



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

LATE

ON THE FOLLOWING MEASURE:

H.B. NO. 35, RELATING TO CONDOMINIUMS.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Tuesday, January 31, 2017 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Shari Wong, Deputy Attorney General

Chair McKelvey and Members of the Committee:

The Department of the Attorney General offers these comments regarding the current draft. The current draft requires the Department to advocate on behalf of certain individual members of the public against other members of the public. This may be contrary to our role as the attorney for the State as a whole.

This bill establishes an office of condominium complaints and enforcement ("Office") and the position of a complaints and enforcement officer ("Enforcement Officer") within the Department of the Attorney General.

This bill also requires the Enforcement Officer, among numerous other responsibilities, to investigate disputes; make recommendations or give guidance to unit owners; assist unit owners with alternative dispute resolution requests; educate the public; publish advisory opinions requested by unit owners; and submit an action in circuit court, apparently on behalf of a condominium association, to amend a condominium's declaration or bylaws.

These tasks may be inconsistent with the statutory responsibility of the Department. Pursuant to section 26-7, Hawaii Revised Statutes (HRS), the Department provides legal advice and representation to state departments and officers.

Contrary to the Department's broad mandate to legally advise and represent the State government, this bill places the Department in the atypical role of an advocate for condominium unit owners in private disputes against private condominium boards and associations. This role is contrary to the Department's role in representing the public

generally. It creates a significant potential conflict if the Department advises the condominium unit owners and also brings some action against them on behalf of a state agency.

The staff of the Real Estate Branch within the Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs (DCCA), currently handles complaints and issues regarding condominiums. Three condominium specialists and support staff are specifically tasked with answering questions and responding to problems within or amongst a condominium board of directors, management company, and unit owners. Mediation and arbitration are other avenues of resolution for disgruntled unit owners. Many of DCCA's responsibilities are duplicative of the proposed responsibilities of the Office.

Instead of creating a new regulatory office overseeing a structure of living intended to be one of self-governance, we respectfully recommend consideration of the following alternatives: (1) using moneys in the condominium education fund to support the Legal Aid Society and other social service providers in educating, assisting, and advocating for condominium unit owners; (2) making principal brokers responsible for ensuring that its management companies comply with all legal requirements; or (3) adding compliance with chapters 514A and 514B, HRS, to a principal broker's responsibilities to enable stronger oversight of a profession already regulated by the DCCA.

Charlotte A. Carter-Yamauchi
Director

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LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
415 S. Beretania Street
Honolulu, Hawaii 96813

Written Comments

HB35 RELATING TO CONDOMINIUMS

Comments by the Legislative Reference Bureau
Charlotte A. Carter-Yamauchi, Director

Presented to the House Committee on Consumer Protection and Commerce

Tuesday, January 31, 2017, 2:00 p.m.
Conference Room 329

Chair McKelvey and Members of the Committee:

Good afternoon Chair McKelvey and members of the Committee, my name is Charlotte Carter-Yamauchi and I am the Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written comments on H.B. No. 35, Relating to Condominiums.

The purpose of this measure is to:

- (1) Establish, on January 1, 2018, an Office of Condominium Complaints and Enforcement in the Department of the Attorney General to intervene in condominium disputes;
- (2) Appropriate, from July 1, 2017, an unspecified sum out of the condominium education trust fund for deposit into the newly created office of condominium complaints and enforcement special fund, and appropriate that sum to the Attorney General for administrative costs associated with the establishment of the Office of Condominium Complaints and Enforcement; and
- (3) Require the Legislative Reference Bureau to conduct a study on the Office of Condominium Complaints and Enforcement, with a report to the Legislature prior to the convening of the 2019 Regular Session, which is to include the Bureau's findings and recommendations, any proposed legislation, and at least the following:

- (A) The effects of the Office of Condominium Complaints and Enforcement oversight on existing evaluative mediation, arbitration, and court remedies;
- (B) A description of the extent of problems within the dispute process among condominium board, association, and unit owners;
- (C) The effects on planned community associations;
- (D) Recommendations to improve the Office of Condominium Complaints and Enforcement; and
- (E) Any other issues deemed necessary or relevant.

The Legislative Reference Bureau takes no position on the establishment of the Office of Condominium Complaints and Enforcement as contained in Part I of this measure, but submits the following comments on Part II for your consideration.

Part II of the measure requires the Bureau to conduct a study, to be submitted to the 2019 Legislature, to determine:

- (1) If the establishment of the Office of Condominium Complaints and Enforcement, after less than a year of existence, has had any effect on existing evaluative mediation, arbitration, and court remedies;
- (2) The extent of problems within the dispute process among condominium board, association, and unit owners;
- (3) The effects on planned community associations;
- (4) Any recommendations to improve the Office of Condominium Complaints and Enforcement; and
- (5) Any other issues deemed necessary or relevant.

The Bureau would like to note that there are programs that currently exist to assist condominium boards, associations, and owners in dealing with disputes. Currently:

- (1) Pursuant to sections 514A-7 and 514B-63, Hawaii Revised Statutes, the Director of Commerce and Consumer Affairs may already appoint condominium specialists to assist consumers with information, advice, and referral on any

matter relating to condominium associations or otherwise concerning condominiums; and

- (2) The Real Estate Commission has been required since 2013 to use the condominium education trust fund to support the mediation of condominium related disputes. Pursuant to section 514B-71(a)(4), Hawaii Revised Statutes;
 - (A) In addition to condominium education trust fund moneys, mediation of condominium related dispute costs are also subsidized by an increase in the annual condominium education trust fund fee pursuant to section 514B-72(a)(2), Hawaii Revised Statutes; and
 - (B) The Real Estate Commission has been using an evaluative mediation service as a means of dispute resolution, which employs trained mediators who possess subject matter expertise in various areas of the law.

It seems that, since the Real Estate Commission has been operating an evaluative mediation dispute resolution program for the past four years, a more useful evaluative tool would be to have the Real Estate Commission report on the efficacy of this program. If the Real Estate Commission reports that its mediation dispute resolution program is not effective, the Commission itself would be in the best position to determine why the program is not meeting its intended objective and what types of alternative dispute mediation programs would be most efficacious.

Furthermore, it seems that, in order to determine if the establishment of the Office of Condominium Complaints and Enforcement has had any effect on existing evaluative mediation, arbitration, and court remedies, certain baseline data must first be collected and reported by affected agencies (e.g., the DCCA, Real Estate Commission, mediation and arbitration organizations, and the courts). Without availability or ready access to such data, the Bureau would be hard-pressed to conduct any meaningful evaluation on the impact of the new program on existing dispute resolution options.

Establishing a new Office of Condominium Complaints and Enforcement program to be housed in another state agency, and then conducting a study to determine its effectiveness less than a year after it begins without first determining if existing dispute resolution initiatives are working, and if not, why not, will most likely not remedy any underlying problems that may exist with the current process. In addition, establishing a new dispute resolution program would most likely include an additional increase in fees against condominium associations.

Honorable Angus L. K. McKelvey
House Committee on Consumer Protection and Commerce
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However, if the Legislature feels that this measure is an appropriate use of the Bureau's resources, then the Bureau notes that it should be able to conduct the study under this measure in the timeframe allotted; provided that the Attorney General, the Department of Commerce and Consumer Affairs, the Real Estate Commission, mediation and arbitration organizations, and the Judiciary can timely provide any information required and the scope of the requested study is not expanded.

Thank you again for this opportunity to provide written comments.

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Tuesday, January 31, 2017
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 35, RELATING TO CONDOMINIUMS.

TO THE HONORABLE ANGUS L.K. MCKELVEY, 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. 35, Relating to Condominiums. Although the Commission will defer to the Office of the Attorney General regarding the legality and administration of a newly created office within its department, the Commission opposes in part and has concerns with other sections of the measure.

House Bill No. 35 establishes a condominium complaints and enforcement office in the Office of the Attorney General, headed by a complaints and enforcement officer. As described, this bill would allow the officer within the newly created office to investigate disputes brought by owners; make recommendations to owners; use condominium education trust fund ("CETF") monies for the purpose of education; publish advisory opinions; make suggestions for amending the project documents; conduct contested case hearings; and adopt rules.

The Commission believes that the bill's requirement for board members to file financial disclosure forms, to attend a condominium education class and obtain a

certificate of completion within three months of acceptance to the board would discourage owners from serving on their condominium association board. Board members are volunteers; many associations have difficulty maintaining a working board even without the additional financial, educational and certification prerequisites imposed by House Bill No. 35.

Additionally, the Commission strongly believes that overall education of unit owners and directors is the main ingredient for a healthy association of unit owners and creating an ethics course for directors is a step in the right direction. However, pursuant to §26H-6, HRS, "New regulatory measures being considered for enactment that, if enacted, would subject unregulated professions and vocations to licensing or other regulatory controls shall be referred to the auditor for analysis. Referral shall be by concurrent resolution that identifies a specific legislative bill to be analyzed. . . ." As this bill proposes new regulatory controls over members of the board of directors of an association of unit owners, a sunrise analysis must be completed before consideration can be given to this measure and the Commission opposes this Section.

Also House Bill No. 35 does not address the accommodations necessary for additional staffing to implement the proposed new regulatory measure.

As it appears, this measure is creating another Office of Self-Governance Oversight in addition to this new Office of Condominium Complaints and Enforcement. The Commission has concerns whether this is the intent of this measure.

In Section 7 of House Bill No. 35, 35 percent of the fees collected shall be transferred to the Office of Condominium Complaints and Enforcement special fund. As trustees of the CETF, the Commission is concerned about its fiduciary responsibilities and not having any oversight over this new Attorney General's Office and its use of the funds.

This measure allows the Commission to impose a \$1,000 fine against any person who knowingly files a false claim with the newly created complaints and enforcement office. It does not, however, describe how the Commission would collect this fine.

House Bill No. 35 also amends existing §514B-71, HRS, by removing the support for mediation as a mandated purpose for the CETF. The Commission believes it would be a mistake to remove mediation from the statutory mandate. Mediation is a valuable dispute resolution tool that is available to condominium owners for a reasonable fee and which has been subsidized by the Commission for owners since 1992. Support for mediation as a means of avoiding litigation was added via Act 187 (SLH 2013) and took practical effect on July 1, 2015. Certain monies from condominium association registration is to be used solely by the owners for evaluative mediation. The Commission strongly believes the condominium law should continue to support mediation for disputing condominium owners.

Thank you for the opportunity to provide testimony opposing and raising concerns with regard to certain sections of House Bill No. 35.

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 28, 2017 7:27 PM
To: CPCtestimony
Cc: hkaicoach@gmail.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/28/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Caesar Paet	Cadmus Properties Corp	Oppose	No

Comments: This bill should not be passed because: We already have alternative dispute resolution programs in place - evaluative mediation and we are proposing voluntary binding arbitration to be funded by the condo-ed fund. It will use the condo education fund to set up a brand new bureaucracy of people who know nothing about condominiums or understand HRS 614B – this is a waste of the funds that condo owners have to pay into the fund. The ombudsman program on other states (Nevada, Colorado, Florida, Del) are not working to resolve disputes. The provision in this bill talk about reviving the “condo Court” that was a temporary program about 10 years ago that was an utter failure and total waste of time and money.

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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From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 11:32 AM
To: CPCtestimony
Cc: cj@cadmusproperties.com
Subject: *Submitted testimony for HB35 on Jan 31, 2017 14:00PM*

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Cj Paet (R)	CADMUS PROPERTIES CORPORATION	Oppose	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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LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 3:05 PM
To: CPCtestimony
Cc: laurie@cadmusproperties.com
Subject: *Submitted testimony for HB35 on Jan 31, 2017 14:00PM*

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
laurie ann hodes	cadmus properties corporation	Oppose	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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P.O. Box 976
Honolulu, Hawaii 96808

January 28, 2017

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

Re: HB 35-OPPOSED

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

I am a member of the Community Associations Institute Legislative Action Committee. CAI opposes HB35.

CAI supports condominium self-governance. If the legislature no longer does, however, it is still true that HB 35 should be amended.

HB 35 results from the lobbying of an organized group, whose stridency and persistence can only be admired. The essential thesis of the group is that the condominium community is rife with corruption and that owners are oppressed by the overbearing tactics of condominium boards and their minions.

The legislature is asked to respond forcefully to these *anecdotes*, and to enshrine the tyranny of the minority. That is unfortunate, both because the group's narrative is false and because abandonment of the principle of self-governance is unwarranted.

One question for *this committee in particular* is: *which consumers does the committee seek to protect?* As of 2015, there were over 160,000 condominium units in Hawaii. Those who are satisfied with condominium living do not rise up and demand change, so the voices of the vast majority of condominium owners, for whom condominium living works well, are unheard.

Honorable Angus L.K. McKelvey
Honorable Linda Ichiyama
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A good starting point for the review of HB 35 is Hawaii Revised Statutes ("HRS") §514B-4(a), that provides as follows:

[§514B-4] Separate titles and taxation. (a) Each unit that has been created, together with its appurtenant interest in the common elements, constitutes, for all purposes, a separate parcel of real estate.

Passage of HB 35 would render that notion untrue, because HB 35 would be a governmental *taking* of precious property rights.

HB 35 would turn condominiums into a species of *public* housing, and that would substantially undermine the investment backed expectations of some 160,000 plus owners. There is no evident basis for discriminating against condominium owners in this way.

There are certainly less intrusive measures that the legislature might consider to address the perceived grievances of HB 35's proponents. HB 242, for example, would establish a condominium unit owner hotline to provide unit owners with legal information relating to disputes with a condominium's board of directors. HB 405 and HB 406 would also require ethics training for condominium board members. CAI supports promoting education and facilitating access to legal information.

CAI also supports mediation. HB 200 would truly and effectively mandate mediation. Surprisingly, HB 35 does not even require mediation prior to government intervention.

New and expensive bureaucracy that effectively establishes executive branch control over a substantial portion of the private housing stock raises a menacing prospect. CAI hopes that the legislature will carefully consider the implications of that course of action.

HB 35 should at least be substantially amended if the committee moves it forward. For one thing, government should not explicitly side with one party to a dispute involving private property rights.

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Honorable Linda Ichiyama
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HB 35 does not treat all condominium owners in a fair and balanced manner. Instead, it is explicitly designed to favor and to advocate for the interests of a complainant against the other owners. This is so, because the membership of a condominium association "shall consist exclusively of all the unit owners." HRS §514B-102(b), and associations are targeted by HB 35.

Government should at least be neutral.

The design of HB 35 is to provide a government attorney to represent an individual in a private civil matter. The legislature should consider that provision carefully.

The same department of government that is to advocate in favor of one party to a private civil matter is then to also judge disputes and determine outcomes. That is manifestly unfair.

The advocate in a dispute should not also be the decision maker. That is fundamental.

Further, HB 35 effectively eliminates any meaningful judicial review. The legislature should consider why discriminating against one class of real property owners in terms of access to the courts is appropriate.

A contested case hearing is not equivalent to a trial. It is also fair to note that there is a constitutional right to trial by jury in suits at common law. HB 35 should take that into account.

Even if the legislature decides that government attorneys should be supplied to advocate on behalf of one party in a private civil matter, the dispute itself should be decided in the courts. There is no reasonable basis whatever for depriving a single class of real property owners from direct access to the courts.

The mixed role of advocate and adjudicator inheres in HB 35. For example, proposed §514B-E enables the "complaints and enforcement officer" to issue an "advisory opinion" but to also "determine[] an association or board is at fault" and that it "shall be responsible for any legal fees incurred or fines levied against the unit owner involved in the dispute." (Emphasis added)

Again, the advocacy role cannot reasonably be mixed with the fact-finding or adjudication role. Government should be neutral towards all parties.

All persons are constitutionally entitled to equal protection of the law. HB 35 involves *state action* and involves the government in taking sides with respect to private disputes.

Even if HB 35 might be constitutional, it is worth considering that individuals are constitutionally equal in their inherent and inalienable constitutional rights to acquire and possess property, per Article I, §2, of Hawaii's Constitution. It is reasonable to ask that the legislature carefully balance the substantial constitutionally protected rights at issue here.

