

HB-1873

Submitted on: 2/5/2018 12:33:18 PM

Testimony for CPC on 2/6/2018 2:00:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|-------------------------------|---------------------------|---------------------------|
| Anne Anderson | Anderson Lahne & Fujisaki LLP | Oppose | No |

Comments:

Dear Representative Roy M. Takumi, Chair, Representative Linda Ichiyama, Vice Chair, and Members of the Committees:

I OPPOSE the proposed change to HRS Section 514B-105(c) as set forth in Part III, Section 3 of H.B. 1873. The change to HRS Section 514B-105(c) 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 Section 514B-105(c), as currently written in the law, allows 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 Section 514B-105(c) 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) will have the effect of substantially impairing contract rights.

Finally, I oppose the change in Section 4, Part III of HB 1873, which will allow an owner to delay payment of fines late fees, lien filing fees, and other charges, except common expenses, while the matter is mediated. This could be used by delinquent owners as a delay tactic in making payment of sums due and owing, requiring all of the other owners to make up the shortfall.

For these reasons, I urge the committee to strike Section 3 and the pertinent portion of Section 4 from H.B. 1873.

Sincerely,

M. Anne Anderson

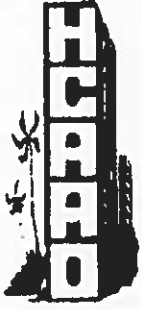
HB-1873

Submitted on: 2/5/2018 2:30:00 PM

Testimony for CPC on 2/6/2018 2:00:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|------------------------------|---------------------------|---------------------------|
| Philip L. Lahne | Anderson Lahne & FujisakiLLP | Oppose | No |

Comments:



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



February 2, 2018

Rep. Roy Takumi, Chair
Rep. Linda Ichiyama, Vice-Chair
House Committee on Consumer Protection & Commerce

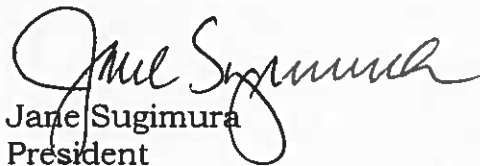
Re: Testimony in support of
HB1873 RELATING TO CONDOMINIUMS
Hearing: Tues., Feb. 6, 2018, 2 p.m., Conf. Rm. #329

Chair Takumi, Vice-Chair Ichiyama 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 supported this bill when it was part of HB1499 and will continue to do so. 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", this bill clarifies that only the assessments as that term is defined in the statute needs to be paid before the unit owner can dispute (in mediation or arbitration) the late charges and legal fees. For these reasons, we respectfully request that that you pass this bill without amendments.

Thank you for the opportunity to testify on this matter.


Jane Sugimura
President



P.O. Box 976
Honolulu, Hawaii 96808

February 4, 2017

Honorable Roy Takumi
Honorable Linda Ichiyama
Committee on Consumer Protection & Commerce
415 South Beretania Street
Honolulu, Hawaii 96813

Re: HB 1873 SUPPORT IN ITS CURRENT FORM

Dear Chair Takumi, Vice-Chair Ichiyama and Committee Members:

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

HB 1873 derives from a 2017 bill (HB 1499 HD1 SD2) that CAI was ultimately able to support in its *final* form. CAI notes that HB 1873 excludes parts of former HB 1499 HD1 SD1. Those excluded parts are reflected in HB 1874.

HB 1873 is extremely controversial within the condominium community, because it alters a fundamental doctrine. Condominium law is premised on an obligation to "pay first, dispute later" because money is the *lifeblood* of every association.

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 alters the "pay first, dispute later" doctrine. CAI is able to support HB 1873 in its current form only because it is carefully crafted, and the exception to "pay first, dispute later" is narrowly tailored.

Honorable Roy Takumi
Honorable Linda Ichiyama
February 4, 2018
Page 2 of 2

The exception to "pay first, dispute later" in HB 1873 relates to disputed "attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charges, except common expense assessments[.]" It is worth noting that there are substantial and meritorious reasons to refrain from creating even this exception.

