed to the other owners, either in the form of higher maintenance fees or cutbacks in services.

HB1873 HD1 supports this collection except it adds two important consumer protection clauses:

1. The board must adopt and annually distribute to all owners a policy with specific requirements; and
2. The policy shall also be included in any agreement by an owner to allow the association to automatically withdraw assessments from an owner's bank account.

I believe that the current version of this bill is a good one and I urge the committee to support it in its current form.

If you require any additional information, your call is most welcome. I may be contacted via phone: 423-6766 or by e-mail: hsap.lc@gmail.com. Thank you for the opportunity to present this testimony.

Sincerely,

Steve Glanstein
SG:tbs/Attachment

Lourdes Scheibert
920 Ward Ave
Honolulu, Hawaii 96814

March 21, 2018

Senator Rosalyn H. Baker, Chair
Senator Jill N. Tokuda, Vice Chair
Committee on Commerce, Consumer Protection, and Health

RE: Testimony opposing
HB1873, HD1 RELATING TO CONDOMINIUMS
Hearing: Thursday, March 22, 2018, Conf Room #229

Chair Baker, Vice Chair Tokuda,

I, oppose HB1873 HD1 because this bill as written worsens the problems of the condominium community to live in peace and harmony.

The condominium educational funds collected are for education. The cause of much of today's outcry of many owners is the management methodology used by certain Boards that lack transparency and clear communication with the owners they represent. The educational fund should first provide mandatory education for the volunteer director and the unlicensed on-site property manager for HRS 514B. There should be revisions of antiquated House Rules and other documents such as, not limited to updates:

- 1) Fine Schedule and Procedures,
- 2) Delinquency
- 3) Collection Policy,
- 4) Assessment Payment Resolution
- 5) Insurance Requirements
- 6) The Insurance Deductible.

Lack of these updates produces communication problems between the owner, the Board of Directors and management. Listening to many condo owners who are participants of the "Hui" discuss the abuse of factitious House Rules violations imposed to keep your mouth shut.

Solely, spending the educational fund on mediation and arbitration is treating the symptoms and not the cause of strife owners are feeling of unfair treatment. Owners should be provided due process of a fair hearing at the level of their community in order for self-governance to work. Mediation and arbitration should be the last resort.

A Police Officer stops a motorist for speeding and issues him a \$50.00 fine. On the traffic ticket contains the information giving the motorist the right to appeal the fine by

scheduling a time to face a Judge in court. The Judge decides the traffic violation based on prior violations if any, if no prior, he may dismiss the violation. That motorist took the time and the effort to be heard. Otherwise, if he was forced to pay the fine without an opportunity for a hearing, the Police Officer becomes the accuser and the Judge. If the motorist does not pay the fine then interest and penalties will occur and possibly a bench warrant for his arrest and driver's license taken away.

This analogy is no different to the outcry of condominium owners who feel that they have been unjustly fined for a House Rules violation. The Board of Directors have the fiduciary duty to revise the Association's House Rules to establish a fining procedure that states the basis for the fine and allows an appeal to the board of the fine with notice and an opportunity to be heard. Refer to HRS 514B 104 (a)(11).

An example of Fine Schedule and Procedures found on the WEB is provided below. This example makes clear of HRS 514B

- (1) The Owner has a right to initiate a dispute resolution process providing all assessed fines are paid in full. (In my opinion, I disagree because House rules violation abuse exists)

Now the owner is fully apprised of his obligation and the Board of Directors can act responsibly for peace and harmony in their community.

Thank-you,
Lourdes Scheibert
Condominium Owner

EXAMPLE:

In accordance with Hawaii Revised Statutes [514B 104\(a\)\(11\)](#) and Section _____ of the Bylaws of the Association of Owners of _____, owners have approved the following procedures, specific fines and penalties to become effective _____:

- (1) A written statement of the alleged violations shall be provided to any Owner against whom such charges are made, and such written statement shall provide a date on which the charges shall be heard;
- (2) No proceedings under this section shall be brought against any Owner unless such owner shall have received a written statement of the charges at least thirty (30) days prior to that hearing;
- (3) No proceeding shall be brought against any Owner more than (60) days after such owner is provided a written statement of charges;

- (4) The Board shall appoint a panel of three (3) capable persons, one of whom shall be designated a chairperson any or all panel members who may or may not be Owners, and who shall hear the charges and evaluate the evidence of the alleged violation;
- (5) At such hearing the Owner so charged shall have the right to present oral and written evidence and to confront and cross-examine adverse witnesses;
- (6) The panel shall deliver to the Owner so charged within seven (7) days after the hearing a written decisions which specifies the fines or penalties levied, if any and the reasons thereof; and
- (7) The decision of the panel shall be binding upon the Owner so charged and shall not be appealed except as otherwise provided for in any applicable provision of [HRS, Chapter 514B](#).