To the extent that the legislature holds to the view that government should have *investigatory and enforcement powers*, to preserve and to protect *governmental* (as opposed to *private*) interests, it is worth noting that current condominium law already provides government with substantial investigatory and enforcement powers. See, e.g., HRS §§514B-65-68. If the legislature determines that such power should be shifted to a different *department*, that can be accomplished without enacting HB 35 in its current form.

HB 35 also contains the requirement that condominium board members file "a financial disclosure form" with government. Service on a condominium board is not service in government.

This provision is designed to deter volunteer service on condominium boards by qualified persons, or can at least be expected to have that effect. If a provision of this sort is to be considered at all, it would be more appropriate to provide that narrowly tailored and relevant disclosures might be required in connection with certain established investigations after a showing of need is made and subject to due process protections.

HB 35 further provides that owners must approve "a major expenditure in excess of \$10,000 per unit owner". The first point to note is that association directors pay assessments just like all other owners, so directors have the same financial incentive as other owners to avoid large assessments.

If the legislature is concerned about large assessments for *optional or non-essential matters*, then HB 35 should be amended to specify the scope of its concern. This is particularly so because public health and safety can be implicated.

The legislature would be facilitating the neglect and deterioration of the housing stock by the current form of this provision. Onerous assessments of the referenced magnitude usually relate to essential maintenance or repair requirements.

The legislature should promote the maintenance and repair of essential infrastructure. The budget function is properly allocated to fiduciaries rather than to individuals who are free to vote their immediate financial self-interest.

This provision exemplifies why the subject matter of HB 35 should be studied. Condominium governance deserves careful consideration. It is appropriate to note, in that connection, that condominium governance was carefully studied in the recodification process that resulted in the enactment of Chapter 514B and nothing like what HB 35 proposes resulted from that process.

HB 35 goes on to require the disclosure of records "including executive session records of voting results regarding the imposition of special assessments, charges, and fines, including legal fees". That is antithetical to the notion and purpose of executive session. A more careful and refined approach is appropriate.

Taken in context, what HB 35 fundamentally promotes is the idea of governance by plebiscite. It reflects a rejection of representative democracy, and can reasonably be expected to lead to dysfunction as well as increased costs to consumers.

With respect to HB 35's proposed revisions to HRS §514B-157, those will, at minimum, oblige consumers to pay more for living in a condominium. **It is essential to recognize that condominium owners pay 100% of their association's expenses.** So, if one zealous owner chooses to constantly make demands upon an association then HB 35 will assure that the expense of meeting those demands will be at the expense of the association's other owners. Such a provision is not protective of consumers.

Honorable Angus L.K. McKelvey
Honorable Linda Ichiyama
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HB 35 also has the odd provision of injecting the complaints and enforcement officer into mediation processes. Although mediation is not required as a predicate to initiating a complaint for that officer to investigate, the complaints and enforcement officer is apparently going to somehow be advocating for an owner within that process and then *adjudicating* the outcome of what, *by definition*, is not an adjudicatory process.

Thus, for a variety of reasons, CAI respectfully requests that the Committee hold HB 35, in favor of alternative legislation that promotes education and facilitates access to information.

Community Associations Institute, by

Philip Nerney

For its Legislative Action Committee

Enclosure

Hawaii Community Associations: Facts and Figures
(<https://www.caionline.org/Advocacy/Resources/Pages/State-Facts-Figures.aspx>)

Hawaii Community Associations facts & figures

» Approximately **370,000** Hawaii residents live in **142,500** homes in nearly **2,000** community associations.

» These residents pay **\$400 million** a year to maintain their communities. These costs would otherwise fall to the local government.



» **13,000** Hawaii residents are elected to their community association boards each year, providing over **\$400,000** in service.

» Homes in community associations are generally valued at least **5-6%*** more than other homes.



66 » percent of residents feel that the rules protect and enhance property values. (5% disagree and the remainder are neutral).

74 » percent of residents oppose additional regulation of community associations.

87 » percent of residents rate their community association experience as positive (65%) or neutral (22%).

» Community associations are private entities, not governments. Residents vote for fellow homeowners to provide leadership—making decisions about operation, administration and governance of the community.

» Assessments paid by association members cover the costs of conducting association business—such as common area maintenance, repair and replacement, essential services, routine operations, insurance, landscaping, facilities maintenance as well as savings for future needs.

CAI supports public policy that recognizes the rights of homeowners and promotes the self-governance of community associations—affording associations the ability to operate efficiently and protect the investment owners make in their homes and communities.

When state legislatures consider amending the laws governing community associations, CAI recommends consideration is first given to well-drafted model statutes that are the product of non-partisan, thoughtful deliberation. These statutes are developed and promoted by the Uniform Law Commission—the Uniform Condominium Act and Uniform Common Interest Ownership Act, also known as UCIOA.

SOURCES
Community Associations Fact Book 2015.

Verdict, Americans Grade Their Associations, Board Members and Community Managers.

www.cairf.org

*Agan, A. & Tabarrok, A. (2005). What are private governments worth. *Regulation*, 28 (3), 14-17.



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From: mailinglist@capitol.hawaii.gov
Sent: Friday, January 27, 2017 11:18 AM
To: CPCtestimony
Cc: albertd@hawaiianprop.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/27/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Al Denys	Hawaii CAI LAC & Hawaiian Properties	Oppose	No

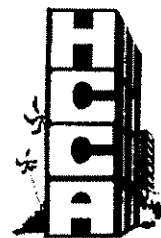
Comments: HB 35. I am in opposition to HB 35. This HB will significantly reduce the ability of any AOA to conduct business in a timely and professional manner by removing their ability to be self-governing. There is a very small vocal minority that wish to control their boards/AOA by requesting additional mechanisms to be adopted. If approved this will become an expensive bureaucratic nightmare trying to "fix things that aren't broken". Again, us taxpayers will be forced to pay for something that is unnecessary and was proven to be unworkable before (i.e. Condo Court). Thus I oppose HB 35 and request that does not move forward in any capacity. Mahalo. warmest aloha Al Denys

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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**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

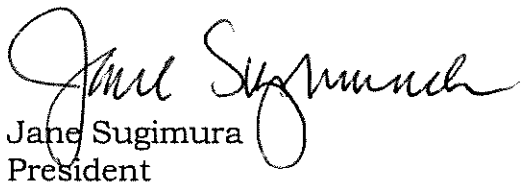
Re: Testimony in Opposition to
HB35 RELATING TO CONDOMIMUMS
Hearing: Tues., January 31, 2017, 2 p.m., Conf. Rm. #329

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 opposes this bill for the reasons stated in Richard Emery's testimony on behalf of Associa Hawaii, which comments and position are incorporated by reference in this testimony. We agree with Mr. Emery's statements that the evaluative mediation program implemented in July 2015 by the Real Estate Commission should be used to address the concerns of this bill rather than to create a new bureaucracy run by and staffed by people who have to learn about condominiums and are not familiar with the provisions of HRS 514B.

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


Jane Sugimura
President

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
HEARING ON JANUARY 31, 2017 AT 2 PM
SUPPORT FOR HB35

Hui `Oia`i`o supports the passage of HB35. This amendment would discourage board of directors from engaging the services of condominium attorneys to harass and intimidate owners through letter writing campaigns which bury those owners in unnecessary legal fees. It would encourage transparency and ethical governance, cause boards to grant access to records, seek owners' approval for expenditures on repairs, replacements and improvements to the common elements or assets, and return integrity to the election process.

Although a board must have access to legal counsel to discharge its duties, boards too often seek the costly services of attorneys for matters which simply do not warrant the expense, such as to block an owner who seeks to exercise his/her right to copies of board minutes.

Owners must hire, at their own expense, an attorney to enforce their rights and responsibilities while boards of directors can defend themselves using association funds, raised through assessments on owners. Thus, owners' funds are used to defend lawsuits brought by owners themselves.

Condominium attorneys have experience and skill at prolonging matters to the point where a unit owner can simply no longer afford to continue his/her action or claim. A board could even assess its association for more money if its attorney needed more.

Further, under the current law, many boards have passed a "priority of payments" which "converts" those legal fees, late fees, fines, bad check charges, agreement of sale payments, or special assessment fees on an association member's account ledger, in that order, into common expense fees (aka maintenance fees). This provision, coupled with HRS514B-104, "if the fine is paid, the unit owner shall have the right to initiate a dispute resolution process," makes it difficult for an owner as swelling legal fees must be paid before the fine is even paid, thus forestalling dispute resolution, causing some owners to default on their common expense (maintenance) fees, and exposing more owners unnecessarily to the potential of foreclosure, a fatal practice in a state which wrestles with a growing homeless population.

To prevent this occurrence, we recommend that HRS514B-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

Owners of registered condominiums are currently mandated to contribute \$10 biennially into the Condo Education Trust Fund, of which \$3 is earmarked to support mediation of condominium related disputes. Per the DCCA's own records, of 36 mediation cases reported in 2016, only 9 were mediated to agreement, 12 were mediated to no agreement, and there were 14 cases in which one or both parties declined to participate, withdrew their request for mediation, or did not respond to a request for mediation. This indicates a "successful resolution" rate of 25% which anywhere else may be considered "failure."

We believe those condo owners' mandatory contributions will be better utilized if transferred to the Office of Condominium Complaints and Enforcement as part of the 35% of all funds collected into the CETF.

Further, the Hui opposes any increase in CETF contributions from owners until successful services for owners can be delivered.

Finally, we ask that you further amend HRS154B-154.5 as follows:

(f) Any fee charged to a unit owner or owner's authorized agent to obtain copies of association's documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, shall be reasonable; provided that a reasonable fee shall include administrative and duplicating costs and shall not exceed \$1 per printed page, or portion thereof, except that the fee for pages exceeding eight and one-half inches by fourteen inches may exceed \$1 per printed page.

And ask that you address what is a "reasonable fee" when available electronic (pdf) documents or digital discs are requested by owners, but owners are charged at the unreasonable rate of \$1 per electronic or digital page when the effort to provide that electronic document or disc took but a few clicks of a computer mouse and a few minutes of an administrative employee's time.

Why should an owner pay hundreds of dollars for documents which are rightfully his but which onerous cost makes it prohibitive for an owner to obtain?

Mahalo.

Lila Mower for Hui `Oia`i`o

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 1:09 PM
To: CPCtestimony
Cc: leonardbio@aol.com
Subject: *Submitted testimony for HB35 on Jan 31, 2017 14:00PM*

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Joan Plylar	Rosehill Properties LLC	Oppose	No

Comments:

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CHRISTOPHER SHEA GOODWIN

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TELEPHONE 808 531-6465
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Christopher Shea Goodwin*
chris@christophersheagoodwin.com

*Admitted to practice in HI and TX

Robert S. Alcorn**
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**Admitted to practice in HI and TX

January 30, 2017

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

RE: Opposition to H.B. 35

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

The undersigned is an attorney representing over 100 condominium and community associations in the State of Hawaii and presents this testimony in opposition to H.B. 35.

There are severely troubling provisions in this proposed legislation which should be carefully considered by the Committee.

First, and foremost, H.B. 35 seeks to create a new “complaints and enforcement officer” to issue “advisory opinions”, “determine [if] an association or board is at fault” and find the association “shall be responsible for any legal fees incurred or fines levied against the unit owner involved in the dispute.” To what extent this contemplated official can serve as both advocate for allegedly affected unit owners and adjudicate such claims raises serious constitutional due process issues. Simply put, a process which empowers the complaints and enforcement officer to not only prosecute claims on behalf of the allegedly affected unit owner, but decide the merits of such claims, is in direct conflict with the basic premise of the judicial system in the United States. Such a procedure would likely not survive a legal challenge due to this inherent conflict of interest.

Second, and of particular concern to attorneys who represent condominium associations is the requirement in H.B. 35 regarding the disclosure of records “including executive session records of voting results regarding the imposition of special assessments, charges, and fines, including legal fees.” By their very nature, executive session minutes should remain confidential to the extent they contain a record of, or make reference to attorney-client communications. At the executive session portion of many board meetings, association legal counsel is present to provide legal advice and recommendations to the board. Disclosure of executive session minutes summarizing or memorializing these communications would severely impair not only the ability of association attorneys to provide effective legal representation, but potentially prejudice the association in any

CHRISTOPHER SHEA GOODWIN
ATTORNEY AT LAW LLLC

Honorable Angus L.K. McKelvey
Honorable Linda Ichiyama
Committee on Consumer Protection & Commerce
January 30, 2017
Page 2

pending or contemplated legal action, regardless of whether a unit owner is a party to such legal action.

Finally, the financial disclosure requirement for condominium board members in H.B. 35 will have a chilling effect on board service. Many of the undersigned's condominium association clients already experience great difficulty in filling vacant board seats to participate in what is generally perceived as a, "thankless" job. The board member financial disclosure requirement in H.B. 35 will further impair efforts to fill board seats with a diverse group of individuals to manage and govern condominium associations further concentrating the board's authority in an even smaller group of individuals which the proponents of H.B. 35 presumably seek to avoid.

Thank-you for your consideration of this testimony in opposition to H.B. 35 which is opposed by an overwhelming majority of the undersigned's condominium association clients.

Very truly yours,

CHRISTOPHER SHEA GOODWIN, AAL, LLLC

A handwritten signature in black ink, appearing to read 'C. Shea Goodwin', with a stylized flourish at the end.

Christopher Shea Goodwin

CSG:skuw

January 29, 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: **Opposition to the Current Version of HB35**

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 opposition to the current version of HB35.

The main problem that is raised with the propose legislation is that it assumes that a central enforcement body is "needed to address the problems faced by many condominium owners who sometimes fear retribution from certain board members when challenging their governance." [Emphasis added.] There is no support for this assumption from any data from the association industry. There may be "some" boards that act in a manner that is viewed as retribution, but such allegations alone – without undisputed facts and empirical data – do not support the creation of a new "central enforcement body" at anyone's expense.

I respectfully suggest that a study be conducted to determine if such measures are needed, and I would be happy to volunteer my time to assist in that venture. A neutral review is needed to determine is truly "many condominium owners" are facing retribution when they challenge their respective board's governance.

As for some of the other aspects of the Bill, I support (a) the requirement of having new board members attended some type of education classes (page 11 of HB35); and (b) not charging owners attorneys' fees incurred by the Association in responding to some of the types of inquires of owners (and other issues) as noted on pages 34 and 35 of the HB35.

Representative Angus L.K. McKelvey, Chair
Representative Linda Ichiyama, Vice Chair
January 29, 2017
Page 2

Lastly, if a special meeting will be required for the approval of loans that will result in an owner having to pay in excess of \$10,000 for their portion of the loan, HB35 on pages 24 and 25 should be clarified as to whether this would require the affirmative vote of owners representing fifty per cent (50%) of the common interest, and this would be in lieu of any written consent. The current version of the Bill regarding voting threshold is not clear.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. Porter', with a long horizontal flourish extending to the right.

Christian P. Porter

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 11:46 AM
To: CPCtestimony
Cc: Richardesh88@gmail.com
Subject: *Submitted testimony for HB35 on Jan 31, 2017 14:00PM*

HB35

Submitted on: 1/30/2017
Testimony for CPC on Jan 31, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Eshleman	AOAO Harbor View Plaza	Oppose	No

Comments:

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Cc: alohaginny5@gmail.com
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HB35

Submitted on: 1/30/2017

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Submitted By	Organization	Testifier Position	Present at Hearing
Virginia Trojan	Harbor View Plaza	Oppose	No

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Sent: Monday, January 30, 2017 12:04 PM
To: CPCtestimony
Cc: schoenecker@email.phoenix.edu
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017
Testimony for CPC on Jan 31, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
JOY SCHOENECKER	Mauna Luan	Oppose	No

Comments: *We already have alternative dispute resolution programs in place - evaluative mediation and we are proposing voluntary binding arbitration to be funded by the condo-ed fund. * It will use the condo education fund to set up a brand new bureaucracy of people who know nothing about condominiums or understand HRS 614B – this is a waste of the funds that condo owners have to pay into the fund. * The ombudsman program on other states (Nevada, Colorado, Florida, Del) are not working to resolve disputes. *The provision in this bill talk about reviving the “condo Court” that was a temporary program about 10 years ago that was an utter failure and total waste of time and money.

