

**PRESENTATION OF THE  
REAL ESTATE COMMISSION**

TO THE SENATE COMMITTEE ON WAYS AND MEANS

TWENTY-NINTH LEGISLATURE  
Regular Session of 2018

Wednesday, April 4, 2018  
10:30 a.m.

**WRITTEN TESTIMONY ONLY**

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

TO THE HONORABLE DONOVAN M. DELA CRUZ, 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, S.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 believes this bill may have unintended consequences. This bill would expand allowable parties and issues beyond the historical limitations of condominium dispute resolution. For example, H.B. 1874, H.D. 1, S.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 any personal issues between unit owners pursuant to subsection (a)(2) on page 7.

The current condominium mediation subsidy prohibits these types of situations from being mediated, and historically, mediation was never intended to stray beyond governance issues.

Also, the bill appears to be internally inconsistent regarding whether mediation is mandatory or permissive. Proposed section 514B-161 starting on page 7 mandates the mediation of issues noted in subsection (a), whereas proposed subsection (b) on page 7 allows the mediation of all issues specified in that subsection if the parties agree. Proposed subsection (b) allows every possible scenario to be mediated, including non-condominium governance issues, either mandatorily or permissively.

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