

HB-1873-HD-1

Submitted on: 2/27/2018 3:50:42 PM

Testimony for JUD on 3/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Support	No

Comments:

This Bill improves notice requirements and due process for homeowners who are fined or have legal fees related to fines. It will help prevent misunderstandings by owners of their obligations and help prevent foreclosures. I support HB 1873.

HB-1873-HD-1

Submitted on: 2/27/2018 4:44:01 PM

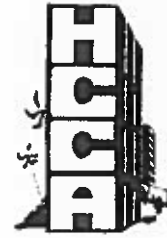
Testimony for JUD on 3/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Na Lan	Community Associations Institute LAC	Support	No

Comments:



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



February 27, 2018

Rep. Scott Nishimoto, Chair
Rep. Joy A. San Buenaventura, Vice-Chair
House Committee on Judiciary

Re: Testimony in support of
HB1873, HD1 RELATING TO CONDOMINIUMS
Hearing: Thursday, March 1, 2018, 2 p.m., Conf. Rm. #325

Chair Nishimoto, Vice-Chair San Buenaventura and Members of the Committee:

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

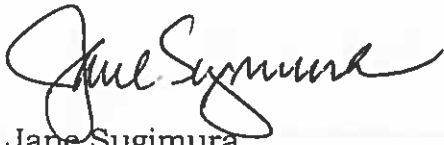
This bill provides important safeguards to unit owners so that they do not lose their homes to foreclosure while ensuring that the Association is able to collect its maintenance fees. With respect to the “pay now and dispute later”, HD1 requires annual written notice to be given to owners describing 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.

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. Although HCCA disagrees with the language in HD1, we will not object to the amendment to allow the discussion on this bill to continue.

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For these reasons, we respectfully request that that you pass this bill without any further amendments.

Thank you for the opportunity to testify on this matter.

A handwritten signature in black ink, appearing to read "Jane Sugimura". The signature is fluid and cursive, with the first name "Jane" being more prominent than the last name "Sugimura".

Jane Sugimura
President

HB-1873-HD-1

Submitted on: 2/27/2018 9:12:10 PM

Testimony for JUD on 3/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
A Denys	Individual	Support	No

Comments:

Aloha,

Strongly support HB 1873. Well done and appropriate! Mahalo.

warmest aloha

A. Denys

HB-1873-HD-1

Submitted on: 2/27/2018 9:34:19 PM

Testimony for JUD on 3/1/2018 2:00:00 PM

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

Comments:

This bill is a very bad idea. At my condo, Makaha Surfside, our Board just passed a Motion to place fines at a leve of \$50 - \$250- \$1,000. This was an amazing abuse of power by four of seven people. We have a 'trigger' level of \$1,000 of 'indebtedness' on any owner(s) after which the matter is referred to collection attorneys. Once they become involved, normally whatever 'debt' an owner has quickly 'triples' and they find themselves on a conveyer belt to Non Judicial Forecloure. This bill will unfairly strengthen the hand of people who may be scheming to create debt with the thought of dispossesing owners they dislike of their monies and property.

The state should not be party to victimization of condo owners.

Please REJECT this bad bill. DO NOT give a 'freebie' to the predatory property management companies.

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](#)

HB-1873-HD-1

Submitted on: 2/27/2018 10:15:58 PM

Testimony for JUD on 3/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Manali-Leonardo	Individual	Oppose	No

Comments:

I strongly oppose HB 1873 HD1. This bill amounts to giving attorneys who represent condo associations free money. There is no cap on their charges...and no real due process for the condo owners. Imagine a kupana's life savings being eaten up by a condo attorney's fee (in addition to other fees) resulting in and up to foreclosure of their property by outright bogus unsubstantiated accusations of late payments. Does the highest homeless state in the country really want to keep pouring more salt into this never healing wound by making it even more easy to lose ones housing?



P.O. Box 976
Honolulu, Hawaii 96808

February 27, 2017

Honorable Scott Y. Nishimoto
Honorable Joy A. San Buenaventura
Committee on Judiciary
415 South Beretania Street
Honolulu, Hawaii 96813

Re: HB 1873 HD1 SUPPORT

Dear Chair Nishimoto, Vice-Chair San Buenaventura and Committee Members:

This testimony is submitted on behalf of the Community Associations Institute ("CAI"). CAI supports HB 1873 HD1, for reasons stated herein.

CAI had previously supported HB 1873, although that version of the bill was extremely controversial within the condominium community. HB 1873 was controversial because it would have altered the requirement to "pay first, dispute later," which is a fundamental premise of condominium law.

CAI was able to support HB 1873 only because the proposed exception to "pay first, dispute later" was narrow and carefully crafted. The exception did not affect common expense obligations that were assessed to all owners. The mediation requirement in HB 1873 for disputes concerning *other* assessments was clear and manageable.

Condominium owners depend upon their neighbors to meet their financial obligations to the Association. The failure of one owner to pay imposes a direct financial burden on other owners. That is unfair and inequitable because one consumer should not become obligated to pay the lawful debt of another. "Pay first, dispute later" enables pursuit of meritorious claims and prevents non-meritorious efforts to avoid payment of just debt.

