

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON INTRASTATE COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Wednesday, February 1, 2017
9:00 a.m.

TESTIMONY ON HOUSE BILL NO. 200, RELATING TO CONDOMINIUMS.

TO THE HONORABLE TAKASHI OHNO, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nikki Senter and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony on House Bill No. 200, Relating to Condominiums. The Commission opposes certain sections of the measure and submits the following comments.

House Bill No. 200 expands the subject matter available for mediation under HRS Chapter 514B to specifically include "design and construction defect claims"; decreases by half the amount of money collected into the condominium education trust fund ("CETF"); and mandates that future surplus monies in the CETF be reduced as practicable in an amount equal to any surplus.

As a general matter, mediation is a helpful dispute resolution tool which the Commission has supported for use in condominium governance disputes since 1992. However, as it involves condominium developers and contractors, the Commission ordinarily has no jurisdiction over these entities or individuals; thus disputes involving developers or contractors generally go to arbitration or litigation. The Commission finds that most of the disputes occurring within condominium associations are between

owners and the board as a whole or individual board members, not developers or contractors of the condominium project. Where developers or their representatives are sitting on newly created condominium boards, disputes tend to focus on the authority of the board to get things done, not on design or defect claims. The Commission believes the addition of design and defect claims to mandatory mediation is unwarranted and opposes this.

The proposed reduction by half of the monies collected into the CETF from the condominium biennial registration fee would make it difficult for the Commission to continue carrying out its duties. The measure asks the Commission to first, cut the amount of registration fees by half and second, to anticipate any surplus in the CETF and to reduce by that amount money collected for registration in the next biennium. The Commission cannot anticipate or predict the use of mediation by owners for resolving disputes. If the Commission failed to set aside enough monies from any "surplus", it would be unable to adequately subsidize the mediation program for owners. The Commission opposes this section of the proposed House Bill No. 200.

SECTION 4 of House Bill No. 200 includes removal of a section of the current law that encourages mediation by providing that an owner who did not prevail in a court of law but who attempted mediation prior to the court action is not necessarily responsible for all reasonable costs and attorneys' fees. House Bill No. 200's elimination of that language removes any incentive for owners to attempt mediation as a first resort.

This measure expands those subjects permissible for mediation to include "Chapter 514B". This is overbroad and unnecessarily expands the scope of permissible topics to be mediated to subject areas historically not intended to be the subject of mediated disputes, for example, disputes regarding common interest ownership, common elements, unit size, etc.

Paragraph (d) of SECTION 5 of the measure provides that a prevailing party shall be awarded attorneys' fees in an amount not to exceed \$200. Paragraph (e) immediately after appears to conflict in that it states that each party to a mediation shall bear their own costs in the absence of certain conditions.

Currently, for evaluative mediation, each party to the mediation pays \$375, more than the \$150 proposed by House Bill No. 200. The amount of \$375 was recommended by mediation providers consistent with the usual costs associated with evaluative mediation.

Thank you for the opportunity to provide testimony in opposition and comments with regard to certain sections of House Bill No. 200.

IACtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 28, 2017 11:05 PM
To: IACtestimony
Cc: mrckima@gmail.com
Subject: *Submitted testimony for HB200 on Feb 1, 2017 09:00AM*

HB200

Submitted on: 1/28/2017

Testimony for IAC on Feb 1, 2017 09:00AM in Conference Room 429

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

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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January 31, 2017

Representative Angus L.K. McKelvey, Chair
Representative Linda Ichiyama, Vice Chair
Committee on Consumer Protection & Commerce
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **Support of HB200**

Dear Chair McKelvey and Vice Chair Ichiyama:

I am a partner with the law firm of Porter McGuire Kiakona & Chow, LLP. Our firm represents condominium associations throughout the State of Hawaii, and I am active on the Community Association Institutes' Legislative Action Committee ("LAC") and a member of the Board of Directors for the Condominium Council of Maui ("CCM"). This testimony is not being submitted on behalf of either LAC or CCM.

I submit this testimony in support of HB200.

This Bill is good for the condominium industry as it clarifies and broadens the matters that can be submitted to the evaluative mediation program. This program provides a useful tool for parties to attempt to resolve their disputes prior to arbitration or litigation.

Thank you for your consideration.

Very truly yours,



Christian P. Porter

IACtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2017 1:26 PM
To: IACtestimony
Cc: richard.emery@associa.us
Subject: Submitted testimony for HB200 on Feb 1, 2017 09:00AM

HB200

Submitted on: 1/31/2017

Testimony for IAC on Feb 1, 2017 09:00AM in Conference Room 429

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

Comments: Mediation has proven to be very successful in resolving condominium disputes. There are several Bills before the legislature to strengthen the process. I believe that the fees should not be lowered at this time as the program is young and efforts are being made to require more mediations. I also do not feel it is appropriate to include construction defect cases in the program from condominium fees.

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LATE TESTIMONY

IAC CPC JUD
Wednesday 02-01-17
9:00am House Conference Room 429

Intrastate Commerce
Representative Tahaski Ohno, Chair and Representative Issac W. Choy

Consumer Protection and Commerce
Representative Angus L.K. McKelvey and Representative Linda Ichihama, Vice Chair

Judiciary
Representative Scott Y. Nishimoto and Representative Joy A. San Buenaventura

RE: Testimony in support of HB 200 / Condominiums; Condominium Association;
Dispute Resolution; Mediation; Arbitration; Condominium Education Trust Fund

Aloha:

I testify in support of HB 200 as it allows owners to invoke mandatory dispute resolution. Presently Boards of Directors are free to ignore that responsibility if they wish to. Also, the reduction in the Condo Education Trust Fund 'tax' is appropriate.

*Respectfully, Dale A. Head (808) 696-4589
85-175 Farrington Highway C-428 Waianae, HI 96792*

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