If an Owner completely corrects and/or remedies an alleged violation prior to the hearing date, the Board shall discontinue the proceedings.

- (8) The Owner has a right to initiate a dispute resolution process providing all assessed fines are paid in full.
- (9) Owners shall be liable for their own fines and fines assessed against their tenants, guest, family members, agents, or employees.
- (10) A fine must be paid to the Association within thirty (30) calendar days.

If a fine is not paid within the applicable period cited above, the fine shall be deemed a special assessment chargeable against the Owner's apartment. Additionally, reasonable attorneys' fees and expenses will be assessed in accordance with [HRS 514-157\(a\) \(3\)](#), should any House Rule violation be referred to the Association's attorney for enforcement.

Schedule of Fines will be assessed against any one violating the Declarations, Bylaws, or House Rules:

- a) For violations that detract from the appearance of the project or interfere with orderly operations:
 - First Offense: violation will be logged and a warning citation issues
 - Second offense: citation issued and \$25.00 fine
 - Third offense: citation issued and \$25.00 fine
 - Fourth and subsequent offense: citation issued and \$100 fine

b) For violations that unreasonably interfere with the rights, comfort, or convenience of other residents, guest and/or owners:

- First Offense: violation will be logged and a warning citation issued
- Second offense: citation issues and \$50.00 fine
- Third offense: citation issued and \$100.00 fine
- Fourth and subsequent offense: citation issues and a \$200.00 fine

c) For violations that constitute a threat to the personal safety or lives of other residents or involve destruction or damage to the common elements, a citation and a fine of \$200.00 will be issued. No warning citation will be issued for these serious offenses, and/or they may immediately be referred to the Association's attorney for institution of legal proceedings, as deemed appropriate by the Board.

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Dear Chair Baker, Vice-Chair Tokuda and Committee Members:

My name is Pamela Schell. I am an attorney who represents condominium owners associations and I support the passage of H.B. 1873, H.D.1. The conditions placed on collection policies that provide for associations to establish a priority of application of partial owner payments allows owners associations to continue to establish a priority in which owner partial payments can be applied but ensures that owners are aware that their partial payments may be applied to satisfy other, non-assessment, but valid, charges on the account as long as the association reminds owners annually of the association collection policy and that the policy is disclosed in provisions of agreements in which owners have authorized their bank to automatically pay their ongoing common expenses.

It has been my experience that association members presently receive reminders about the application policy in the annual budget letters, but the changes to H.B. 1873, H.D. 1 allow the associations to retain a useful tool that has assisted in the timely collection of owner assessments through deterrence and which offsets costs that may be associated with the late payments while still assuring fair notice to owners who may not, or do not timely, pay assessments and have accrued late fees or other charges as a result of the late payment. I urge the Committee to pass the bill in its present form.

HB-1873-HD-1

Submitted on: 3/21/2018 7:12:29 PM

Testimony for CPH on 3/22/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dante K. Carpenter	Testifying for CCV, Phase 2, AOA	Support	No

Comments:

Chair Sen. Baker, V-C Sen. Tokuda and Members of the Committee:

1. I am in support of the language in Section 1 of HB 1873, HD1, which will amend HRS Section 514B-105(c) to require associations to distribute their priority of payment policy to their members on a yearly or other periodic basis. This language appears very reasonable going forward.

2. The language changes to the original draft in Section 514B-105(c) appear clearer. The prior language could potentially have invalidated action taken by previous BOD policies. Those previous action/s may have been in place for many years and to date have been effective in collecting late fees, fines, interest, and attorney's fees. If condominium associations are not able to collect these amounts via a priority of payment policy, owners would have no incentive to pay these amounts when they are assessed to their accounts. In many cases, these sums would not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgement against the owners, thus leaving the association with no effective means of collecting said sums if priority of payment policies are no longer in place.

3. The changes made to the HRS Section 541B-105(c) in HB 1873 HD1 appear to be acceptable, therefore, I urge the committee's approval without further changes!

Respectfully submitted,

/s/ Dante
Carpenter
Director, AOA Country Club
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Units)
nalua, Salt Lake

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