

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Wednesday, February 28, 2018
12:00 p.m.

TESTIMONY ON HOUSE BILL NO. 1874, H.D. 1, RELATING TO CONDOMINIUMS.

TO THE HONORABLE SYLVIA LUKE, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Nikki Senter, and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). Thank you for the opportunity to testify on H.B. 1874, H.D. 1, Relating to Condominiums. The Commission offers the following comments to this bill, which is a companion to S.B. 2060.

The purposes of this bill are to: (1) add a new section to permit annual condominium education trust funds fees designated for educational purposes to be used for voluntary binding arbitration of condominium disputes by amending Hawaii Revised Statutes ("HRS") sections 514B-71 and 514B-72 and Act 187, Session Laws of Hawaii 2013; and (2) expand the conditions mandating mediation by amending HRS section 514B-161.

The Commission supports arbitration as an additional avenue for resolving condominium disputes, but would like to confirm the intent of the bill and comment on certain parts of H.B. 1874, H.D. 1.

The Commission reads proposed section 514B-161 starting on page 7 as mandating the mediation of issues noted in subsection (a), while proposed subsection (b) on page 7 simply allows the mediation of all issues specified in that subsection if the parties agree. This amendment appears to allow every possible scenario to be mediated, either mandatorily or permissively, and may create unintended consequences. The Commission respectfully asks whether all potential scenarios that

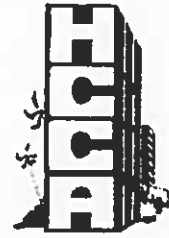
may result from H.B. 1874, H.D. 1 have been considered and whether this bill would expand allowable parties and issues beyond the historical limitations of mediation.

As examples, H.B. 1874, H.D. 1 appears to allow owners to: demand mediation with a developer over alleged construction defects; challenge a condominium managing agent on the agent's contract with a condominium board; or demand mediation of personal issues pursuant to subsection (a) (2) on page 7. The current Commission subsidy prohibits these types of situations from undergoing mediation.

Thank you for the opportunity to provide testimony on H.B. 1874, H.D. 1.



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



February 2, 2018

Rep. Sylvia Luke, Chair
Rep. Ty J.K. Cullen, Vice-Chair
House Committee on Finance

Re: Testimony in support of
HB1874, HD1 RELATING TO CONDOMINIUMS
Hearing: Wed., Feb. 28, 2018, 12 noon, Conf. Rm. #308

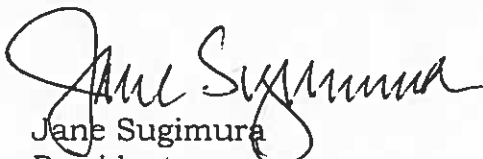
Chair Luke, Vice-Chair Cullen and Members of the Committee:

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

This bill has no impact on the State's general fund nor does it require the State to incur any expense. This bill would allow funds in the special condominium education fund administered by the Real Estate Commission (DCCA) to be used to fund voluntary binding arbitration. This bill also seeks to broaden the mediation provision in Chapter 514B to include board members and managing agents and to clarify (i) the consequences in refusing a request to engage in evaluative mediation and (ii) the process to compel mediation by court action.

This bill expands the dispute resolution options available to condo residents, board members and managing agents and provides for use of the condo-education fund to subsidize these options. It also provides for voluntary, binding arbitration (with no *de novo* requirement) that will be subsidized by the condo-education fund. The provisions in this bill will expand the available dispute resolution remedies available to the condominium community so that the disputes can be resolved quickly, economically and efficiently. For these reasons we respectfully request that you pass this bill out without amendments.

Thank you for the opportunity to testify on this matter.


Jane Sugimura
President

HB-1874-HD-1

Submitted on: 2/26/2018 9:40:05 AM

Testimony for FIN on 2/28/2018 12:00:00 PM

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

Comments:

HB 1874 HD1 expands the current successful evaluative mediation program by allowing parties to voluntarily agree that the proceeding is binding arbitration. The Bill further expands the eligible mediation participants; all at no cost to the State since after the first hour of mediator time which is split by the parties, the balance is paid by the condominium education fund that is funded by the condominium association registration fee. Initial statistics show great success in resolving disputes through this program. I strongly support HB 1874 HD1.



