

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, January 27, 2017 1:30 PM  
**To:** CPCtestimony  
**Cc:** richard.emery@associa.us  
**Subject:** Submitted testimony for HB244 on Jan 31, 2017 14:00PM

**HB244**

Submitted on: 1/27/2017

Testimony for CPC on Jan 31, 2017 14:00PM in Conference Room 329

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

Comments: The proposed Bill is a reasonable balance to resolve fees related to fines and foreclosures.

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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**LATE**



P.O. Box 976  
Honolulu, Hawaii 96808

January 30, 2017

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

Re: HB 244-SUPPORT IN CURRENT FORM

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

I am a member of the Community Associations Institute Legislative Action Committee. CAI supports HB 244 in its current form.

HB 244 departs from the pay first, dispute later principle that is essential to the efficient and effective functioning of condominiums. CAI is concerned about any such departure.

The factors enabling CAI to support HB 244 in its current form are:

1. The exception to the pay first, dispute later principle is narrowly tailored and carefully crafted;
2. The process to be followed is clear; and
3. The impact on the finances and operations of condominiums should be manageable.

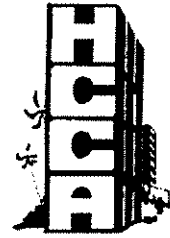
Community Associations Institute, by

*Philip Nerney*

For its Legislative Action Committee



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



January 28, 2017

Rep. Angus McKelvey, Chair  
Rep. Linda Ichiyama, Vice-Chair  
House Committee on Consumer Protection & Commerce

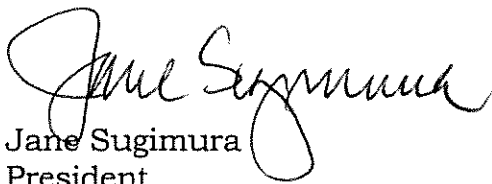
Re: Testimony in Support of  
HB244 RELATING TO CONDOMIMUMS  
Hearing: Tues., January 31, 2017, 2 p.m., Conf. Rm. #329

Chair McKelvey, 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 supports this bill. It addresses very important issues relating to the voluntary settlement of a non-judicial foreclosure that would help the association collect its maintenance fees and allow the owner to keep his home; and clarifies the priority of payments provision of the law and would allow an owner to dispute the validity of the association's claims without first requiring the owners to pay the association's legal expenses.

For the reasons set forth, HCCA respectfully requests that you pass this bill. If you have any questions, please feel free to contact me. Thank you for the opportunity to testify on this matter.

A handwritten signature in black ink that reads "Jane Sugimura". The signature is written in a cursive, flowing style.

Jane Sugimura  
President

**COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**  
HEARING ON JANUARY 31, 2017 AT 2 PM  
**SUPPORT WITH AMENDMENTS REGARDING HB244**

Common expense assessments (aka "maintenance fees"), must be paid to assure the continued operation and maintenance of their properties.

Some associations have enacted rules which essentially convert peripheral fees-- such as attorneys' fees, late fees, penalties or fines for violations, bad check fees which are not essential to the operation of the association--into common expense assessments, using a "priority of payments" scheme that can reduce the amount that is credited to an owner's common expense assessment. This may cause an owner to unintentionally default on his common expense assessment and unnecessarily put that owner on the rhetorical "slippery slope" towards foreclosure.

That "priority of payments" scheme also implies that those peripheral charges are more necessary to the association's operation than the actual common expense assessment.

Thus, while HB244 provides that owners may demand mediation prior to paying any contested charges other than common expense assessments (aka, "maintenance fee), we ask for clarity and adherence to the principle that associations should not convert peripheral fees into common expense which continuance may circumvent HB244's intent.

We recommend that that 514B-105 (c) is amended as follows, deleting those sections which have been stricken:

~~"No association shall deduct and apply portions of common expense payments received from a unit owner to unpaid late fees, legal fees, fines, and interest (other than amounts remitted by a unit in payment of late fees, legal fees, fines, and interest) unless the board adopts and distributes to all owners a policy stating that: (1) Failure to pay late fees, legal fees, fines, and interest may result in the deduction of such late fees, legal fees, fines, and interest from future common expense payments, so long as a delinquency continues to exist; and (2) Late fees may be imposed against any future common expense payment that is less than the full amount owed due to the deduction of unpaid late fees, legal fees, fines, and interest from the payment"~~

And amend HRS667-94 to add:

Any fines owed to the association by a unit owner shall not be converted into any additional fees that may cause the unit owner to default. Any dispute over fines owed by a unit owner to the association shall attempt to be resolved through the Office of Condominium Complaints and Enforcement before foreclosure proceedings are commenced

We ask that legislators prevent aggressive collection practices which include the needless of seizure of homes and to halt potential homelessness whenever possible. Mahalo.