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SB 35

§514B-H Office of condominium complaints and enforcement special fund. (a) There is established an office of condominium complaints and enforcement special fund into which shall be deposited the following moneys:

- (1) Appropriations by the legislature to the special fund;
- (2) Gifts, donations, and grants from public agencies and private persons;

This is asking for financial pressure from outside agencies or persons

"§514B- Board member; disclosure; education. (a) Every member of a board shall file annually with the office of self-governance oversight a financial disclosure form as required pursuant to rules adopted by the office of self-governance oversight. The financial disclosure shall be confidential and not open to public inspection.

Too open-ended for a reasonable person to adhere to...what are the "rules"?

(c) Every person chosen to be a new member of a board shall take the condominium education class and obtain a certificate of completion within three months of acceptance to the board."

Who provides the class and at whose cost? It is hard enough for small associations to obtain suitable board members without subjecting them to unnecessary financial disclosures and "education classes" that have yet to be announced for content and schedule.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 7:17 AM
To: CPCtestimony
Cc: mikegolojuch808@gmail.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch	Palehua Townhouse Association	Oppose	No

Comments: HB35 is not needed. We already have alternative dispute resolution programs in place - evaluative mediation. This proposal will use the condo education fund to set up a brand new bureaucracy of people who know nothing about condominiums or understand HRS 514B – this is a waste of the funds that condo owners have to pay into the fund. The ombudsman programs for other states (Nevada, Colorado, Florida, and Delaware) are not working to resolve disputes. The provision in this bill about reviving the “condo Court” that was a temporary program about 10 years ago that failed and was a total waste of time and money.

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Princeville *at Hanalei* Community Association

Enhancing the Quality of Life and Princeville Experience for its Members

LATE

1

Testimony in Opposition to HB 35

As I think you all know, I serve as the General Manager for the Princeville at Hanalei Community. I am also a member of the Community Association Institute, the national body committed to advancing the effectiveness of community management.

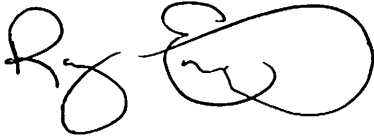
I am writing today, to encourage you to vote against HB 35 and any Senate equivalent. On its surface, it might seem logical to create a state function to help adjudicate disagreements within condominium associations. I'm sure all of you have received communications from dissatisfied condo residents that have disagreements with their Board of Directors. Trust me, this is a daily experience for me. It's because of this experience that I strongly doubt the effectiveness of a new state organization to improve the situation.

Although Princeville is a Community Association (governed under the Hawaii Planned Community Statutes - 421J), we also have 21 Condo Associations (governed under Hawaii Condominium Property Acts 514A and 514B) as members. So I get to see the everyday workings of "self-governance" up close and personal. It's anything but perfect; then again, I'd say the same thing about democracy. I submit that creating another decision-making body above the elected Board of Directors will worsen, not improve, the situation. Here's why:

- Getting candidates to run for Condo Board of Directors is challenging, to say the least. For every single "power hungry" director there are fifty that serve because they feel responsible. More often than not, they have had their arms twisted to serve because their broader community sees them as the type of leader they want to represent them.
- Virtually all associations struggle with pleasing a small minority of critical and quite vocal members. Often these are people that are very committed to having things their way, not a great characteristic for building communities. They rarely serve the broader community and usually don't get elected.
- A state office is just what this type of person wants. They will be able to play havoc with the elected board members by threatening to bring a complaint to the state.
- Now consider the fact that Hawaii has nearly two thousand community associations. I venture to say a majority of these have a few members each that resemble the above description. Do you really think a state office can effectively manage this? Very unlikely! Instead, this bill will weaken the Boards ability to govern.

Condo Board of Directors do make mistakes. They are volunteers. But they've been elected by their neighbors to represent them. If a Board becomes "rogue" and governs inappropriately, they will be voted out. This process of governance works without state intervention. The existing Statutes provide adequate guidance. Avoid the temptation to try to fix what the state really can't fix.

Regards,

A handwritten signature in black ink, appearing to read "Rory Enright". The signature is fluid and cursive, with a large, rounded flourish at the end.

Rory Enright
General Manager
Princeville at Hanalei Community Association

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 11:06 AM
To: CPCtestimony
Cc: tomk6588@gmail.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Tom	Waikoloa Beach Villas	Oppose	No

Comments: The Waikoloa Beach Association, Island of Hawaii, a condominium complex of 120 units is OPPOSED to HB 35. We as an AOA are governed by a Board that works for the owners. We do not need additional legislation that gives way to much power to an individual owner. We have open forums and annual meetings for all to talk and discuss issues. The Board is also a group of 7 owners that will look out for all 120 owners. Please do not add additional costs to our budget that currently pays all the expenses and continues to build our reserves. Thank you, Tom Kell AOA President tomk6588@gmail.com 808.315.7824

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LATE



P.O. Box 976
Honolulu, Hawaii 96808

January 28, 2017

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

Re: HB 35-OPPOSED

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

I am a member of the Community Associations Institute Legislative Action Committee. CAI opposes HB35.

CAI supports condominium self-governance. If the legislature no longer does, however, it is still true that HB 35 should be amended.

HB 35 results from the lobbying of an organized group, whose stridency and persistence can only be admired. The essential thesis of the group is that the condominium community is rife with corruption and that owners are oppressed by the overbearing tactics of condominium boards and their minions.

The legislature is asked to respond forcefully to these *anecdotes*, and to enshrine the tyranny of the minority. That is unfortunate, both because the group's narrative is false and because abandonment of the principle of self-governance is unwarranted.

One question for *this committee in particular* is: *which consumers does the committee seek to protect?* As of 2015, there were over 160,000 condominium units in Hawaii. Those who are satisfied with condominium living do not rise up and demand change, so the voices of the vast majority of condominium owners, for whom condominium living works well, are unheard.

Honorable Angus L.K. McKelvey
Honorable Linda Ichiyama
January 28, 2017
Page 2 of 6

A good starting point for the review of HB 35 is Hawaii Revised Statutes ("HRS") §514B-4(a), that provides as follows:

[§514B-4] Separate titles and taxation. (a) Each unit that has been created, together with its appurtenant interest in the common elements, constitutes, for all purposes, a separate parcel of real estate.

Passage of HB 35 would render that notion untrue, because HB 35 would be a governmental *taking* of precious property rights.

HB 35 would turn condominiums into a species of *public* housing, and that would substantially undermine the investment backed expectations of some 160,000 plus owners. There is no evident basis for discriminating against condominium owners in this way.

There are certainly less intrusive measures that the legislature might consider to address the perceived grievances of HB 35's proponents. HB 242, for example, would establish a condominium unit owner hotline to provide unit owners with legal information relating to disputes with a condominium's board of directors. HB 405 and HB 406 would also require ethics training for condominium board members. CAI supports promoting education and facilitating access to legal information.

CAI also supports mediation. HB 200 would truly and effectively mandate mediation. Surprisingly, HB 35 does not even require mediation prior to government intervention.

New and expensive bureaucracy that effectively establishes executive branch control over a substantial portion of the private housing stock raises a menacing prospect. CAI hopes that the legislature will carefully consider the implications of that course of action.

HB 35 should at least be substantially amended if the committee moves it forward. For one thing, government should not explicitly side with one party to a dispute involving private property rights.

Honorable Angus L.K. McKelvey
Honorable Linda Ichiyama
January 28, 2017
Page 3 of 6

HB 35 does not treat all condominium owners in a fair and balanced manner. Instead, it is explicitly designed to favor and to advocate for the interests of a complainant against the other owners. This is so, because the membership of a condominium association "shall consist exclusively of all the unit owners." HRS §514B-102(b), and associations are targeted by HB 35.

Government should at least be neutral.

The design of HB 35 is to provide a government attorney to represent an individual in a private civil matter. The legislature should consider that provision carefully.

The same department of government that is to advocate in favor of one party to a private civil matter is then to also judge disputes and determine outcomes. That is manifestly unfair.

The advocate in a dispute should not also be the decision maker. That is fundamental.

Further, HB 35 effectively eliminates any meaningful judicial review. The legislature should consider why discriminating against one class of real property owners in terms of access to the courts is appropriate.

A contested case hearing is not equivalent to a trial. It is also fair to note that there is a constitutional right to trial by jury in suits at common law. HB 35 should take that into account.

Even if the legislature decides that government attorneys should be supplied to advocate on behalf of one party in a private civil matter, the dispute itself should be decided in the courts. There is no reasonable basis whatever for depriving a single class of real property owners from direct access to the courts.

The mixed role of advocate and adjudicator inheres in HB 35. For example, proposed §514B-E enables the "complaints and enforcement officer" to issue an "advisory opinion" but to also "determine[] an association or board is at fault" and that it "shall be responsible for any legal fees incurred or fines levied against the unit owner involved in the dispute." (Emphasis added)

Again, the advocacy role cannot reasonably be mixed with the fact-finding or adjudication role. Government should be neutral towards all parties.

All persons are constitutionally entitled to equal protection of the law. HB 35 involves *state action* and involves the government in taking sides with respect to private disputes.

Even if HB 35 might be constitutional, it is worth considering that individuals are constitutionally equal in their inherent and inalienable constitutional rights to acquire and possess property, per Article I, §2, of Hawaii's Constitution. It is reasonable to ask that the legislature carefully balance the substantial constitutionally protected rights at issue here.

To the extent that the legislature holds to the view that government should have *investigatory and enforcement powers*, to preserve and to protect *governmental* (as opposed to *private*) interests, it is worth noting that current condominium law already provides government with substantial investigatory and enforcement powers. See, e.g., HRS §§514B-65-68. If the legislature determines that such power should be shifted to a different *department*, that can be accomplished without enacting HB 35 in its current form.

HB 35 also contains the requirement that condominium board members file "a financial disclosure form" with government. Service on a condominium board is not service in government.

This provision is designed to deter volunteer service on condominium boards by qualified persons, or can at least be expected to have that effect. If a provision of this sort is to be considered at all, it would be more appropriate to provide that narrowly tailored and relevant disclosures might be required in connection with certain established investigations after a showing of need is made and subject to due process protections.

HB 35 further provides that owners must approve "a major expenditure in excess of \$10,000 per unit owner". The first point to note is that association directors pay assessments just like all other owners, so directors have the same financial incentive as other owners to avoid large assessments.

If the legislature is concerned about large assessments for *optional or non-essential matters*, then HB 35 should be amended to specify the scope of its concern. This is particularly so because public health and safety can be implicated.

The legislature would be facilitating the neglect and deterioration of the housing stock by the current form of this provision. Onerous assessments of the referenced magnitude usually relate to essential maintenance or repair requirements.

The legislature should promote the maintenance and repair of essential infrastructure. The budget function is properly allocated to fiduciaries rather than to individuals who are free to vote their immediate financial self-interest.

This provision exemplifies why the subject matter of HB 35 should be studied. Condominium governance deserves careful consideration. It is appropriate to note, in that connection, that condominium governance was carefully studied in the recodification process that resulted in the enactment of Chapter 514B and nothing like what HB 35 proposes resulted from that process.

HB 35 goes on to require the disclosure of records "including executive session records of voting results regarding the imposition of special assessments, charges, and fines, including legal fees". That is antithetical to the notion and purpose of executive session. A more careful and refined approach is appropriate.

Taken in context, what HB 35 fundamentally promotes is the idea of governance by plebiscite. It reflects a rejection of representative democracy, and can reasonably be expected to lead to dysfunction as well as increased costs to consumers.

With respect to HB 35's proposed revisions to HRS §514B-157, those will, at minimum, oblige consumers to pay more for living in a condominium. **It is essential to recognize that condominium owners pay 100% of their association's expenses.** So, if one zealous owner chooses to constantly make demands upon an association then HB 35 will assure that the expense of meeting those demands will be at the expense of the association's other owners. Such a provision is not protective of consumers.

Honorable Angus L.K. McKelvey
Honorable Linda Ichiyama
January 28, 2017
Page 6 of 6

HB 35 also has the odd provision of injecting the complaints and enforcement officer into mediation processes. Although mediation is not required as a predicate to initiating a complaint for that officer to investigate, the complaints and enforcement officer is apparently going to somehow be advocating for an owner within that process and then *adjudicating* the outcome of what, *by definition*, is not an adjudicatory process.

Thus, for a variety of reasons, CAI respectfully requests that the Committee hold HB 35, in favor of alternative legislation that promotes education and facilitates access to information.

Community Associations Institute, by

Philip Nerney

For its Legislative Action Committee

Enclosure

Hawaii Community Associations: Facts and Figures
(<https://www.caionline.org/Advocacy/Resources/Pages/State-Facts-Figures.aspx>)

From: mailinglist@capitol.hawaii.gov
Sent: Friday, January 27, 2017 12:14 AM
To: CPCtestimony
Cc: apices42323@mypacks.net
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/27/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Milica Barjaktarovic	Individual	Support	No

Comments: I support HB 35. I am an owner at Mokuleia Surf in Waiialua, managed by Associa HI. We owners have tried all available resources: the mediation, HIREC, RICO and the BBB to resolve the issues and nothing has worked. Our basic problem is that our building is neglected and in need of repairs, which BoD refused to do for years. Now BoD has partnered with Associa and are TAKING US TO THE CLEANERS, in Oct 2016 they asked for \$225 special assessment paid in full in 1 month or else they take our units away; now they are preparing another 80K special assessment; and effective immediately increase of \$250 per month for AOA dues to \$780 per month. There was never any owner voting. The \$225K assessment is overbloated, like 10K to patch a leaky ceiling. No scope of work, only one bid, etc. All to be done by Associa contractors and Associa lawyer. Our BoD does not even respond to any requests for documents or mediation. We filed RICO complaint and Associa is trying to delay giving us documents. We have not even seen long form financials that we should be getting every month. Our only recourse is to hire a private attorney and yet we are expected to pay about 25K special assessment and 8K per year for dues. It looks like the BoD and Associa are all set to keep on asking for money and that is completely unacceptable. We collected informal bids and estimated that what they plan to do can be done for about 8-9K which we would gladly pay to fix the building. Paying 25K for unnecessary work and then threatening to take the units seems highly questionable business practice. The Office of Condo Complaints and Enforcement would be an added asset for owners like us who have not been able to find anyone to help us with our situation. As consumers and tax payers, we do need to be protected. Thank you, Milica Barjaktarovic

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HB35

Submitted on: 1/27/2017

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

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

Comments: I support this measure.

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Sent: Friday, January 27, 2017 11:30 AM
To: CPCtestimony
Cc: aycockburr@aol.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/27/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Virginia Aycock	Individual	Support	No

Comments: I support HB 35 which establishes more viable means for condominium owners to address the wrongs and abuses they are subjected to by unethical persons governing them and their properties. The available resources, (HIREC, RICO and the BBB) have proven inadequate to benefit condo owners who have legitimate complaints, whose rights have been trampled upon, and who enjoy very little recourse without incurring tremendous attorney (and condo) fees, which most owners cannot afford. The old adage, "Power corrupts and absolute power corrupts absolutely" is true. HB35 would lessen some of the power wielded by those intimately involved with condominium association government and level the playing field somewhat.. As an owner of a condo at One Waterfront Towers, I ask you to please be sure that HB35 passes. Thank you

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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From: mailinglist@capitol.hawaii.gov
Sent: Friday, January 27, 2017 3:16 PM
To: CPCtestimony
Cc: kananik@hawaiianprop.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/27/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Kanani Kaopua	Individual	Oppose	No

Comments: I am a board member for a condo association, and if an owner in our condo is delinquent, the board and only the board, should have the authority to send this person to collections and all legal fees associated with this action should be charged back to the delinquent owner. The owner is responsible for timely payment of their maintenance fees, and they need to be held to a higher standard of responsibility. Please do not get involved in matters that need not be fixed. Let each respective association handle the matters presented to them, which they will carry out in accordance with their governing documents. Thank you.

