

**PRESENTATION OF THE  
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE  
Regular Session of 2018

Tuesday, February 6, 2018  
2:00 p.m.

**WRITTEN TESTIMONY ONLY**

**TESTIMONY ON HOUSE BILL NO. 1874, RELATING TO CONDOMINIUMS.**

TO THE HONORABLE ROY M. TAKUMI, 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, which is a companion to S.B. 2060. The Commission submits the following comments.

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

The Commission supports arbitration as an additional avenue for resolving condominium disputes. However, it has concerns about section 5 of the bill, relating to mediation. Section 5 expands permissible mediation subjects to include: any claims presented during the mediation; any dispute that falls outside the scope of threatened property damage or the health or safety of unit owners or any other person; assessments;

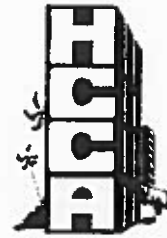
House Bill No. 1874  
February 6, 2018  
Page 2

personal injury claims; or matters that would affect the availability of any coverage pursuant to an insurance policy obtained by or on behalf of an association. This language is overbroad and unnecessarily expands the scope of permissible topics to subject areas historically not intended to be the subject of mediated disputes, including, but not limited to, disputes regarding common interest ownership, common elements, and unit size.

Thank you for the opportunity to provide written testimony on H.B. 1874.



**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  
HB1874 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 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



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 1874 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 1874, *in its current form*, for reasons stated herein.

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

Broadly speaking, HB 1874 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 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 Roy Takumi  
Honorable Linda Ichiyama  
February 4, 2018  
Page 2 of 2

Other aspects of HB 1874 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.

CAI supports HB 1874, in its current form.

Community Associations Institute, by

*Philip Nerney*

For its Legislative Action Committee

**HB-1874**

Submitted on: 2/5/2018 10:54:48 AM

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

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

Comments:

Without encouraging Association Boards to fulfil their fiduciary duty by initially attempting to resolve disputes in a friendlier neighborly environment and by directing these associations to utilize alternative means of dispute resolution such as mediation or arbitration, "self-governance" is subverted. Mediation and arbitration are as much alternatives to resolving disputes as is a condo ombudsman, but mediation and arbitration are costlier.

**HB-1874**

Submitted on: 2/5/2018 10:34:47 AM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard Emery	Associa	Support	Yes

Comments:

We support the testimony of CAI in SUPPORT.

**HB-1874**

Submitted on: 2/1/2018 5:10:41 PM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
lynne matusow		Oppose	No

Comments:

This is a waste of money.

lynne matusow



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

**Measure:** HB 1874

**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 1874. 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 am testifying in support of HB 1874 because it expands dispute resolution options for condo residents, boards and managing agents. This bill also provides for the use of the Condominium Education Fund which all condominium owners currently pay. In addition, it provides for voluntary binding arbitration subsidized by the Condominium Education Fund and expands the available dispute resolution remedies available to our condo community. In this way, disputes that arise can be resolved quickly without crowding court calendars.

I appreciate this opportunity to provide my testimony in support of HB 1874 and request that your committee pass this bill out without changes.

Richard Port