Honorable Scott Y. Nishimoto
Honorable Joy A. San Buenaventura
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Condominiums simply could not function if owners could withhold payment of common expense assessments. The function of condominium associations is *vital* to the housing market, and approximately 29 percent of the housing units in Hawaii are condominium units. See, Challenges to Condominium Self-Governance, at 4, Hawaii Bar Journal (November 2017).

HB 1873 HD1 differs substantially from HB 1873. The bill now preserves "pay first, dispute later" entirely.

Instead, HB 1873 HD1 addresses the priority of payments system by revising a notice requirement. HB 1873 HD1 also includes a requirement to provide certain additional information when demanding payment of an assessment. These notice and informational requirements are manageable.

CAI supports HB 1873 HD1.

Community Associations Institute, by

Philip Nerney

For its Legislative Action Committee

HB-1873-HD-1

Submitted on: 2/28/2018 12:00:45 AM

Testimony for JUD on 3/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marcia Kimura	Individual	Oppose	No

Comments:

This is an extremely unjust measure which I strongly oppose.

The Fair Debt Collections Practices Act states in §809. Validation of Debts:

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, **the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification** or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. **Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.**

Because HB 1873 HD1 is stating that association boards, attorneys or managers can first extract charges, fines, fees, penalties or any other incidental charges to the principal sum from partial or presumed full payments by Powners, this is in violation of the FDCPA, if the owner disputes those incidental charges within 30 days of the original demand for payment.

But whether or not those incidental charges are disputed, there is NO JUSTIFICATION for assigning payments owners submit to those charges, while the principal amounts remain outstanding.

It is time to derail the unbridled greed and injustice exhibited by condo industry principals responsible for this outrageously unfair bill.

888 Mililani Street
2nd Floor
Honolulu, 96813

Re: HB 1873

Dear Chair Nishimoto and Members of the Committee,

My name is John Morris and I am submitting testimony in support of HB 1873. I served as the State's first condominium specialists from 1988 to 1991 and since that time have represented condominium associations as their legal counsel. The main benefit of this bill is that it tries to encourage owners to pay their bills and then dispute any specifics of the bills, rather than fighting with the association and causing it to incur unnecessary legal fees that could be avoided if the owner simply paid and then disputed the amount of the bill.

Section 1 of this bill proposes to require associations to make it very clear to owners – on an annual basis – that if they fail to pay all amounts claimed by the association in full, they may be subject to a priority of payment plan that applies the payments they do make in a certain order – e.g. too late fees, legal fees, fines and interest -- before any payments are made to maintenance fees or common expenses.

The requirement for annual notice of the possibility that this priority of payment policy will be applied should help make owners fully aware of the policy. Similarly, the bill requires that if owners sign up for "Surepay" or some other form of automatic deduction, they are made fully aware of the possibility that a priority of payment plan will be applied to their payments. This should help encourage owners to pay and avoid unpleasant surprises.

Section 2 of this bill encourages owners to "pay first, dispute later." Moreover, this section improves the current pay first, dispute later policy in the law.

Under the current law, the owner is supposed to pay and then request a statement of the amounts owed and the various charges comprising those amounts. Under the proposed change in section 2, the association will have to provide full disclosure of those amounts in its demand for payment. In other words, the proposed changes will help encourage owners to pay by giving them a very clear list of exactly what they owe. In that way, the proposed change will improve on the existing law.

When I served as condominium specialist in the late 1980s, I was involved in drafting the original pay first, dispute later policy and suggesting it to the legislature. I had suggested that requiring owners to pay first and then dispute was a far better practice than prolonged legal battles. I made this suggestion after investigating a case in which a \$400 debt had ballooned into over \$50,000 of legal fees for an owner because the owner felt the \$400 was not owed. The legal fees included circuit court and several appeals, but the owner ultimately lost.

My original suggestion was that the owner would not have to pay until the owner had first received a clear statement of the charges comprising the amount owed. The law was passed in its current form, instead.

The changes made by HB 1873 will help improve the pay first, dispute later process and avoid unnecessary legal battles for those owners who are smart enough to take advantage of the process. Then, disputes about the amounts owed can be worked out through mediation or some other form of negotiation.

Thank you for this opportunity to testify.

John Morris

HB-1873-HD-1

Submitted on: 2/28/2018 10:53:41 AM

Testimony for JUD on 3/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lourdes Scheibert	Individual	Oppose	Yes

Comments:

I oppose HB1873 HD1 in its current form because it has been rewritten to contradict SB2054. SB2054 supports the consumer.

The original form, Agendas in February 2018 show both measures mirrored each other the following:

2/6/2018 Agenda _HB1873 Introduced by Representative Roy M Takumi

2/7/2018 Agenda _SB2054 Introduced by Senator Rosalyn Baker

Clarifies the process, including payment obligations, mediation requirements, and triggers for further default where a condominium unit owner and association reach a payment plan to resolve a nonjudicial foreclosure. Establishes procedures that provide condominium owners with the right to submit disputed legal fees, penalties or fines, late fees, lien filing fees, or other charges, except for common expense assessments, to the mediation process prior to payment.