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 29, 2017 12:40 PM
To: CPCtestimony
Cc: sawonglaw@hawaii.rr.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/29/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Sandie Wong	Individual	Oppose	Yes

Comments: Chair McKelvey and members of the Committee, I am a condominium owner and resident and I am in opposition of this bill. I am a current Board member at my condominium, I was compelled to run for the Board because of my frustration with the previous Board. That being said, I think that the proposed bill is premature and further data needs to be collected before we create yet another bureaucracy. We have current programs that are in place to resolve the issues that this bill wants to address. Thus, I think we should give the current programs that are in place a chance. Such programs include alternative dispute resolution programs. I also think that the current programs are more user friendly for condo owners. Also, I understand that Ombudsman programs in other states, such as Nevada, Colorado, Florida, and Delaware have had mixed reviews. Thus, I urge the Committee either to hold this bill or alternatively form a task force of stakeholders to study this issue further. Thank you for the opportunity to testify.

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 29, 2017 11:07 AM
To: CPCtestimony
Cc: lynnehi@aol.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/29/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Oppose	No

Comments: I have owned a condo since 1987. I have also served on the board for several years. This bill is not only unnecessary, but duplicative and a waste of money. The condo court was a dismal failure years ago and should not be resurrected. Condo owners, including me, pay a fee into an education fund. This measure would 35% of funds away from its great purpose. If you want to reduce the funds, fine, return them to the condo associations so they can spend the money on needed repairs and maintenance. In addition, the AGs office is overworked and you this will add to its workload. This bill would also require board members to file financial disclosure forms. We are volunteers. We do not get paid for our service to our community. If this is enacted, we will have a harder time to find board members. My building has 396 units and a nine member board. This year we will be voting to fill at least four positions. Two incumbents are not seeking reelection. In addition, a third board member's unit is for sale, and we will have to replace that individual too. Owners who have been approached to run have told us they can't for health reasons, work considerations, no time, etc. Putting more demands on board members will only make people decide they do not want to serve. We are currently dealing with major repairs, evaluating requests for proposals, vetting contracts, etc. This is very time consuming work. Please kill this bill now. lynne matusow 60 N. beretania, #1804 honolulu, hi 96817 808 531-4260

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To: Committee on Consumer Protection & Commerce, Rep. Angus L.K. McKelvey, Chair

Date: Tuesday, January 30th, 2017, 2:00 p.m.

Re: HB35, Relating to Condominiums.

Chair McKelvey, Vice Chair Ichiyama, and members of the committee:

My name is T. J. Davies Jr. I am 82 years old, retired and live in a Condominium in Kakaako. I am writing in STRONG OPPOSITION of HB 35, Relating to Condominiums

This bill should not be passed because:

We already have alternative dispute resolution programs in place - evaluative mediation and we are proposing voluntary binding arbitration to be funded by the condo-ed fund

It will use the condo education fund to set up a brand new bureaucracy of people who know nothing about condominiums or understand HRS 614B – this is a waste of the funds that condo owners have to pay into the fund.

The ombudsman program on other states (Nevada, Colorado, Florida, Del) are not working to resolve disputes.

The provision in this bill talk about reviving the “condo Court” that was a temporary program about 10 years ago that was an utter failure and total waste of time and money.

T. J. Davies Jr., Volunteer

Treasurer, AARP Chapter 60 Honolulu

Treasurer, Kokua Council for Senior Citizens of Hawaii Education Fund

Director, Hawaii Alliance for Retired Americans

Kakaako (District 26 / Senate District 12)

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 28, 2017 12:57 PM
To: CPCtestimony
Cc: raetenno@gmail.com
Subject: *Submitted testimony for HB35 on Jan 31, 2017 14:00PM*

HB35

Submitted on: 1/28/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Raelene Tenno	Individual	Oppose	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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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 28, 2017 12:32 PM
To: CPCtestimony
Cc: akluvo@gmail.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/28/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Arthur Kluvo	Individual	Oppose	No

Comments: As a board treasurer for three associations, it is really difficult to keep maintenance fees reasonable. Adding new laws such as HB35 would be an additional financial burden to associations that already follow the law. Yes, there might be a few associations that aren't following the law, but those problems should be resolved on a case by case basis, not impose all associations with a new law that adds another layer of government control. That money could be better spent elsewhere. Please keep frivolous laws to a minimum.

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Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

January 28, 2017

VIA EMAIL

Hearing Date: Tuesday, January 31, 2017

Time: 2:00 pm

Place: Conference Room 329

Committee on Consumer Protection & Commerce
House of Representative, the 29th Legislature
Regular Session of 2017

RE: Testimony supporting HB 35

Dear Chair McKelvey, Vice Chair Ichiyama and Committee members:

I have not received a request from CAI LAC to "make [CAI's] majority voice heard by the Legislators.

I am a condominium owner submitting my opinions based on documents to show my experiences of abuse by my board. I believed that my circumstances were unique. However, as a participant of HUI 'OIA'I'O, I was surprised to find that my circumstances were common among the participants. Where I am unique is the chronic abuse caused harmful emotional anguish to my deceased husband, myself and extended to my entire family. This abuse has to stop.

I served as a board director 2011-2013. At the March 2011 meeting, the minutes recorded 6 disparaging motions made against director Lourdes Scheibert. The motions totaled 806 words. The motions, I believe were the opinions of the other eight (8) 2011 board directors based on my 2010 letters of opinions questioning certain alterations made to the limited common areas. One of the six motions accused me of failing my fiduciary duty. Another accused me of not disclosing my financial conflict of interest. I full-filled my service as a director from 2011-2013 under duress.

During this March 2011 meeting I was told by the President that the Board has the authority to remove an owner or tenant from the property. I believe that these motions were the first step to my removal. Being fearful, I hired attorney Terrance Revere and Associates to intervene in my behalf. Revere started the mediation process with a letter dated June 15, 2015 to the Board and Hawaiiana Management Company. October 2016, I was notified by my attorney that the Board refused to participate in dispute and resolution. My mediation failed.

The abuse stems from my questions concerning the interpretation of the Declaration, By-laws, Map 64, unpermitted building construction activity and City & County Building Code 3401 Maintenance that involves the majority of the 2011 directors including my unit. In 2009, the project documents Amendment 5 to the Declaration were applied to my unpermitted lanai window installation installed by the previous owner. I believe the same documents were not fairly applied to the other director's who completed their own alterations to the limited common areas.

The question of the past and continued payment of these repairs by the Association is still an issue. I believe, that the Association's insurance property claims adjuster and the owner's HO6 insurance property claims adjuster should decide who is financially responsible for the repairs before any Association money is spent. A claim should be filed by the Board and Hawaiiiana Management Company to all respective insurance companies to have the proper licensing professionals make the determination. This determination should not be made by an unqualified and an unlicensed property manager and/or a resident manager.

In December 2013, we changed to a new resident manager. Since later 2016, we changed to a new property manager. Under this new management team more repair issues are finally being addressed.

I support HB 35 which establishes more viable means for condominium owners to address the wrongs and abuses they are subjected to by unethical persons governing them and their properties. My mediation process in dispute and resolution failed because my board refused to participate. This process has proven inadequate to benefit condo owners who have legitimate complaints, whose rights have been trampled upon, and who enjoy very little recourse without incurring tremendous attorney (and condo) fees, which most owners cannot afford.

HB 35 would take away some of the absolute power wielded by those intimately involved with condominium association government.

Sincerely yours,

Lourdes Scheibert
Royal Court Condominium
920 Ward Ave, Honolulu, Hawaii

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 8:23 AM
To: CPCtestimony
Cc: calaug@comcast.net
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Paul Carow	Individual	Oppose	No

Comments: As a property owner I oppose this legislation. I feel it would create an undo burden on our association.

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Committee on Consumer Protection and Commerce
CPC:JUD FIN
Tuesday, January 31, 2017
2:00 pm, Capitol, Rm 329

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

RE: Testimony In Support of HB 35, Relating to Condominiums

I, Harendra Panalal, have been living in Honolulu since 1970. I support HB 35.

I am a licensed professional mechanical engineer PE, and hold Responsible Managing Employee RME license in AC, Plumbing and Solar.

I own the following condominiums.

Sunset Towers, 419 Atkinson Dr. Unit 1802, Honolulu HI 96814
Hawaiiana Management Co.

Mokuleia Surf, 68-101 Waialua Beach Road, Unit 304, Waialua HI 96791
Hawaii First Inc. now Associa

Hale-O-Kalani Towers, 1702 Kewalo St. Unit PH3, Honolulu, HI 96822
Management Specialists, Inc.

Country Club Plaza, 5080 Likini St. South Tower, Unit 417, Honolulu, HI 96818
Hawaiiana Management Co.

A few years ago, I was president of above three AOA. At present, I am president of HOKT, and a board member of ST.

Even as a board member, I did not have an easy time getting all information from Hawaiiana and HFI (now Associa).

For Sunset Towers, we had conflicting legal opinions about responsibility of spalling and drain, waste and vent (DWV) piping. Legal bills etc. in a lawsuit ran into hundreds of thousands of dollars.

For Mokuleia Surf, many times I am denied information. The usual excuse given was that I have to personally go to management company, and get information, albeit at a steep price.

I am not much involved in Country Club Plaza but I understand that there are issues with PV solar panels contract.

At HOKT, BOD and management company work well together.

For ensuring complete transparency, I suggest the following.

- (a) All records be available to all owners by email. This also should apply to delinquencies below 90 days.
- (b) Legal opinions should be available to all owners. The word “attorney-client privilege” tends to be abused by keeping owners in the dark. Since all owners pay legal fees, they are all their clients. If management company employees can be trusted, so should all owners. If any attorney feels his information should not be shared with all owners, he can look for business elsewhere. Secrecy does more harm than good.
- (c) All major expenses over say, \$5,000 per unit must need approval from a majority of owners. Classifying such expenditures as ‘emergency’ is subject to abuse. Making a slim majority of directors decide such issues, can be detrimental to owners.
- (d) Financial statements are often given in management company’s own format. I suggest that these be given in spreadsheet format. I suggest that the actual check register be included so an average owner can readily understand them.
- (e) Whenever a loan is taken, payment plan should be included. Vague answers such as ‘it is up to the BOD’ should not be acceptable. Without payment plan, many owners do not recognize the balloon payment. Every owner should be given an option to prepay his share of the loan.
- (e) All emails should also be available to all owners so a 5 to 4 majority cannot dictate its terms.
- (f) If a parliamentarian is called to conduct any meeting, his relationship with the management company should be disclosed, and need prior approval by a majority of BOD. They may tend to use their knowledge more in favor of management company or directors more favorable to management company, rather than owners. This can distort results of election of directors.
- (g) Most owners do not have time, money and energy to go to court. REC or RICO or AG’s office should be empowered to act on behalf of such groups of owners.
- (h) Under the oversight of DCCA, REC and RICO, condo owners’ issues have not been satisfactorily addressed. In my humble opinion, oversight and assistance of AG’s office, not beholden to condo industry may provide better protection to condo owners.

In closing, I ask that you please pass HB 35. I suggest more changes to ensure rights of individual owners. Mahalo for your time and support in this matter.



(Sign Name)

Harendra Panalal, MSE, PE, RME

(Print Name)

harendrap@leisinc.com

(Email or Address)

Off. 792-0455, home 538-6202
(Phone-optional)

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 29, 2017 9:48 PM
To: CPCtestimony
Cc: apices42323@mypacks.net
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/29/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Milica Barjaktarovic	Individual	Comments Only	No

Comments: I AM TOTALLY SUPPORTING HB35 AS WE OWNERS REALLY NEED HELP. I want to add to the testimony I already submitted, after I had email interaction with Associa HI. I asked to see the minutes of board meeting where 225K special assessment for our building was voted on (charging owners 20K per unit, due in full in 1 month, with threats to take our units away). Associa does not provide ANY documents to us. We turned them into RICO and that is not going anywhere. This is the trail of emails from Associa, ALL CCED TO RICO. My responses are shortened and Associa's responses are copied verbatim. Associa clearly does not care one bit about RICO nor Legislature nor any laws. If you dont stop them, they are going to rob us. Me: Donna and Christina and Mark, my lawyer asked for BOARD MINUTES FOR THE \$225K SPECIAL ASSESSMENT. I need to have that asap. Thanks! Donna K LaFrance, Associa Manager: Aloha Milica. I recommend that you ask your lawyer to contact the associatiions attorney John Morris. He will provide anything your attorney needs. Me: Please give me the docs. I am paying for it as a condo owner. sic Associa: I apologize Milica you misunderstand. Since you now have an attorney you should have your attorney contact Mokuleia Surf attorney. That would be the appropriate action to take. Me: I am entitled to get the docs as owner. I already submitted notarized affidavit to you in December, asking for docs. sic Associa: Aloha Milica I am still waiting for a properly executed books and records request. I am not trying to intimidate you at all but trying to ensure that we are all working in accordance with 514b. Once you submit a properly executed request in accordance with Mr Yamashiros I will be happy to comply. Me: I am entitled to docs for free, as owner. I already paid. sic Associa: Aloha Milica I am still waiting for a properly executed books and records request. I am not trying to intimidate you at all but trying to ensure that we are all working in accordance with 514b. Once you submit a properly executed request in accordance with Mr Yamashiros I will be happy to comply.

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January 29, 2017

VIA EMAIL

Supersedes January 28, 2017 submission

Hearing Date: Tuesday, January 31, 2017

Time: 2:00 pm

Place: Conference Room 329

Committee on Consumer Protection & Commerce

House of Representative, the 29th Legislature

Regular Session of 2017

RE: Testimony supporting HB35

(Testimony supporting HB177 and SB369 prohibits retaliating or discriminating against a condominium owner. For your information these testimony copies are included in efforts to present related experiences in one picture.)

Dear Chair McKelvey, Vice Chair Ichiyama and Committee members:

I support HB35 which establishes more viable means for condominium owners to address the wrongs and abuses they are subjected to by unethical persons governing them and their properties. My mediation process of Dispute and Resolution failed because my board refused to participate.

I am a condominium owner submitting my opinions based on documents supporting my experiences of abuse by my board. I believed that my circumstances were unique. However, as a participant of HUI 'OIA'I'O, I was surprised to find that my circumstances were common among the participants. Where I am unique, is the chronic abuse caused harmful emotional anguish to my deceased husband, former director Todd Scheibert, myself and effected my entire family. This abuse has to stop.

I served as a board director 2011-2013. At the March 2011 meeting, the minutes recorded 6 disparaging motions made against director Lourdes Scheibert. The motions totaled 806 words. The motions, I believe were the opinions of the other eight (8) 2011 board directors based on my 2010 letters of opinions questioning certain alterations made to the limited common areas. One of the six motions accused me of failing my fiduciary duty. Another accused me of not disclosing my financial conflict of interest. I full-filled my service as a director from 2011-2013 under duress.

During this March 2011 meeting I was told by the President that the Board has the authority to remove an owner or tenant from the property. I believe that these motions were the first step to my removal. Being fearful, I hired attorney Terrance Revere and Associates to intervene on my behalf. Revere started the mediation process June 2015 and by October 2016, I was notified that the Board refused to participate.

The abuse stems from my questions concerning the Declaration, By-laws, Map 64, unpermitted building construction activity and City & County Building Code 3401 Maintenance involving the majority of the 2011 directors including my unit.

In 2009, the Declaration with Amendment 5 & By-laws were applied to my unpermitted lanai window installation installed by the previous owner. I believe the same documents were not fairly applied to the other director's who completed their own alterations to the limited common areas.

The question of the past and continued payment of lanai repairs by the Association is still an issue. I believe, claims should be filed with both the Association's & the owner's H06 insurance and reviewed by both property claims adjuster. Together they decide who is financially responsible for the repairs before any Association money is spent. This determination should not be made by an unqualified and unlicensed property manager or resident manager.

HB 35 would take away some of the absolute power wielded by those intimately involved with condominium association government.

Sincerely yours,

Lourdes Scheibert
Royal Court Condominium
920 Ward Ave, Honolulu, Hawaii

January 29, 2017

Hearing Date: Tuesday, January 31, 2017

Time: 2:00 pm

Place: Conference Room 329

Committee on Consumer Protection & Commerce

House of Representative, the 29th Legislature

Regular Session of 2017

RE: Testimony supporting HB177

Testimony supporting HB35 and SB369. For your information these testimony copies are included in efforts to present related experiences in one picture.