For one, condominiums are not businesses for profit. Owners pay all the expenses of the association. Attorneys' fees and costs, lien filing fees, and the like are actual expenditures from the common fund of an association.

Innocent owners should not be obligated to pay expenses caused by the default and/or misconduct of other owners. Stated differently, one consumer should not be obligated to pay the just debt of another consumer.

Also, owners should not be incentivized to engage in disputes. The common fund of an association is depleted by things like legal expense.

The availability of the condominium education trust fund to subsidize the cost of accessing professional mediation services for condominium disputes, however, lessens the burden imposed by HB 1873's mediation requirement. CAI supports the use of mediation.

The specific mediation mechanism in HB 1873 is not unduly onerous and it cannot readily be used as a means for substantial mischief. The mediation requirement burdens covenant enforcement, but in a manageable fashion.

CAI supports HB 1873, in its current form.

Community Associations Institute, by

Philip Nerney

For its Legislative Action Committee

HB-1873

Submitted on: 2/5/2018 11:11:08 AM

Testimony for CPC on 2/6/2018 2:00:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Lila Mower | Hui `Oia`i`o | Support | No |

Comments:

Please add clarity to line 21, page 13, and line 4, page 14, by adding the phrase, “from the association,” as in, “written statement requested from the association pursuant to...”

In reference to the section on page 14, from lines 9 to 16, there appears to be a presumption that a delay in the mediation process is caused by an owner, however that is not in the experience of some owners in Hui `Oia`i`o and as reported in many of the DCCA’s REC Hawaii Condo Bulletins. Allegedly many delays in mediation are caused by associations. And many abandoned mediation are reportedly caused by associations. Thus, this section is unfair to owners.

HB-1873

Submitted on: 2/5/2018 10:33:38 AM

Testimony for CPC on 2/6/2018 2:00:00 PM

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

Comments:

We support the testimony of CAI in SUPPORT.

HB-1873

Submitted on: 2/4/2018 6:04:09 AM

Testimony for CPC on 2/6/2018 2:00:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Lourdes Scheibert | Condo Owner | Support | No |

Comments:

HB-1873

Submitted on: 2/3/2018 10:59:26 AM

Testimony for CPC on 2/6/2018 2:00:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Marcia Kimura | | Support | No |

Comments:

The main reason I am in support of this measure is the provision for owners to dispute all principal non maintenance fees, fines or charges BEFORE paying them. This should have been established years ago, and the unfair status quo requirement that owners pay up front for so many unfair, incorrect or fraudulent charges, and dispute them after payment is extremely unfair. The tendency is for management to prevail in litigation or mediation with those non principal charges, while owners are at risk for home loss due to unfair charges. Legislators, please do the right thing and support this bill yourselves!

HB-1873

Submitted on: 2/3/2018 10:28:09 AM

Testimony for CPC on 2/6/2018 2:00:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Mary Martin | | Comments | No |

Comments:

Part II for 667-94(c) seems to have a disconnect between subparts (1) and (3), as (1) indicates a "right to" mediation, but (3) uses "shall" --- not sure how to correlate, so it warrants clarification.

HB-1873

Submitted on: 2/5/2018 12:34:14 PM

Testimony for CPC on 2/6/2018 2:00:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|-----------------------------|---------------------|---------------------------|---------------------------|
| Paul A. Ireland Koftinow | | Oppose | No |

Comments:

Dear Representative Roy M. Takumi, Chair, Representative Linda Ichiyama, Vice Chair, and Members of the Committees:

I OPPOSE the proposed change to HRS Section 514B-105(c) as set forth in Part III, Section 3 of H.B. 1873. The change to HRS Section 514B-105(c) 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 Section 514B-105(c), as currently written in the law, allows 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 Section 514B-105(c) 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) will have the effect of substantially impairing contract rights.

Finally, I oppose the change in Section 4, Part III of HB 1873, which will allow an owner to delay payment of fines late fees, lien filing fees, and other charges, except common expenses, while the matter is mediated. This could be used by delinquent owners as a delay tactic in making payment of sums due and owing, requiring all of the other owners to make up the shortfall.