P.O. Box 976
Honolulu, Hawaii 96808

February 23, 2017

Honorable Sylvia Luke
Honorable Ty J.K. Cullen
Committee on Finance
415 South Beretania Street
Honolulu, Hawaii 96813

Re: HB 1874 HD1 SUPPORT

Dear Chair Luke, Vice-Chair Cullen and Committee Members:

This testimony is submitted on behalf of the Community Associations Institute ("CAI"). CAI supports HB 1874 HD1, for reasons stated herein.

Broadly speaking, HB 1874 HD1 does two things. First, it provides *needed* clarity to the condominium mediation statute by amending HRS §514B-161. Second, it provides support for parties who voluntarily choose binding arbitration for condominium disputes.

The pressing need is for amendment of HRS §514B-161. Supporting the voluntary choice to engage in binding arbitration is also meritorious.

The current condominium mediation statute, HRS §514B-161, is substantially deficient. HB 1874 HD1 provides clarity regarding the scope of mandatory mediation, takes the relatively recent subsidy for "evaluative" mediation into account, and provides a mechanism to compel participation in mediation. The proposed form of amendment to HRS §514B-161 has immense utility and will be a vast improvement over current law.

Honorable Sylvia Luke
Honorable Ty J.K. Cullen
February 23, 2018
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Other aspects of HB 1874 HD1 incentivize parties to voluntarily choose binding arbitration of condominium disputes by subsidizing the expense of such arbitrations. That is a wholly worthwhile and laudable goal.

The incentive is contingent on first making the effort to mediate the dispute, using "evaluative" techniques. Pairing evaluative mediation with voluntary binding arbitration holds the prospect of increasing efficiency in addressing condominium-related disputes.

Use of the condominium education trust fund to support voluntary binding arbitration is entirely consistent with the goal of promoting alternative dispute resolution. Associations make substantial contributions to the fund and deserve to benefit from it. Moreover, on information and belief, the fund is robustly capitalized so that general funds should be altogether unnecessary.

CAI supports HB 1874 HD1.

Community Associations Institute, by

Philip Nerney

For its Legislative Action Committee

HB-1874-HD-1

Submitted on: 2/26/2018 8:17:35 AM

Testimony for FIN on 2/28/2018 12:00:00 PM

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

Comments:

HB-1874-HD-1

Submitted on: 2/24/2018 3:31:23 PM

Testimony for FIN on 2/28/2018 12:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Christian Porter	Individual	Support	No

Comments:

Dear Chair Luke:

As an attorney practicing in this area, offering a paid arbitration program for condo disputes and expanding the current evaluative mediation program will be a huge benefit for all condo owners, and offer an alternative to the current system of handling condo disputes that can be costly.

Thank you for considering this testimony in support of this Bill.

Christian Porter

HB-1874-HD-1

Submitted on: 2/26/2018 5:48:48 AM

Testimony for FIN on 2/28/2018 12:00:00 PM

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

Comments:

HB-1874-HD-1

Submitted on: 2/26/2018 10:57:12 PM

Testimony for FIN on 2/28/2018 12:00:00 PM

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

Comments:

I am not in favor of this bill or of mediation. Statistics from the past three years show that less than one-half of cases mediated ended in mutual agreements between the parties. It is unclear what beyond the \$175 and the \$375 initial out-of-pocket costs parties pay for evaluative mediation or mandatory arbitration, is covered by the Condominium Education Trust Fund (CETF). Does the coverage for mediation and arbitration procedures include only the time spent by the mediators in the mediation or arbitration sessions? If so, this is still unfair, as owners must still pay out-of-pocket for preparation expenses. Why doesn't the bill set limits on the amount the attorneys will be paid out of our CETF funds?

So far, "educational" use of our funds have been for that of management who are taught practices to defeat the efforts of rights-seeking condo owners who are the exclusive contributors to the CETF.

The management industry insists that self governance be maintained. Yet mediation and arbitration do not support self-governance, as the attorneys are the third party for-profit judges and arbitrators in these resolution methods, while they decry government participation in legislation to protect owner rights.

I prefer that an impartial condominium association regulation office or ombudsman investigate and make recommendations for enforcement of statutes. This would mitigate or obviate the high cost of dispute resolution or litigation.

This is just the wolf's opportunism in sheep's clothing. They have done their best to destroy protective measures such as HB 2542 limiting condo attorney collection fees to 25 per cent of principal balances, and by what possible rationale?

In my view, HB 1874 appears intentionally written to confound those attempting to understand it in its current form, for the purpose of disguising the hell-bent intention of profiting from the misfortunes of owners caught in often fraudulent-based disputes.