Dear Chair McKelvey, Vice Chair Ichiyama and Committee members:

I support HB177, this measure is needed to protect all owners because retaliation exists. Many unhappy owners will not stand up to be counted. Many suffer quietly. This measure helps to bring balance to Condominium-Self-Governance. Together with HB35 will help in preventing bad Boards using retaliatory tactics who govern in a defensive manner under the guise of protecting the Association. This is my experience and opinion.

Should these bills become law, I am hopeful that the Community Association Institute (CAI) would make this a priority in their educational curriculum to teach board directors as well as other owners the importance of fairness. After all, CAI, an independent vendor is contracted by the Real Estate Commission thru the condominium education trust fund supported by fees collected from all condo owners. In fact, I believe CAI should adopt a mission statement of "no condo owner left behind."

In the testimony for SB35, I refer to 6 disparaging motions recorded in the minutes and now a permanent record. As a director, I was required to submit motions 10 days prior to the board meeting along with 11 copies for the purpose to include a copy in each of the director's meeting packets. Packets are delivered a week before the meeting giving each director time to review the agenda and information. A copy was given to the property manager and resident manager. These 6 disparaging motions were not included in my packet but rather presented at the meeting. This was a blind-sided sucker-punch and left me shaken and at a disadvantage with no chance to prepare to defend myself. The motions were approved and minutes ratified under my protest. This is only one example.

What the other directors don't understand is that I represented a number of owners who asked me to run for a position on the board to address their concerns over one major issue. Their rights were damaged as well.

Lourdes Scheibert
Royal Court Condominium
920 Ward Ave, Honolulu, Hawaii

January 29, 2017

Hearing Date: Tuesday, January 31, 2017

Time: 9:00 a.m.

Place: Conference Room 229

Committee on Consumer Protection & Commerce

The Senate, the 29th Legislature

Regular Session of 2017

RE: Testimony supporting SB369

Testimony supporting HB35 and SB177. For your information these testimony copies are included in efforts to present related experiences in one picture.

Dear Chair Baker, Vice Chair Nishihara and Committee members:

I support SB369, this measure is needed to protect all owners because retaliation exists. Many unhappy owners will not stand up to be counted. Many suffer quietly. This measure helps to bring balance to Condominium-Self-Governance. Together with HB35 will help in preventing bad Boards using retaliatory tactics who govern in a defensive manner under the guise of protecting the Association. This is my experience and opinion.

Should these bills become law, I am hopeful that the Community Association Institute (CAI) would make this a priority in their educational curriculum to teach board directors as well as other owners the importance of fairness. After all, CAI, an independent vendor is contracted by the Real Estate Commission thru the condominium education trust fund supported by fees collected from all condo owners. In fact, I believe CAI should adopt a mission statement of "no condo owner left behind."

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What the other directors don't understand is that I represented a number of owners who asked me to run for a position on the board to address their concerns over one major issue. Their rights were damaged as well.

Lourdes Scheibert

Royal Court Condominium

920 Ward Ave, Honolulu, Hawaii

Committee on Consumer Protection and Commerce

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 35, Relating to Condominiums

Aloha:

1. I support House **Bill 35** as it provides a modicum of respect for and due process to protect the basic civil rights of condo association owners which at this time we DO NOT have. Presently association residents are denied equal treatment under Article 14 Section 1 of the US Constitution which provides in part that no state shall "deny to any person within its jurisdiction the equal protection of the laws." *Hawaii, like most states, abrogates* this responsibility by insisting that condo associations are 'self governing', leaving residents at the whims of what is really a medieval style 'mini state'. Our only 'check and balance' is a once a year election for a Board of Directors. We are quite vulnerable to intrigues perpetrated by predatory property management companies which use deception and hype to persuade volunteer directors to recommend 'Jumbo Loans' to owners on false promise that all issues in a complex can be corrected by throwing a lot of money at them. Owners are not appraised of how huge a maintenance fee increase will result if they blindly vote for such a recommendation. The results are usually 'bone crushing' increases. Add that to the adversarial attitude of these companies and their unwillingness to provide requested documents to owners promptly means we have been both lied to and coerced too often by their profit centric schemes, in my opinion. Promised repairs often are not done and then the companies which 'painted a rosy picture' simply turn around and blame the Board which merely followed their advice, good or bad.

2. Establishment of an Office of Condominium Complaints and Enforcement within our State Attorney General Office is a good start. While the proposed bill does not provide for expeditious removal of misbehaving Board members, as happens in Nevada by their state Ombudsman, that could be added later.

3. Let me set the record straight about misrepresentations made by the lobby arms of the property management companies. When we in condo associations hire those folks to manage our monies, it is inappropriate for their business legislative lobby arms such as Community Associations Institute or the Hawaii Council of Community Associations to claim to elected state office holders that they 'speak' for homeowner associations. I vote for the State Senate, House, and City Council candidates to represent me, *NOT* wealthy business people or their attorneys, lobbyists, or employees.

4. Presently entities such as Hawaii Real Estate Commission, Regulated Industries Complaint Office, Hawaii Civil Rights Commission, the Better Business Bureau et al, DO NOT advocate for homeowners rights. Neither do the property management companies. Please pass **Bill 35**.

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**.

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 29, 2017 5:41 PM
To: CPCtestimony
Cc: sunnymakaha@yahoo.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/29/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Dale	Individual	Support	Yes

Comments: Committee on Consumer Protection and Commerce 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 35, Relating to Condominiums Aloha: 1. I support House Bill 35 as it provides a modicum of respect for and due process to protect the basic civil rights of condo association owners which at this time we DO NOT have. Presently association residents are denied equal treatment under Article 14 Section 1 of the US Constitution which provides in part that no state shall "deny to any person within its jurisdiction the equal protection of the laws." Hawaii, like most states, abrogates this responsibility by insisting that condo associations are 'self governing', leaving residents at the whims of what is really a medieval style 'mini state'. Our only 'check and balance' is a once a year election for a Board of Directors. We are quite vulnerable to intrigues perpetrated by predatory property management companies which use deception and hype to persuade volunteer directors to recommend 'Jumbo Loans' to owners on false promise that all issues in a complex can be corrected by throwing a lot of money at them. Owners are not appraised of how huge a maintenance fee increase will result if they blindly vote for such a recommendation. The results are usually 'bone crushing' increases. Add that to the adversarial attitude of these companies and their unwillingness to provide requested documents to owners promptly means we have been both lied to and coerced too often by their profit centric schemes, in my opinion. Promised repairs often are not done and then the companies which 'painted a rosy picture' simply turn around and blame the Board which merely followed their advice, good or bad. 2. Establishment of an Office of Condominium Complaints and Enforcement within our State Attorney General Office is a good start. While the proposed bill does not provide for expeditious removal of misbehaving Board members, as happens in Nevada by their state Ombudsman, that could be added later. 3. Let me set the record straight about misrepresentations made by the lobby arms of the property management companies. When we in condo associations hire those folks to manage our monies, it is inappropriate for their business legislative lobby arms such as Community Associations Institute or the Hawaii Council of Community Associations to

claim to elected state office holders that they 'speak' for homeowner associations. I vote for the State Senate, House, and City Council candidates to represent me, NOT wealthy business people or their attorneys, lobbyists, or employees. 4. Presently entities such as Hawaii Real Estate Commission, Regulated Industries Complaint Office, Hawaii Civil Rights Commission, the Better Business Bureau et al, DO NOT advocate for homeowners rights. Neither do the property management companies. Please pass Bill 35. 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.

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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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 29, 2017 4:37 PM
To: CPCtestimony
Cc: georgeandmary@mac.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/29/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
George Outlaw	Individual	Oppose	No

Comments: Aloha, I have served on the Board of Two Condominium Associations, and I strongly oppose this needless compounding of the condominium association rules. If an individual has an issue of seriousness, and can not resolve it with the Board, then they have legal redress available. In my opinion this proposed system would unnecessarily complicate and hinder the Boards which are duly elected and in the vast majority of cases are able to satisfy the requirements of sound management of associations. Thank you for considering my opinion, and I do not know who the authors are of this needless legislation but would think they would be able to produce examples of needing a mother layer of supervision(not elected by the owners which they will rule on) which to my knowledge has had few issues. Mahalo, George Outlaw George

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From: Gabrielle Collins <gabi.collins@gmail.com>
Sent: Sunday, January 29, 2017 10:35 PM
To: CPCtestimony
Subject: Testimony in Support of HB35

Good Evening,

Please accept this email of my Testimony in Support of HB35. My name is Gabi K. Collins. I have been condo owner in Hawaii who has been extremely harmed by the willful and deceptive acts of condo associations and their lawyers. One in particular involves a condo I owned at Kemoo by the Lake in Wahiawa Hawaii, where I was so irreparably harmed and deceived by a wrongful non judicial foreclosure action carried out by an unscrupulous lawyer, Arlette Harada, of Ekimoto and Morris, acting on behalf of the board of directors. She carried out such an illegal and highly oppressive debt collection scheme which resulted in a wrongful non judicial takeover of my condo, when I was trying to cure my arrears with the association under the protection of ACT 48 at the time. I have been fighting over 6 years in a horrific legal battle, to stop this abusive deprivation and scheme against my property. With no other remedy against a non judicial foreclosure action, I sought justice through the courts and found none. Despite the fact that my court record shows so many clear violations of established laws being committed by the associations and their lawyer, it is shocking to find that there is no fairness or justice being administered by our courts in the arena of condo associations. I've turned to every possible agency for help, including the DCCA, Legal Aid Society, the Consumer Protection Agency, RICO, HIREC, the BBB, the Office of Disciplinary Counsel, and all to no avail. I have been abused so badly by the litigation process, by lawyers acting in cahootz with judges, who are clearly not willing to apply the law fairly as it regards associations. I have experienced retaliation personally by lawyers from whom I sought protection, and to my horror, there is absolutely nowhere to turn for help or protection from these destructive civil crimes against condo owners.

Non judicial foreclosures should be abolished for all condo associations because it is clearly being abused, and lawyers are enriching themselves in this lucrative playground since the courts refuse to scrutinize them. Condo owners need to be allowed the same rights to convert non judicial actions to judicial when being harmed by a condo association and their lawyer. We desperately need consumer protection because I have clearly tried all of the resources available and all of them have failed me. We need a new Office of Condo Complaints and Enforcement. I am living this nightmare for over 6 years now, trying to obtain justice for irreparable harms, and all I have found is a broken legal system. I have substantial evidence to support my testimony and I'm willing to be interviewed, to answer any questions regarding my experience, and to provide any information to support my testimony, in favor of HB35.

Thank you.

Gabi K. Collins
94-1221 Ka Uka Blvd. #108-136
Waipahu, Hawaii 96797
808-781-1076

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

Measure: HB 35 Relating to Condominiums
Date and Time of Hearing: 2:00 p.m. Tuesday, January 31, 2017
Committee: Committee on Consumer Protection & Commerce

Aloha Rep. McKelvey and Members of the Committee,

I believe the Department of the Attorney General will express strong disapproval of placing an Office of Condominium Complaints and Enforcement within the Department of the Attorney General. Therefore, I expect that your committee will be very reluctant to move HB 35 forward.

Having said that, I would ask your committee to consider HB 35 as a cry for help for 30% of our population who reside in condominiums. In that spirit, I ask that your Committee consider the concerns of the many condo owners in other condominium bills you will be considering.

More specifically, you need to know that condominium Boards have extraordinary powers over their owners. Boards have executive, legislative, and judicial powers over owners in their condos and control the media through their newsletters. Owners have very few opportunities to express their concern or dissent regarding condo Board decisions.

I speak to you with a lot of experience, having been president and/or a member of a condo Board for more than 35 years and have helped, and tried to help, Owners in other condos at their request. I know first hand where the problems exist. Although I have been less active in recent years, I have seen Boards able to get around various provisions of Chapter 514B. In this Legislative session, you have several bills that will help close some of the loopholes that currently exist and your committee can bring greater justice to condo owners by approving many of these bills.

Thank you for this opportunity to testify,

Richard Port
Richard Port

Sharon Y Moriwaki
One Waterfront Towers – 425 South Street
Honolulu, Hawaii 96813

I am a condominium owner and vice-president of its board. I oppose HB 35, which proposes to establish an unnecessary office of condominium complaints and enforcement in the department of attorney general to investigate disputes brought by individual condo owners and to assist them in processing requests for alternative dispute resolution. The resulting staffing and administrative costs would be borne by legislative appropriations, fees, and 35% of fees collected into the condominium trust fund -- currently used for education and research to help condos and the public.

HB 35 establishes another bureaucratic organization and the attendant stable of attorneys and other staff as well administrative costs and paying for these costs by diverting 35% of the condominium education and research fund for very little benefit to condos operating well with no use for these services. There are already very effective alternative resolution programs in place when disputes cannot be resolved informally by condo owners; and these are far better than escalating disputes to the level of state government involvement, and which may also necessitate legal representation in contested cases.

Condo board members are elected by and represent owners to resolve complaints and manage their property(ies) and operations in the most cost-effective way for both the short term and long term. If boards fail, unit owners can vote them out in annual elections. There is no need to spend either taxpayer monies or condo education and research funds to cope with those boards that cannot manage effectively. For the above reasons, I oppose HB35.

ichiyama2 - Brandon

From: ichiyama1 - Kaci
Sent: Monday, January 30, 2017 9:18 AM
To: ichiyama2 - Brandon
Subject: Unable to Submit Testimony

Sheila Pereira was unable to submit testimony to Bill 35.
She called in saying that she wants to support Bill 35.

-Kaci Takara

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 9:40 AM
To: CPCtestimony
Cc: al@worldclassproductionz.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Albert Cloutier	Individual	Oppose	No

Comments: This is a foolish, unnecessary waste of money, and it has many potentially negative implications for the majority of condominium owners.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 9:37 AM
To: CPCtestimony
Cc: merrileelucas@hotmail.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Merrilee Lucas	Individual	Oppose	No

Comments: This bill should not be passed because we already have alternative dispute resolution in place. The proposed bill will use the condo education funds to set up a new bureaucracy of people who know nothing about condominiums or understand HRS 614B. Evaluative mediation and voluntary binding arbitration to be funded by the condo fund would work to resolve disputes.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 9:34 AM
To: CPCtestimony
Cc: piercel001@netscape.net
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Lon Pierce	Individual	Comments Only	No

Comments: I support HB 35 which establishes more viable means for condominium owners to address the wrongs and abuses they are subjected to by unethical persons governing them and their properties. The available resources (via HIREC, RICO and the BBB) have proven inadequate to benefit condo owners who have legitimate complaints, whose rights have been trampled upon, and who enjoy very little recourse without incurring tremendous attorney (and condo) fees, which most owners cannot afford. The old adage, "Power corrupts and absolute power corrupts absolutely" is true. HB35 would take away some of the absolute power wielded by those intimately involved with condominium association government. Please be sure that HB35 passes. Thank you
Lon Pierce Owner of condo at Kahala Towers

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 9:26 AM
To: CPCtestimony
Cc: mikeh@hmcmgt.com
Subject: *Submitted testimony for HB35 on Jan 31, 2017 14:00PM*

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Hartley	Individual	Oppose	No

Comments:

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TESTIMONY HB35

OPPOSITION

My name is Richard Emery. I am a 20-year industry veteran in association management, host of the weekly educational talk show "Condo insider", former management company president, member of the Hawaii Council of Community Associations, and the Community Associations Institute Legislative Action Committee.

There is a misperception about the industry and its methods of handling of complaints or as I would call it Fake News. It can alarm legislators into considering an unnecessary expensive new government agency by establishing the office of condominium ombudsman. This discussion has taken place for years. Public records tell us a lot about the reality.