For these reasons, I urge the committee to strike Section 3 and the pertinent portion of Section 4 from H.B. 1873.

Sincerely,

Paul A. Ireland Koftinow

Richard J. Port
1600 Ala Moana Blvd. #3100
Honolulu, Hawaii 96815
Tel 808-941-9624
e-mail: portr001@hawaii.rr.com

Measure: HB 1873

Date and Time of Hearing: Tuesday, February 6, 2018, 2:00 p.m.

Committee: House Committee on Consumer Protection and Commerce, room 329

Chairman Takumi,

I am testifying in strong support of HB 1873. I have been involved in testifying on condominium bills for more than thirty-five years. Although I have been president or a member of my condominium board for most of those years, I have generally supported legislation in support of owner rights in relation to their Boards because I know that condominium boards exercise great authority through their executive, legislative, and judicial powers.

I support HB 1873 because it both ensures that condo associations will be able to collect owners' maintenance fees, but also ensures that unit owners will have safeguards so that they do not unnecessarily lose their homes through foreclosure. This bill clarifies that assessments will need to be paid before the unit owner can dispute in mediation or arbitration late charges and legal fees.

I appreciate this opportunity to provide my testimony in support of HB 1873 and request that your committee approve HB 1873 as written.

Richard Port

Dear Representative Roy M. Takumi, Chair, Representative Linda Ichiyama, Vice Chair, and Members of the Committees:

I OPPOSED this last year (2017 – H.B. 1499), and I will OPPOSE this (H.B. 1873) this year. I submitted a long testimony last year detailing my reasons of opposing this. I still cannot see one compelling reason(s) for changing the current laws.

I urge the committee to strike Section 3 and the pertinent portion of Section 4 from H.B. 1873.

Sincerely,

Bonnie Lau
Salt Lake, Honolulu, Hawaii

HB-1873

Submitted on: 2/5/2018 6:26:17 PM

Testimony for CPC on 2/6/2018 2:00:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Mary Freeman | Self | Oppose | No |

Comments:

Dear Representative Roy M. Takumi, Chair, Representative Linda Ichiyama, Vice Chair, and Members of the Committees:

I am OPPOSED to the proposed change to HRS Section 514B-105(c) as set forth in Part III, Section 3 of H.B. 1873. These changes will not benefit the condominium associations in Hawaii. Instead the change to HRS Section 514B-105(c) will render useless the application of payment policies used by most 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. I see no upside the the proposed changes.

HRS Section 514B-105(c), as currently written in the law, allows 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. 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 Section 514B-105(c) 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) will have the effect of substantially impairing contract rights.

Finally, I oppose the change in Section 4, Part III of HB 1873, which will allow an owner to delay payment of fines late fees, lien filing fees, and other charges, except common expenses, while the matter is mediated. This could be used by delinquent owners as a delay tactic in making payment of sums due and owing, requiring all of the other owners to make up the shortfall. Why this would be considered beneficial to owners that are not delinquent and have them bear the additional costs incurred has not been explained, possibly because there is no good reason for it

For these reasons, I urge the committee to strike Section 3 and the pertinent portion of Section 4 from H.B. 1873.

Sincerely,

Mary S. Freeman

H.B. 1873 – Set for hearing 2/6/18 at 2:00 p.m.

Dear Representative Roy M. Takumi, Chair, Representative Linda Ichiyama, Vice Chair, and Members of the Committees:

I OPPOSE the proposed change to HRS Section 514B-105(c) as set forth in Part III, Section 3 of H.B. 1873. The change to HRS Section 514B-105(c) 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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Finally, I oppose the change in Section 4, Part III of HB 1873, which will allow an owner to delay payment of fines late fees, lien filing fees, and other charges, except common expenses, while the matter is mediated. This could be used by delinquent owners as a delay tactic in making payment of sums due and owing, requiring all of the other owners to make up the shortfall.

For these reasons, I urge the committee to strike Section 3 and the pertinent portion of Section 4 from H.B. 1873.

Sincerely,

Primrose K. Leong-Nakamoto
Board of Director