Lila Mower of Hui `Oia`i`o

**LATE**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, January 30, 2017 12:08 PM  
**To:** CPCtestimony  
**Cc:** schoenecker@email.phoenix.edu  
**Subject:** Submitted testimony for HB244 on Jan 31, 2017 14:00PM

**HB244**

Submitted on: 1/30/2017

Testimony for CPC on Jan 31, 2017 14:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
JOY SCHOENECKER	Mauna Luan	Support	No

Comments: This bill addresses very important issues relating to the voluntary settlement of a nonjudicial foreclosures that would help our association collect its maintenance fees and allow the owner to keep their home and clarifies the priority of payments provision of the law and would allow an owner to dispute the validity of the association's claims without first requiring the owners to pay the association's legal expenses.

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CPC JUD FIN  
Tuesday, January 31, 2017  
2:00 pm, Capitol Bldg., Rm 329

**To: Representative Angus K.L. McKelvey, Chair and Representative Linda Ichiyama, Vice Chair**

From: Dale A. Head (808) 696-4589 home (808) 228-8508 cell sunnymakaha@yahoo.com

**RE: Testimony In Support of HB 244**, Relating to Condominiums, defaults, priority of payments

Aloha:

1. I'm in favor of passage of House Bill #244.
2. Presently the property management companies prefer to deduct any fines, late fees, and legal fees from home owners maintenance fees thereby 'generating' debt which serves to oftentimes more than 'triple' the amount owed to an association. I know of cases where condo owners were effectively 'pushed under water' by compounding or pyramiding debt on top of late maintenance fees to where people gave up and lost their home. This is both predatory and unfair to the consumer.
3. Associations should be using Small Claims Court for these cases instead of running to collections attorneys, in my opinion.
4. Please pass House Bill #244

Respectfully, **Dale A. Head**

*Owner at Makaha Surfside in Waianae, Unit C-428 since October of 1987*

**Quote** - "When you see something that is not right, not fair, not just, you have a moral obligation to do something – to say something – and not be quiet." "You must have courage, you must be bold, and never ever give up". **U.S. Representative John Lewis.**

CPC JUD FIN  
Tuesday, January 31, 2017  
2:00 pm, Capitol Bldg., Rm 329

**To: Representative Angus K.L. McKelvey, Chair and Representative Linda Ichiyama, Vice Chair**

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*Owner at Makaha Surfside in Waianae, Unit C-428 since October of 1987*

**Quote** - "When you see something that is not right, not fair, not just, you have a moral obligation to do something – to say something – and not be quiet." "You must have courage, you must be bold, and never ever give up". **U.S. Representative John Lewis.**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, January 30, 2017 10:03 AM  
**To:** CPCtestimony  
**Cc:** piercel001@netscape.net  
**Subject:** Submitted testimony for HB244 on Jan 31, 2017 14:00PM

**HB244**

Submitted on: 1/30/2017

Testimony for CPC on Jan 31, 2017 14:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lon Pierce	Individual	Support	No

Comments: Peripheral fees should not be converted into common expense. Better clarification as to what is considered peripheral fees.

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**LATE**

January 30, 2017

Hearing Date: January 31, 2017

Time: 2:00 PM

Place: Conference Room 325

Committee on Consumer Protection & Commerce  
House of Representatives, the 29<sup>th</sup> Legislature  
Regular Session of 2017

**RE: Testimony for Conditional support of HB 244**

Aloha, Chair McKelvey, Vice Chair Ichiyama and Committee Members ,

If this bill will cure the unadjudicated pay first, dispute later fines and penalties along with the associated costs that go with them, then this bill will have my whole hearted support. There are multiple numbers of examples whereby homeowners have lost their homes without even their day in court because of unpaid fines and the associated cost.

Mahalo,  
John White Sr.

**LATE**

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Testimony Regarding HB 244

DATE: Tuesday, January 31, 2017  
TIME: 2:00 PM  
PLACE: Conference Room 329

John Morris  
(808) 523 0702

Chair McKelvey and Members of the Committee,

I work as an attorney representing condominiums and other homeowner associations and I am testifying in support of HB 244 with one suggested change.

For many years, the condominium law has provided for a "pay first, dispute later" policy, under which owners have not been allowed to withhold any assessment claimed by their association. Instead, the owners are supposed to pay the disputed amounts and then exercise their right to mediation, arbitration, or Small Claims Court to resolve their dispute over the amounts owed. While this policy may seem to favour the association, it was first adopted to protect owners by giving them the opportunity to minimize or eliminate late fees, fines, and legal fees by paying what was owed and then disputing about the amounts owed.

This bill proposes to eliminate the pay first, dispute later policy for all association claims except maintenance fees (common expenses). Since maintenance fees are the "lifeblood of the association", preserving the policy from maintenance fees makes sense. Since, however, fines and late fees are not necessarily an out-of-pocket expense for the association, this bill's changes make sense with respect to those other amounts. Legal fees are an out-of-pocket expense for the association, but the bill is attempting to balance the association's rights on legal fees against those of the owner.