History: In 2003, the legislature established a pilot program for condominium disputes that established a "Condo Court" where hearings were conducted by a hearings officer at the DCCA, very much like the proposed duties of the new office of condominium ombudsman. The pilot program began in 2004 and lasted until its sunset date in 2012 or 7 years. In that period of time only 19 hearings were conducted. Attached is the list of cases as published by the Hawaii Real Estate Commission. During its existence, the Hawaii Supreme Court ruled that all of these cases were void as the authority was overbroad and violated other federal and state laws so the law had to be subsequently amended to address issues. The law was allowed to sunset as it was a failure. In essence the former Condo Court is the same as an ombudsman under a different name.

It should be noted that the current condominium law has always provided for mediation or arbitration for condominium owners and boards of directors. In 2013, the legislature enacted Act 187 to provide for modern evaluative mediation. After rule making and contract negotiation with mediation providers, the program began in approximately September 2015. Under this law, the mediation is funded by the condominium education fund except for the first hour which is split by the parties, or about \$150 each. The parties agree to the mediator who is neutral and is normally a retired judge. Under evaluative mediation, the mediator can be more proactive to settle disputes. There are current Bills this session to tighten up Act 187 to create more opportunity to settle disputes. Act 187 is the best vehicle to resolve condo disputes.

Other States: Six states have enacted legislation in some form of an ombudsman or information agency with authority. Hawaii proponents point to Nevada as a solution. It should be no surprise that the basic condominium laws vary widely in the states. Hawaii is one of the most detailed set of condominium laws in the country. For example, none of the six states provide for the same mandatory mediation that currently exists in the Hawaii statute. The number of differences in the various state laws are immense. Without going into more detail, Community Associations Institute recently published a report on the issues surrounding an ombudsman office. I have attached a copy to this testimony.

In Nevada, the initial assessment to condominium to fund was \$3/unit per year. Hawaii's condominium education fund fee is \$3 every other year.

The 2016 Nevada legislative reports suggests the fee needs to be increased to \$5/unit per year or the equivalent of 333% more than current Hawaii fee. In the Nevada 2016 legislative report, Nevada only conducted 16 contested hearings in 2016.

Hawaii Public Records for Condominium Mediation: The Hawaii Real Estate Commission publishes quarterly statistics on mediation cases. It should be remembered that initially only facilitative mediation was offered and in that model the mediator’s role was greatly limited. The new evaluative mediation (Act 187) has only been in use for about 16 months. Therefore I have only compiled data for the last 15 months from public data that included both methods of mediation:

Mediations	Results September 2015 - December 2016	Comments
Cases Submitted	72	Both Facilitative and Evaluative mediations
Withdrawn by Requestor	11	It requires both parties to agree to withdraw mediation, so it might be assumed the mediation filing got the parties together to resolve the differences.
Net Cases	61	2.44 cases per month in a community of approximately 400,000 condominium residents.
Either Board or Owner Declined Mediation	18 – 29%	A proposed Bill this session imposes penalties for not agreeing to mediation.
Agreement	23 – 37%	Evaluative mediation was 50%.
No Agreement	20 – 32%	No agreement does not mean no resolution. Often people are hard head and do not want agree that the other party is correct. None of these cases resulted in continued litigation or arbitration.

It should be clear that only 20 cases possibly were left unresolved after 15 months in communities of approximately 400,000 residents. Is this a big problem to create a new expensive government agency? I don’t think so.

What Were the Disputes? I have attached the last few Hawaii Real Estate Commission bulletins that define the cases and related issues. A brief review will demonstrate that the issue are local in nature to a particular association primarily involving house rules, governing document enforcement, and allocation of costs.

Can government do a better job of resolving local issues than the stakeholders who live there? On one questions that there are areas that the industry can do better in resolving disputes, but the best solution is to fine tune our existing condominium law as addressed in several other Bills this session.

Scare Tactics: I recently read an email by one of the proponents of this Bill that suggested that the industry was in chaos. She cited as an example that a few years ago a management company executive was indicted for theft of association money; thus, associations are at risk and we need more government oversight.

We have many laws against stealing, but it still happens. I read in the paper regularly of theft at banks, nonprofits, etc. Bad people get arrested and go to jail.

When it comes to condominiums, current law requires that each association and each management company have a fidelity bond (crime policy) for such unfortunate events. In the case cited, the management company made full restitution but in any event the association was fully insured for any losses. The current law adequately addresses this risk; frankly, better than any other industry. This case is being used as a scare tactic because that is all that is.

Financial Disclosures & Ethics Classes: Condominium boards are simply elected homeowners serving their community. There is no evidence that there is widespread misuse of the board's authority. Typically a board is 5-9 elected nonrelated homeowners making decisions. To suggest that there is corruption and self-dealing is frankly insulting to the estimated 1,700 volunteer directors that faithfully serve on condominium boards. Such regulation will simply discourage homeowners from participating. Currently, the industry provides several seminars on ethics, conflicts of interest, and a board's fiduciary duty.

Where is the Fairness? HB35 allows homeowners to file complaints against board, but does not provide for boards to file complaints against homeowners who may violate the association's documents.

Private Housing or Government Housing? HB 35 proposed major changes to the industry without facts or justification, and any study to verify the extent of the problem, if one exists. It puts government in charge of private housing and at a big expense to condominium owners. An ombudsman usually makes efforts for dispute resolution; an area that Hawaii already offers three ADR options.

I oppose HB 35 and suggest that more efforts with the stakeholders is required to create effective legislation. Current efforts should be on improving the existing law HRS 514B, not creating new government agencies. HB35 is no more than a revisit of the Condo Court pilot program that failed after 7 years. We should learn from our mistakes. HRS 514B with a few tweaks can resolve any current issues.

/s/ Richard Emery



Department of Commerce and Consumer Affairs
Hearings Office (<http://cca.hawaii.gov/oah>)

(<http://cca.hawaii.gov/oah>)

Home (<http://cca.hawaii.gov/oah/>) » OAH Decisions (http://cca.hawaii.gov/oah/oah_decisions/) »
Condominium Dispute Resolution Pilot Program

CONDOMINIUM DISPUTE RESOLUTION PILOT PROGRAM

Decisions issued from July 2, 2004

(PDF) CDR-2005-2; Riordan v. Hayashida and Udoff
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/cdr-2005-2-riordan-v-hayashida.pdf)

(PDF) CDR-2005-3; Iimura v. One Kalakaua
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/cdr-2005-3-iimura-v-one-kalakaua-web.pdf)

(PDF) CDR-2006-1; Deigert v International Colony
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/cdr-2006-1-deigert-v-international-colony-wc.pdf)

(PDF) CDR-2006-3; Di Mauro v. Waikaloa
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/di_mauro_v_waikaloa_cdr-2006-3_decision.pdf)

(PDF) CDR-2007-2; Lydon v Maalaea Banyans
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/cdr-2007-2-lydon-v-maalaea-banyans-web.pdf)

(PDF) CDR-2007-7; Wunds v. Fairways
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/cdr-2007-7-wunds-v-fairways-web.pdf)

(PDF) CDR-2007-9 Shim et al. v. AOA Harbor Square
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/cdr-2007-9-shim-v-harbor-square-web.pdf)

(PDF) CDR-2007-12; Shaw v. AOA Harbor Square
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/cdr-2007-12-shaw-v-aoa-harbor-square-web.pdf)

(PDF) CDR-2007-15; Olague v. Villages of Waipio
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/cdr-2007-15-olague-v-villages-of-waipio-web.pdf)

(PDF) CDR-2008-1; Suzuki v. Waikalani Woodlands
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/cdr-2008-1-suzuki-v-waikalani-woodlands-web.pdf)

(PDF) CDR-2008-2; Newton v. Hale Kai
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/cdr-2008-2-newton-v-hale-kai-web.pdf)

(PDF) CMDR-2008-2; Clay v. One Kalakaua
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/CMDR-2008-2_Clay_v_One_Kalakaua_web.pdf)

(PDF) CMDR-0809-2; Romano et al v. Kuhio Village
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/cmdr-0809-2-romano-et-al-v-kuhio-village-web.pdf)

(PDF) CMDR-0809-3; Wong v. AOA Waikiki Banyan
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/CMDR-0809-3_Wong_v_AOA_Waikiki_Banyan_web.pdf)

(PDF) CMDR-0809-4; Kachilla v. Woodcreek
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/CMDR-0809-4_Kachilla_v_Woodcreek_web.pdf)

(PDF) CMDR-0910-1; Moskowitz v. Kaanapali Royal
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/CMDR-0910-1_Moskowitz_v_Kaanapali_Royal_web.pdf)

(PDF) CDR-1011-5 Barbara Guest v. Karen Michaud & Kanoelani Apartments
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/CDR-1011-5-Barbara-Guest-v-Karen-Michaud-and-Kanoelani-Apts-pdf-r.pdf)

(PDF) CDR-1011-04 Dawn Smith v. AOA Nauru Tower
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/CDR-1011-04-Dawn-Smith-v-AOA-Nauru-Tower.pdf)

(PDF) CMDR-1011-1 Everett Senter-Sue Taylor v. Harbor Lights AOA
(http://files.hawaii.gov/dcca/oah/oah_decisions/cdrdec/CMDR-1011-1-Everett-Senter-Sue-Taylor-v-Harbor-Lights-AOA.pdf)

Mediation Case Summaries

From September 2016 through November 2016, the following condominium mediations were conducted pursuant to Hawai'i Revised Statutes § 514B-161, and subsidized by the Real Estate Commission. The mediation providers also conducted additional condominium mediations in the District Courts and community outreach in their respective communities.

Mediation Center of the Pacific

Through Skype video conferencing capabilities, MCP can conduct mediations with condominium owners who live part-time in Hawaii and are currently residing out of the state; MCP also continues to mediate condominium disputes referred by the Honolulu District Court.

Owner vs. Board	Dispute over ventilation system and security gates (common area).	Board declined mediation.
Board vs. Owner	Dispute over responsibility for water damage and source of leak.	Board w/drew request for mediation.

Dispute Prevention and Resolution, Inc.

Owner vs. Board	Dispute over flood damage to unit.	Mediated to agreement.
Owner vs. Board	Various claims against the board for alleged breach of governing documents.	Mediated; no agreement.
Owner vs. Board	Dispute over alleged violation of declaration and bylaws.	Mediated; no agreement.
Owner vs. Board	Allegation that board violated rules and proxy procedures.	Mediated; no agreement.
Owner vs. Board	Dispute over damage to unit caused by a leak outside of the unit.	Mediated to agreement.
Board vs. Owner	Alleged violation of house rules and regulations.	Mediated; no agreement.

Condominium Hotel Operator Biennial Re-Registration Conducted

Re-registration applications for the upcoming 2017-2018 CHO biennial re-registration period were mailed out in October to the 34 CHOs registered with the Real Estate Branch. Applications were due back to the REB by November 30, 2016 to ensure timely registration compliance by December 31, 2016. CHOs who fail to complete the re-registration process by December 31, 2016 are required to submit new applications and supporting documents if they intend to continue conducting CHO activities.

CHO activity is governed by Hawaii Revised Statutes section 467-30 of the real estate licensing law.

Mediation Case Summaries

From June 2016 through August 2016, the following condominium mediations were conducted pursuant to Hawai'i Revised Statutes § 514B-161, and subsidized by the Real Estate Commission. The mediation providers also conducted additional condominium mediations in the District Courts and community outreach in their respective communities.

Mediation Center of the Pacific

Through Skype video conferencing capabilities, MCP can conduct mediations with condominium owners who live part-time in Hawaii and are currently residing out of the state; MCP also continues to mediate condominium disputes referred from the Honolulu District Court.

Owner vs. Board	Dispute over reimbursement for damages to unit caused by repair of common element.	Mediated; no agreement.
Owner vs. Board	Dispute regarding annual meeting procedures.	Owner withdrew complaint.
Owner vs. Board	Dispute over late fees and attorneys fees. Owner alleges no notification re: change of management companies.	Owner did not respond to requests to mediate once all parties were contacted.
Board vs. Owner	Dispute over reimbursement to owner for repair cost to common element.	Mediated to agreement.

Maui Mediation Services

Owner vs. Board	Alleged violation of house rules re: dogs in condo unit.	Board did not respond to request for mediation.
Owners vs. board	Owners disagreed with board decision to fumigate areas within the association.	Mediated; no agreement reached.

Dispute Prevention and Resolution, Inc.

Board vs. Owner	Alleged violation of house rules and regulations.	Mediated; no agreement.
Owner vs. Board	Dispute over payment for damages due to water leak.	Mediated to agreement.
Owner vs. Board	Dispute regarding alleged improper proxy forms.	Mediated; no agreement.
Owner vs. Board	Dispute over what information an owner is allowed to view pursuant to declaration and bylaws.	Mediated; no agreement.

Ku'ikahi Mediation Center

Board vs. 4 different owners in a single condominium association in a dispute regarding summary possession of the each owner's unit. The parties in the first mediation were unable to meet to mediate; the second mediation was mediated to agreement; the third mediation was mediated with no agreement; and the fourth mediation was mediated to agreement.

Mediation Case Summaries

From March 2016 through May 2016, the following condominium mediations were conducted pursuant to Hawai'i Revised Statutes § 514B-161, and subsidized by the Real Estate Commission. The mediation providers also conducted additional condominium mediations in the District Courts and community outreach in their respective communities.

Mediation Center of the Pacific

Through Skype video conferencing capabilities, MCP has been conducting additional mediations with condominium owners who live part-time in Hawaii and are currently residing out of the state; MCP continues to mediate condominium disputes referred from the Honolulu District Court.

Owner vs. Board	Alleged house rule violations.	Mediated to agreement.
Board vs. Owner	Dispute over responsibility for water damage to unit.	Parties unable to meet; case closed.

Maui Mediation Services

Owner vs. Board	Owner alleged construction by AOUC was violation of bylaws and negatively affected owner's unit.	Owner withdrew complaint.
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Dispute Prevention & Resolution, Inc.

Owner vs. Owner	Alleged violation of house rules regarding noise.	Mediated to agreement.
Owner vs. Board	Alleged violation of house rules.	Mediated to agreement.

The Real Estate Branch Dedicated Line

The Real Estate Branch announces the creation of a dedicated telephone number where condominium owners, board members and other interested members of the public can call to get specific information about condominium issues, information and concerns. The telephone number is 586-2644. When calling, please specify that this is a condominium issue and staff will be happy to answer any questions you may have. This line is available from 7:45-4:30 daily, Monday through Friday, except State holidays.

Mediation Case Summaries

From December 2015 through February 2016, the following condominium mediations were conducted pursuant to Hawai'i Revised Statutes § 514B-161, and subsidized by the Real Estate Commission. The mediation providers also conducted additional condominium mediations in their respective District Courts and community outreach in their respective communities.

Mediation Center of the Pacific

Through Skype video conferencing capabilities, MCP has been conducting additional mediations with condominium owners who live part-time in Hawaii and are currently residing out of the state; MCP continues to mediate condominium disputes referred from the Honolulu District Court.

Owner vs. Board	Dispute over maintenance of the common area.	Party declined mediation.
Owner vs. Board	Alleged unequal reimbursement for common area repairs.	Owner w/drew complaint.
Owner vs. Board	Contesting fines for house rule violations.	Mediated; no agreement.
Board vs. Owner	Enforcement of house rules.	Owner w/drew complaint.
Owner vs. Board	Access to board documents.	Owner w/drew complaint.
Owner vs. Board	Alleged unequal application of board policy for assessing plumbing repairs.	No follow-up by owner; case closed.
Owner vs. Board	Alleged board did not follow procedure for collecting delinquent maintenance fees.	Board declined mediation.
Board vs. Owner	Dispute over cause of clogged pipes.	Mediated to agreement.
Owner vs. Board	Alleged lack of enforcement of noise house rules.	Owner w/drew complaint.

Maui Mediation Services

Owner vs. Board	Owner alleges damage to her unit as a result of repair work by association.	Mediated to agreement.
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Dispute Prevention & Resolution, Inc.

Owner vs. Board	Alleged violation of house rules.	Mediated to agreement.
Owner vs. Board	Assessment of fees for alleged violation of project documents.	Mediated; no agreement.

Mediation Case Summaries

From September 2015 through November 2015, the following condominium mediations were conducted pursuant to Hawai'i Revised Statutes § 514B-161, and subsidized by the Real Estate Commission. The mediation providers also conducted additional condominium mediations in their respective District Courts.