SB2054 passed with no amendments by Chair Senator Rosalyn Baker and her committee with the support of industry leaders:

Hawaii Council of Association of Apartment Owners (HCCR)

Hawaiian Affairs Caucus

Community Association Institute (CAI)

Hui' Oia'i'o Participants

In CAI, Richard Emery's testimony he writes: **The great benefit of SB2054 is that it allows owners due process when they contest fines or legal fees related to fines thus preventing misunderstandings or abuse. The specific mediation mechanism in SB2054 is not unduly onerous and it cannot readily be used as means for substantial mischief. The mediation requirement adds responsibility to covenant enforcement, but in a managerial and reasonable fashion.**

Excerpt from Senator Rosalyn Baker's committee report to Honorable Ronald D. Kouchi: **Accordingly, this measure makes a narrowly- tailored exception to the pay first, dispute later requirement by clarifying that common expense assessments are the only fees that must be paid prior to initiating a dispute. If the unit owner contests any penalties or fines, late fees, lien filing fees, or other charges in an assessment, then the unit owner may, under certain circumstances proceed to mediation prior to paying those charges.**

Thank-you,

Lourdes Scheibert

Condominium Owner

HB-1873-HD-1

Submitted on: 2/28/2018 1:35:08 PM

Testimony for JUD on 3/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lila Mower	Hui `Oia`i`o	Oppose	Yes

Comments:

Current law does not allow associations to foreclose for default of NON-essential fees, but a payment scheme which carves these fees from maintenance fees allows these associations to foreclose on owners who may not really be in default on their maintenance fees. Owners may be contesting something as simple as a House Rule violation penalty.

The following simplified example is supported by HB1873 HD1. This simplified example of a payment scheme has been adopted by many associations pays and assures that attorneys are paid first and satisfies NON-essential expenses before maintenance fee (common expense assessments) payments are credited to owners' accounts.

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 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 dismay and disharmony among owners. And discredited owners are now in position to lose equity, damage their credit for years to come, and many lives are destroyed.

Unbelievable? No--this has happened to dozens of Hui participants. Legal bills from the association's attorneys have been reported to have ballooned to as much as \$35,000 for what started off as an alleged House Rules violation. Under the "pay first, dispute later" rule, associations "allow" owners to request mediation if those legal bills and other deficiencies are paid first; subsequently, many of these associations forego participation in mediation because they have received what they wanted, payment of the supposed deficiencies and a chastened and now intimidated owner.

The following comes from one of an association which adopted this payment scheme without owners understanding its consequences:

"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.”

Notice that charges that are NON-essential to the operation of this association are carved out of an owner’s maintenance fees. And typically, the first of those prioritized payments was attorneys' fees which is why some attorneys embrace this payment scheme.

To make this worse, some association attorneys charge whatever they want because they know that associations can force owners to pay.

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.

Without any limitation to what association attorneys can charge, if an owner didn't or couldn't pay, attorneys were assured that the association would pay their fees. If the association lacked enough funds, it could simply increase maintenance fees or charge a special assessment to raise those necessary funds.

This is why some association attorneys may benefit from the demise of HB1873 in its original iteration and will probably support the amended HB1873 HD1.

We condo owners cannot and Hui `Oia`i`o **OPPOSES THIS AMENDED VERSION.**

HB-1873-HD-1

Submitted on: 2/28/2018 1:49:11 PM

Testimony for JUD on 3/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lila Mower for Kokua Council	Kokua Council	Oppose	Yes

Comments:

The Kokua Council is one of Hawai'i's oldest advocacy groups, empowering seniors and other concerned citizens to be effective advocates in shaping the future and well-being of our community.

The Council acknowledges many media reports highlighting Hawaii's exorbitant cost of living, the difficulty of obtaining and retaining affordable housing, and concerns about financially induced homelessness, coupled with Census Bureau data that reveals how little discretionary income the average Hawaii resident has after paying essential bills.

The payment scheme that is supported by amendment to the original HB1873 only endangers the most vulnerable of our citizens. Those with limited incomes and assets are unable to afford their own legal defense when associations act aggressively to collect non-essential charges which may be subject to question and contestable.

While legislators may think that "automatic payments" may allow unknowing or unaware consumers to avoid cascading late fees and additional charges, this assumes that most consumers have pools of funds from which those non-essential payments may be made.

The greater possibility is that those with limited incomes also have limited cash assets in their accounts and may find that their checks to pay for essentials such as food, medication, fuel, etc., will "bounce" because the non-essential charges are "automatically withdrawn" from their accounts.

Thus, "automatic payment" is no salve under the conditions imposed by HB1873 HD1 if enacted.

HB1873 HD1 is not a solution for condo owners and creates hardships for the most vulnerable.

Kokua Council opposes HB1873 HD1 in its current form.