As part of that balancing process, the bill requires any disputes relating to legal fees, late fees, and fines to go to mediation, at the request of an owner. In addition, the bill requires the association to inform the owner of the availability of mediation for disputes over those types of charges. Moreover, the mediation has to be pursued promptly or the association can continue its collection efforts for the legal fees, late fees, and fines and other non-common expense

charges. This seems to be a reasonable trade-off between the rights of the owner and the rights of the association.

I would suggest one change to confirm that priority of payment policies are no longer permitted (see sections 4 and 6 of the bill). (Essentially, a priority of payment policy requires that any amounts received from an owner be applied, after notice to the owner, in a specific order of priority. For example, maintenance fee payments can applied first to fines and late fees, then to legal fees and, finally, to maintenance fees. Thus, a priority of payment policy has the effect of converting those other charges into a maintenance fee delinquency. This means an owner who only pays his maintenance fees will find the maintenance fee amount being applied to everything but maintenance fees, leaving the owner with a maintenance fee delinquency.)

Many associations have the right to follow this policy written into their declaration and bylaws. Therefore, eliminating it from the law will not necessarily eliminate it from the declaration and bylaws of some associations. Therefore, I suggest the following change be made to section 514A-15.1 and 514B-105 (d), as follows:

**§514A-15.1 Common expenses; prior late charges.** Notwithstanding anything to the contrary in the declaration and bylaws of an association of apartment owners, ~~No~~ no association of apartment owners shall deduct and apply portions of common expense payments received from an apartment owner to unpaid late fees (other than amounts remitted by an apartment owner in payment of late fees) ~~unless it delivers or mails a written notice to such apartment owner, at least seven days prior to the first such deduction, which states that:~~

(1) ~~Failure to pay late fees will result in the deduction of late fees from future common expense payments, so long as a delinquency continues to exist.~~

(2) ~~Late fees shall be imposed against any future common expense payment which is less than the full amount owed due to the deduction of unpaid late fees from such payment."~~

**§514B-105 Association; limitations on powers.**

\* \* \*

(c) Notwithstanding anything to the contrary in the declaration and bylaws of an association ~~No~~ no association shall deduct and apply portions of common expense payments received from a unit owner to unpaid late fees, legal fees, fines, and interest (other than amounts remitted by a unit in payment of late fees, legal fees, fines, and interest). ~~unless the board adopts and distributes to all owners a policy stating that:~~

~~(1) Failure to pay late fees, legal fees, fines, and interest may result in the deduction of such late fees, legal fees, fines, and interest from future common expense payments, so long as a delinquency continues to exist; and~~

~~(2) Late fees may be imposed against any future common expense payment that is less than the full amount owed due to the deduction of unpaid late fees, legal fees, fines, and interest from the payment.~~

In that way, the legislature will make it clear that even if an association has authority in its governing documents, if this bill passes, a priority of payment policy will no longer be permitted.

Thank you for this opportunity to testify.

John Morris

**LATE**

TESTIMONY IN SUPPORT  
WITH RECOMMENDED AMENDMENTS  
HB 244, RELATING TO CONDOMINIUMS

Committee on Consumer Protection and Commerce  
Tuesday, January 31, 2017, 2:00 p.m., Conference Room 329

Rep Angus L. K. McKelvey, Chair  
Rep Linda Ichiyama, Vice Chair  
and Members

Aloha mai kākou

I am writing in support of HB 244, Relating to Condominiums, that proposes to clarify certain provisions of HRS 514A and 514B concerning payment plans; nonjudicial foreclosure; obligation of a unit owner and association while a unit owner is not otherwise in default under a payment plan; the pay first, dispute later provisions applying only to common expense assessments; the requirements for mediation on contested charges, etc.

I fully agree that common expense assessments (aka “Maintenance Fees”) must be paid to assure the continued operation and maintenance of condominium properties and like many of the amendments to HRS 514B proposed under HB 244. However, there is one area that has been abused. While HB 244 attempts to differentiate the process for handling delinquent common expense assessments from that of attorneys’ fees, late fees, etc., some associations of apartment owners (AOAO) have enacted rules that essentially convert peripheral fees, such as attorneys’ fees, late fees, penalties or fines for violations, and bad check fees that are not essential to the operation of the association into common expense assessments, using a priority of payments scheme that can reduce the amount that is credited to an owner’s common expense assessment.

Accordingly, strongly recommend that HRS 514B-105(c) contain the following language: “No association shall deduct and apply portions of common expense payments received from a unit owner to unpaid late fees, legal fees, fines, and interest (other than amounts remitted by a unit in payment of late fees, legal fees, fines and interest.” Inclusion of this recommended language into HB 244 would assure adherence to the principle that associations should not convert peripheral fees into common expense that is the intent of HB 244.

Additionally recommend amending HRS667-94 to add: “Any fines owed to the association by a unit owner shall not be converted into any additional fees that may cause the unit owner to default. Any dispute over fines owed by a unit owner to the association shall attempt to be resolved through the Office of Condominium Complaints and Enforcement or mediation before foreclosure proceedings are commenced.”

Mahalo for your consideration of these recommendations.

Respectfully,

MARILYN L. KHAN  
Homeowner, Moana Pacific