Mediation Center of the Pacific

Through Skype video conferencing capabilities, MCP has been conducting additional mediations with condominium owners who live part-time in Hawaii and are currently residing out of the state; MCP continues to mediate condominium disputes referred from the Honolulu District Court.

Owner vs. Board	Owner alleges improper foreclosure proceeding based upon maintenance fee delinquency.	Board declined mediation.
Owner vs. Board	Alleged improper use of proxies.	Owner declined to mediate.
Board vs. Owner	Issue of cost to repair common element.	Mediated to agreement.
Board vs. Owner	Noise issue between unit owners.	Board w/drew request for mediation.
Owner vs. Board	Issue regarding maintenance of common area.	Board declined mediation.

Mediation Services of Maui

Owner vs. Board	Owner argues association responsible for damages to unit; association denies responsibility.	Mediated; no agreement.
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Lou Chang, A Law Corporation

Owner vs. Board	Owner disagreed with board's adoption of a facility usage fee pursuant to the project documents.	Mediated; no agreement.
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Dispute Prevention & Resolution, Inc.

Owner vs. Board	Issue of parking stalls size reduced for construction of a gardening shed.	Mediated to agreement.
Owner vs. Board	Whether alterations made to unit were in compliance with project documents.	Mediated to agreement.

Ku'ikahi Mediation Center, West Hawaii Mediation Center and Kaua'i Economic Opportunity did not report any completed condominium mediations for this period. They continue to reach out to the condominium communities to educate owners about the benefits of mediation as a dispute resolution tool, including maintaining a presence at District Court to conduct court-referred condominium mediations on site.

Mediation Case Summaries

From June 2015 through August 2015, the following condominium mediations were conducted pursuant to Hawai'i Revised Statutes § 514B-161, and subsidized by the Real Estate Commission. The mediation providers also conducted additional condominium mediations in their respective District Courts.

Mediation Center of the Pacific

Through Skype video conferencing capabilities, MCP has been conducting additional mediations with condominium owners who live part-time in Hawaii and are currently residing out of the state.

Owner vs. Board	Water damage caused by the alleged malfunction of a common element.	Mediated to agreement
Owner vs. Board	Alleged improper board action in rental of common element.	Board declined mediation

Mediation Services of Maui

Owner vs. Owner	Owner alleges violation of bylaws in attempt to force owner from the board and from the condominium association.	Mediated; no agreement
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Ku'ikahi Mediation Center, West Hawaii Mediation Center and Kaua'i Economic Opportunity did not report any condominium mediations for this period. They continue to reach out to the condominium communities to educate owners about the benefits of mediation as a dispute resolution tool, including maintaining a presence at District Court to conduct court-referred condominium mediations on site.

Email Subscription

The Real Estate Commission and Real Estate Branch have become aware that many owners are not receiving information regarding various condominium issues for a variety of reasons. The Commission and Branch are also aware that many people are looking to purchase condominiums. As the Commission and Branch are mandated by the Legislature to make educational materials regarding condominium living available to all owners, a new online service was launched at the end of June 2015 to help spread information to unit owners and the general public regarding condominium issues. Interested parties can sign up to receive direct emails at the address below.

In July, the first direct email discussed the June 2015 Condominium Bulletin, the new condominium document complaint form from the Regulated Industries Complaint Office, the rights and responsibilities of owners and board members and the newly signed evaluative mediation contracts with providers statewide.

The August email detailed Act 242 which relates to medical marijuana, the newly updated electronically available Hawaii Revised Statutes Chapters 514A and 514B, a September Hawaii Community Association Institute's educational event and a helpful condominium tip.

The Commission strongly recommends any interested parties to subscribe to the email list at: cca.hawaii.gov/reb/subscribe/.

The Commission also appreciates such interested parties in spreading the word about this and other educational opportunities offered by the Commission.

Mediation Case Summaries

From March 2015 through May 2015, the following condominium mediations were conducted pursuant to Hawai'i Revised Statutes § 514B-161, and subsidized by the Real Estate Commission. Mediation Center of the Pacific conducted additional condominium mediations in Honolulu District Court.

On May 28, 2015, Maui Mediation Services held an open house and traditional Hawaii blessing of their office, welcoming the new executive director, Bevanne Bowers, while saying good bye to the departing executive director James Fiorino. A representative of the Maui Mayor's office was in attendance to support the importance of mediation as a means of dispute resolution in the community.

Ho'omaika'i MMS!

Mediation Center of the Pacific

Through Skype video conferencing capabilities, MCP has been conducting additional mediations with condominium owners who live part-time in Hawaii and are currently residing out of the state.

Board vs. Owner	Alleged violation of house rules.	Mediated; no agreement.
Owner vs. Board	Dispute over house rules and fines.	Board declined mediation.
Owner vs. Board	Alleged unequal enforcement of house rules.	Owner declined to follow up; no mediation.
Owner vs. Board	Alleged unequal enforcement of house rules; allegation that board not following bylaws in decision-making.	Board declined mediation.
Owner vs. Board	Dispute over definition of "fixtures" in declaration; alleged unauthorized removal of tiles from lanai.	Board declined mediation.

Mediation Services of Maui

Owner vs. Board	Issues involving landscape maintenance and alleged disability discrimination.	Mediated; no agreement.
Owner vs. Owner	Dispute between owners over common driveway.	Mediation declined by one of the owners.

West Hawaii Mediation Center

Owner vs. Board	Dispute over common elements.	Parties decided against mediation.
Owner vs. Board	Issue of alleged illegal vacation rentals	Mediation declined by the parties.

Ku'ikahi Mediation Center and Kaua'i Economic Opportunity did not report any condominium mediations for this period. They continue to reach out to the condominium communities to educate owners about the benefits of mediation as a dispute resolution tool, including being present at District Court for court-referred condominium mediation.

Mediation Case Summaries

From December 2014 through February 2015, the following condominium mediations were conducted pursuant to Hawai'i Revised Statutes § 514B-161, and subsidized by the Real Estate Commission. Mediation Center of the Pacific conducted additional condominium mediations in Honolulu District Court.

Mediation Center of the Pacific

Through Skype video conferencing capabilities, MCP has been conducting additional mediations with condominium owners who live part-time in Hawaii and are currently residing out of the state.

Owner vs. Board	Regarding repairs to the common elements	Board declined mediation; case closed.
Owner vs. Board	Building access to/from parking area pursuant to the house rules.	Mediated to agreement.
Owner vs. Board	Allocating costs for the replacement of fixtures within a unit.	Mediated; no agreement.
Owner vs. Board	Replacement of limited common elements and cost to owners.	Mediated; no agreement.
Owner vs. Board	Alleged unequal enforcement of house rules.	Mediated to agreement.
Owner vs. Board	Limiting number of elevator fobs for owners; alleged improper meeting notice re: the use of proxies.	Board declined mediation.
Board vs. Owner	Alleged non-compliance by owner with project documents.	Mediated to agreement.
Owner vs. Board	Noise from the repair of common area; access to documents.	Mediated; no agreement.

Mediation Services of Maui

Owner vs. Board	Owners' voting rights as they pertain to hiring a contractor to do work in the association.	Mediated to agreement.
Owner vs. Board	Issue of alleged disparate treatment of owners not participating in the short term rental pool.	Mediated to agreement.
Owner vs. Board	Owner disputes charges for common area repairs.	Mediated to agreement.
Owner vs. Board	Owner unhappy with the installation of doors on all of the units.	Mediated; no agreement.

West Hawaii Mediation

Owner vs. Board	Owner questioned the accuracy of the association's reserves.	Mediated to agreement.
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Kaua'i Economic Opportunity

Owner vs. Board	Owner challenged the issue of replacing vacancies on the board to do work in the association.	Owner declined mediation.
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Ku'ikahi Mediation Center did not report any condominium mediations for this period. It continues to reach out to the condominium communities to educate owners about the benefits of mediation as a dispute resolution tool.

2015 Real Estate Commission Meeting Schedule

Laws & Rules Review Committee – 9:00 a.m.

**Condominium Review Committee – Upon adjournment of
the Laws & Rules Review Committee Meeting**

**Education Review Committee – Upon adjournment of the
Condominium Review Committee Meeting**

Real Estate Commission – 9:00 a.m.

Wednesday, March 11, 2015
Wednesday, April 08, 2015
Wednesday, May 13, 2015
Wednesday, June 10, 2015
Wednesday, July 08, 2015
Wednesday, August 12, 2015
Wednesday, September 09, 2015
Wednesday, October 07, 2015
Tuesday, November 10, 2015
Wednesday, December 02, 2015

Friday, March 27, 2015
Friday, April 24, 2015
Friday, May 29, 2015
Friday, June 26, 2015
Friday, July 24, 2015
Friday, August 28, 2015
Friday, September 25, 2015
Friday, October 23, 2015
Wednesday, November 25, 2015
Friday, December 18, 2015

All meetings will be held in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First Floor.

Meeting dates, locations and times are subject to change without notice. Please visit the Commission's website at www.hawaii.gov/hirec or call the Real Estate Commission Office at (808) 586-2643 to confirm the dates, times and locations of the meetings. This material can be made available to individuals with special needs. Please contact the Executive Officer at (808) 586-2643 to submit your request.

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Memorandum on Offices of Community Association Ombudsman

**Prepared By:
Community Associations Institute (CAI)
Department of Government and Public Affairs
Updated December 2015**

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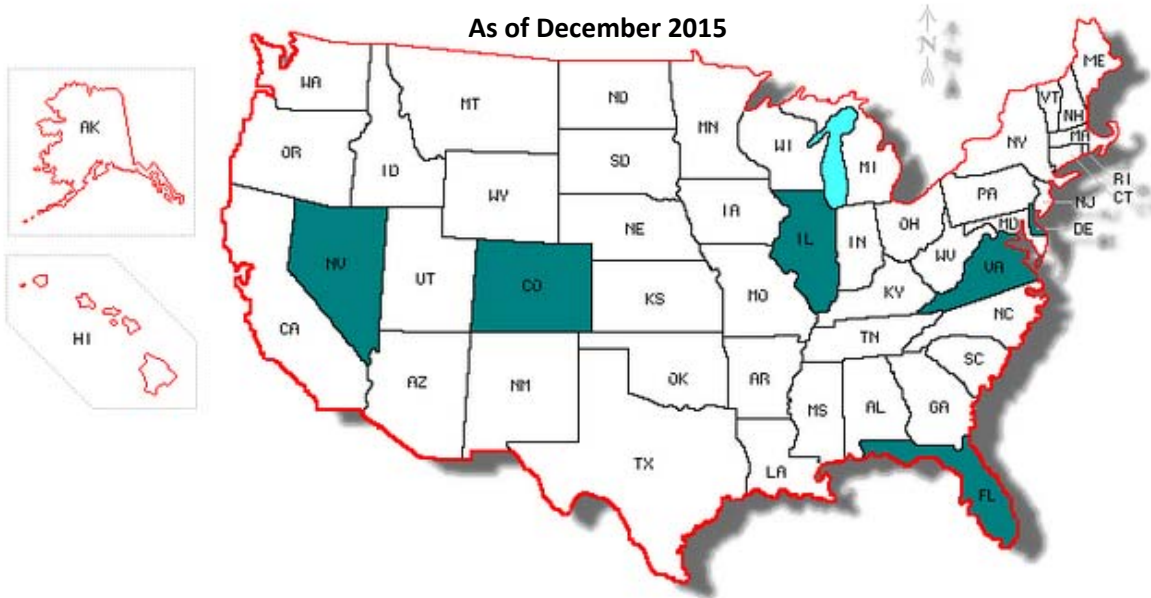
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Map and List of Ombudsman Programs

As of December 2015



States that have an Ombudsman Office or Similar Information Centers:

The following six states have or will have either an office of community association ombudsman or an HOA information center (shaded black): [Colorado](#), [Delaware](#), [Florida](#), [Illinois](#), [Nevada](#), and [Virginia](#).

Colorado

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Florida

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Nevada

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Delaware

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820 N. French Street
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Illinois

TBD

Virginia

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History of the Ombudsman

The history of the ombudsman dates back to the late 1990s. Since that time six states created a form of an ombudsman; Nevada was the first state to create the office, followed by Florida and Virginia. Colorado has a homeowner's association information officer that serves a more limited role when compared to the other states. Delaware's office was created by the General Assembly in August 2014. Illinois, enacted an office, but its law goes into effect in 2016 and lacks a funding mechanism.

The first office of a condominium ombudsman was created in Nevada during the 1997 legislative session through an omnibus bill seeking to regulate homeowners associations as a government-like entity as opposed to a private corporation.¹ There was a consensus from all professional organizations that homeowners associations needed improvement. Primarily the bill sought to reduce problems, confusion, lack of education and lack of remedies among association owners, board members and property managers.² While the bill's intent was sweeping, part of the original goal was to have the attorney general's office oversee at least one attorney, one auditor and one investigator in monitoring the practices of associations, review complaints, conduct investigations, provide information, approve courses of instruction and continuing education for members of executive boards, and to specify restrictions that apply to and must be included in the bylaws of each association.³ However, in an attempt to eliminate the fiscal impact and make the bill more workable, the provision was amended by the attorney general's office to work with the Real Estate Division and Real Estate Commission in dealing with the issues of education of board members. As a result the amended and chaptered version contains the provision which created the ombudsman's office for owners in common-interest communities within the Real Estate Division of the Department of Business and Industry. The office is funded by fees levied on associations and has the responsibility to assist in processing claims submitted to mediation or arbitration; assist owners in common-interest communities to understand their rights, responsibilities and the governing documents of their associations; and assist persons appointed or elected to serve on executive boards of associations to carry out their duties.⁴ The scope of the office was broadened in the 1999 session to require the office to compile an informational database about registered associations and authorized the ombudsman to request certain records from associations. The office was further authorized to request that the Common-

¹ Sections 8 and 9, 1997 Nevada Senate Bill 314 as Enrolled, Senator Michael A. Schneider.

<http://www.leg.state.nv.us/Session/69th1997/97bills/SB/SB314.HTM>

² Minutes of the Nevada Senate Committee on Commerce and Labor, May 1, 1997.

<http://www.leg.state.nv.us/Session/69th1997/97minutes/SM/CL/sm5-01CL.htm>

³ Section 9, 1997 Nevada Senate Bill 314 as Introduced, Senator Michael A Schneider.

<http://www.leg.state.nv.us/Session/69th1997/97bills/SB/SB314.HTM>

⁴ Sections 8 and 9, 1997 Nevada Senate Bill 314 as Enrolled, Senator Michael A. Scheider.

<http://www.leg.state.nv.us/Session/69th1997/97bills/SB/SB314.HTM>

Interest Community and Condominium Hotels Commission issue subpoenas for the attendance of witnesses and the production of books and records.⁵

The Florida Legislature approved its condominium ombudsman's office in 2004. During the interim prior to the 2004 legislative session, the Speaker of the Florida House of Representatives created the Select Committee on Condominium Association Governance. The charge of the committee was to take public testimony and review current laws regulating the governance of condominium associations to identify any improvements in those laws that might be recommended. The select committee was instructed to issue a report prior to the beginning of the 2004 session outlining any recommendations for legislation consistent with the committee's conclusions. The committee identified many issues affecting residents of common interest communities; one being there was no department that had the power to settle disputes between condominium owners and their respective associations, help monitor elections and meetings, and fine members. The committee's recommendation was to create the Office of the Condominium Ombudsman which would have the authority to make recommendations for legislation, act as liaison between parties to a dispute or complaint, recommend the initiation of enforcement proceedings, and make recommendations to the Division of Land Sales, Condominiums and Mobile Homes for addressing complaints.⁶ An omnibus condominium association bill outlining the duties and administration of the ombudsman was drafted by the committee chair, was substituted by a senate bill, passed the legislature and finally went into effect October 1, 2004.⁷ As of December 2015, Florida's office only oversees condominiums and lacks the specific power over homeowners associations; however, legislation has been introduced for the 2016 session to provide divisional authority of homeowners associations to a renamed Division of Florida Condominiums, Timeshares, and Mobile Homes, the Division of Florida Condominiums, Homeowners' Associations, Timeshares, and Mobile Homes.⁸

Prior to the creation of the Virginia Office of the Common Interest Community Ombudsman in 2008, the Common Interest Community Liaison served as an information resource on issues relating to the governance, administration and operation of condominiums and homeowners associations located in the state. On the recommendation of a Housing Study Commission, a bill was introduced that required the Real Estate Board to create a condominium ombudsman. However, the legislation was amended in its

⁵ Creation of the Ombudsman Office, Nevada Real Estate Division. http://www.state.nv.us/CIC/cic_ombuds.htm

⁶ Florida House Committee on Business Regulation Staff Analysis, 2004 House Bill 1223. <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h1223.br.doc&DocumentType=Analysis&BillNumber=1223&Session=2004>

⁷ 2004 Florida Senate Bill 1184 as Enrolled, Senate Judiciary Committee. <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=s1184er.html&DocumentType=Bill&BillNumber=1184&Session=2004>

⁸ 2016 Florida House Bill 653. <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0653.docx&DocumentType=Bill&BillNumber=0653&Session=2016>

house of origin. As a result the Common Interest Community Liaison was established by the General Assembly in 2001 to give interpretations of the Property Owner's Association Act, the Condominium Act and the Condominium Rules and Regulations. The liaison's duties also included processing association annual reports, identifying associations to be registered and referring parties to public and private agencies providing alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members.⁹ In 2008, the General Assembly passed a measure which created the Common Interest Community Board and required the Department of Professional and Occupational Regulation to create the Office of the Condominium Ombudsman. The office was given functions similar to Florida and Nevada.¹⁰

As a result of legislation passed in 2010, Colorado has an information officer that serves in a similar fashion as did the Virginia liaison. Like Virginia, the General Assembly originally sought to create an ombudsman's office. The introduced version of the bill required the ombudsman to advocate for the rights of unit owners in the governance of unit owners' associations, offer to mediate disputes, act as a clearinghouse for information, and report suspected violations of rules. However, the legislation was amended several times to strip the position of its advocacy provisions and the "ombudsman" title. Upon passage, the bill provided for an HOA Information Officer to act as a clearing house for information concerning basic rights and duties of unit owners, declarants and unit owners' associations, and granted the officer the ability to track inquiries and complaints concerning homeowners associations.¹¹ The bill's provisions went into effect January 1, 2011.

In 2014, Delaware and Illinois passed legislation creating a Common Interest Community Ombudsman. Less than a year following the enactment of Delaware's office, the Ombudsman and the office's appointed Advisory Council have met to discuss the study of and advice on statutorily requirement subjects, such as the following: mechanisms to increase collection rate for assessments; the development of conflict resolution procedures within communities; the feasibility of mandatory mediation, arbitration or other ADR for disputes not resolved within communities; the development of mechanisms for registration of common interest communities with the state or political subdivisions; and the study and recommendation of adoption, amendment or rescission of law or rules to improve the operation of common interest communities.¹²

⁹ 2001 Virginia House Bill 2429 Fiscal Impact Statement, Department of Planning and Budget. <http://lis.virginia.gov/cgi-bin/legp604.exe?011+oth+HB2429FER122+PDF>

¹⁰ Virginia Revised Statutes Section 55-530, 2008 Chapter 851. <http://lis.virginia.gov/cgi-bin/legp604.exe?081+ful+CHAP0851>

¹¹ Colorado House Committee of Business Affairs and Labor Report, March 3, 2010, House Bill 1278. http://www.leg.state.co.us/clics/clics2010a/csl.nsf/fsbillcont3/OA35EF05AB1DDED1872576A8002A2D19?Open&file=HB1278_C_001.pdf

¹² Delaware Common Interest Community Advisory Council Agenda, June 3, 2015.

Existing Programs

Versions of the office are in effect in five states – Colorado, Delaware, Florida, Nevada and Virginia. While the office has been established under public Act in Illinois, the effective date of the Act is July 1, 2016. The following section contains the duties of each state’s office, including how the offices are staffed and funded.

Comparison of Function and Duties¹³

Function or Duty	Colorado	Delaware ¹⁴	Florida	Illinois ¹⁵	Nevada	Virginia
Accepts Complaints	Yes	Limited	Yes	Limited	Yes	Limited
Investigates/Verifies Complaints	No	Yes	Limited	No	Yes	Yes
Resolves Complaints	No	Limited	Yes	Limited	Yes	Limited
In-house Mediation	No	Yes	Yes	Yes	Yes	No
Mandates Mediation	No	No	No	No	Limited	No
ADR Referrals	Yes	Yes	Yes	No	Yes	Yes
Administrative Hearing	No	No	Yes	No	Yes	Yes
Monitor/Review Election Procedures, Disputes	No	Yes	Yes	No	Yes	Yes
Reports Alleged Election Misconduct	Yes	Yes	Yes	No	Yes	No
Appoints Election Monitors	No	Yes	Yes	No	Yes	No
Per Unit Fee	No	No	Yes	No	Yes	No
Oversight Over Declarant Boards	No	No	Yes	No	Yes	Yes
Protect ... from Threats, Defamation	No	No	No	No	Yes	No

¹³ Colorado Division of Real Estate, 2013 Study of Comparable HOA Information and Resource Centers, http://www.caionline.org/govt/advocacy/LAC/LegislativeYearbookBills/2013_CO_Ombudsman_Study.pdf

¹⁴ Delaware Common Interest Community Ombudsman Act, January 2015, http://attorneygeneral.delaware.gov/fraud/cpu/documents/ombudsman/CIC_Ombudsman_Act.pdf

¹⁵ Illinois Condominium and Common Interest Community Ombudsperson Act, December 2014, <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1135>

Colorado

The HOA Information Office does not have regulatory or investigative power. The office tracks inquiries and complaints and is to report annually to the director of the Division of Real Estate. The office also acts as clearinghouse for information concerning the basic rights and duties of homeowners, declarants, and HOAs under the state’s Common Interest Ownership Act. Complaints are logged and issues are tracked and are reported in an annual report. Depending on the nature of the complaint, the office may contact complainants to discuss their rights and responsibilities, but it will not contact an HOA or management company.¹⁶

The operating expenses of the office are paid from the HOA Information and Resource Center Cash Fund, which was created in the state treasury. The fund consists of annual registration fees paid by HOAs, and in its initial fiscal period was appropriated \$205,828 to implement the office. These fees are in addition to the annual Secretary of State Registration. Under statute, the fees are limited to \$50; however, associations who collect under \$5,000 in assessments (both annually and through special assessments) are exempt from the fee but not from registration. Associations were required to pay an \$8 fee when registering in 2011. That fee increased and now stands at \$16 in 2013.

The HOA Information Officer is appointed by the executive director of the Department of Regulatory Agencies. When conducting the search for an appointee, the executive director is to place a high premium on candidates that are balanced, independent, unbiased and without any financial ties to an HOA or an HOA management service. The officer is required to be familiar with the state’s Common Interest Ownership Act. The officer may not, within the past ten years, have been licensed or registered with the Division of Real Estate, or hold stocks, bonds, or any financial interest in a corporation regulated by the Division. The officer is granted the authority to employ one or more assistants with a maximum of one full time equivalent.¹⁷

Delaware

The General Assembly created the Office of the Ombudsperson for the Common Interest Community in the Department of Justice in August 2014. The purpose of the Office is to assist members of residential “common interest communities” to understand their rights and responsibilities and where possible, to resolve disputes without use of the judicial system. The Ombudsperson has the following powers and duties:

- Assist members of the Common Interest Community to understand their rights and responsibilities and the processes available to them according to the law, regulations, and documents governing their particular common interest community. However, the Office of the Ombudsperson cannot provide legal advice, or legal interpretation. The Office can only provide

¹⁶ HOA Information Office and Resource Center, <http://www.dora.state.co.us/real-estate/hoa.htm>

¹⁷ 2010 Colorado House Bill 1278, <http://www.dora.state.co.us/real-estate/HOA/docs/HB10-1278.pdf>

general, nonbinding explanations of laws, and the types of documents and regulations that govern common interest communities. The Ombudsperson may not act as an attorney in a legal action brought by you or any other person.

- Prepare, publish and make available on request, educational and reference material about common interest communities, in print and on the Ombudsperson’s website.
- Organize and conduct educational meetings for community members about their rights and responsibilities, and the processes available to them, according to the law, regulations and documents governing their community.
- Provide a template of reasonable procedures for community associations to use internally to resolve complaints with unit owners and other interested parties.
- Review the denial of a complaint that was first submitted to an internal dispute resolution process. The Ombudsperson will review a complaint: to determine compliance with law; for investigation in an appropriate case; and if appropriate, offer meetings, conciliation, mediation or other forms of alternative dispute resolution.
- Investigate and refer meritorious allegations of violations of existing law to other sections of the Attorney General’s Office or another appropriate law enforcement agency.
- Provide alternative dispute resolution (ADR) such as meetings or conciliation, mediation, or arbitration, to members of the common interest community before or after first using the informal complaint procedure. ADR can proceed only with the consent of all parties.
- Develop and publicize procedures intended to result in fair elections of members and officers of Community Associations.
- Provide election services such as election monitors and vote counting (fee required).¹⁸

Currently the office is funded through an appropriation to the Office of the Attorney General. The 2015 budget appropriated one full time employee Deputy Attorney General to lead the office.¹⁹ The fiscal note under the Act approximates at least \$89,300 for the Ombudsman, or up to a total of \$242,100 if three additional staff are appropriated.²⁰

¹⁸ Delaware Common Interest Community Ombudsman, Services Available Through the Office of The Ombudsperson, http://attorneygeneral.delaware.gov/fraud/cpu/ombudsman_services.shtml

¹⁹ Delaware 2015 HB 225, Budget Bill, [http://legis.delaware.gov/LIS/lis148.nsf/vwLegislation/HB+225/\\$file/legis.pdf?open](http://legis.delaware.gov/LIS/lis148.nsf/vwLegislation/HB+225/$file/legis.pdf?open)

²⁰ Delaware 2014 HB 308, Fiscal Note, [http://legis.delaware.gov/LIS/lis147.nsf/FiscalforLookup/1201470025/\\$file/Fiscal.html?open](http://legis.delaware.gov/LIS/lis147.nsf/FiscalforLookup/1201470025/$file/Fiscal.html?open)

Florida

The state's Office of Condominium Ombudsman has the mission to improve the quality of life for Florida condominium owners through prompt, professional and courteous service as a neutral, informative and accessible resource.²¹ The office is limited to matters involving condominium associations. The office is granted several more powers and duties than the information center in Colorado; the office's duties include issuing reports and recommendations for legislation and procedures; serving as a liaison between the state, associations, boards and unit owners; helping parties understand their rights and responsibilities; coordinating reference material; and monitoring and reviewing disputes. Specifically, the ombudsman duties are as follows:

- Prepare and issue reports and recommendations to the Governor; the Department of Business and Professional Regulation; the Division of Florida Condominiums, Timeshares, and Mobile Homes, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within its jurisdiction, and make recommendations for legislation.
- Act as liaison between the division, unit owners, boards of directors, board members, community association managers and other affected parties. Additionally the ombudsman is to develop policies and procedures to assist unit owners, boards of directors, board members, community association managers and other affected parties to understand their rights and responsibilities and the condominium documents governing their respective association. The ombudsman is to coordinate and assist in the preparation and adoption of educational and reference material, and endeavor to coordinate with private or volunteer providers of these services, so that the availability of these resources is made known to the largest possible audience.
- Monitor and review procedures and disputes concerning condominium elections or meetings, including, but not limited to, recommending that the division pursue enforcement action in any manner where there is reasonable cause to believe that election misconduct has occurred.
- Make recommendations to the division for changes in rules and procedures for the filing, investigation and resolution of complaints filed by unit owners, associations and managers.
- Provide resources to assist members of boards of directors and officers of associations to carry out their powers and duties, division rules, and the condominium documents governing the association.
- Encourage and facilitate voluntary meetings with and between unit owners, boards of directors, board members, community association managers and other affected parties when the meetings

²¹ Florida Office of the Condominium Ombudsman,
<http://www.myfloridalicense.com/dbpr/lsc/LSCMHCondominiumOmbudsman.html>

may assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy.

- Appoint an election monitor to attend the annual meeting of the unit owners and conduct the election of directors when 15 percent of the total voting interests in a condominium association, or six unit owners, whichever is greater, petition the ombudsman to do so.²²

The office is funded by an annual fee of \$4 per condominium unit and \$4 per mobile home lot, as well as a \$2 timeshare fee per seven-day period.

The ombudsman is appointed by the governor and must be an attorney. The ombudsman or an employee of the office may not engage in any other business or profession; serve as the representative of any political party, executive committee, or other governing body of a political party; serve as an executive, officer, or employee of a political party; receive remuneration for activities on behalf of any candidate for public office; or engage in soliciting votes or other activities on behalf of a candidate for public office.²³ The office was statutorily required to be established and maintained in Tallahassee; however, a second office was also established in Ft. Lauderdale.

Nevada

The Office of the Ombudsman for Owners in Common-Interest Communities and, and added in 2007, Condominium Hotels was created to assist homeowners and board members to better understand their rights and obligations under the law and their governing documents and compile an informational database about registered associations. Specifically, the duties of the office are as follows:

- Assist in processing claims submitted to mediation or arbitration;
- Assist owners in common-interest communities to understand their rights and responsibilities as set forth in this chapter and the governing documents of their associations, including, without limitation, publishing materials related to those rights and responsibilities;
- Assist persons appointed or elected to serve on executive boards of associations to carry out their duties; and
- Compile and maintain a registration of each association organized within the state which includes, without limitation:

²² Florida Statute 718.5012,
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0718/Sections/0718.5012.html

²³ Florida Statute 718.5011,
http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0718/Sections/0718.5011.html

- The name, address and telephone number of the association;
- The name of the person engaged in property management for the common-interest community or the name of the person who manages the property at the site of the common-interest community;
- The names, mailing addresses and telephone numbers of the members of the executive board of the association;
- The name of the declarant;
- The number of units in the common-interest community; and
- The total annual assessment made by the association.

Pursuant to a 2008 formal opinion of the Attorney General’s Office, the Commission for Common-Interest Communities does not have jurisdiction to investigate the interpretation, application and/or enforcement of governing document disputes nor does the Commission and its Administrative Law Judges (ALJs) have jurisdiction to hear or decide governing document disputes.²⁴

The office is funded through the Account for Common-Interest Communities and Condominium Hotels, which receives its monies through an annual per-unit assessment of up to \$3. Interest and income earned on the money in the account, after deducting any applicable charges, must be credited to the account. The fund is used solely to defray the costs and expenses of administering the office, and if authorized the Real Estate Division may use a portion of the fees collected to support the office to pay the fees for a mediator or arbitrator to resolve disputes involving common-interest communities.

The ombudsman is appointed by the Real Estate Division administrator and is statutorily required to be qualified by training and experience to perform the duties and functions of the office.²⁵ The office is staffed by 17 full-time positions and seven commissioners. The office has a legislatively-approved 2011-2013 budget of \$7,051,969 which is down from the 2009-2011 budget of nearly \$8,685,291.²⁶

Virginia

The General Assembly established the Office of Common Interest Community Ombudsman within the Department of Professional and Occupational Regulation in 2008, which replaced services offered by the

²⁴ Attorney General's Opinion Regarding the Commission's Jurisdiction Over Common-Interest Communities' & Condominium Hotels' Governing Documents, 2008. http://red.state.nv.us/publications/AGO_CICCH_2007-41.pdf

²⁵ Nevada Revised Statutes Chapter 116, <http://www.leg.state.nv.us/NRS/NRS-116.html#NRS116Sec625>

²⁶ Nevada Open Government, Budget Expenditure Summary, Common Interest Communities. <http://open.nv.gov/OpenGov/ViewBudgetDetail.aep?amountView=Total&budgetVersionId=5&view=Function&departmentCode=74&divisionCode=748&budgetAccountCode=3820>

Common Interest Community Liaison. Among other things, the ombudsman is responsible for helping common interest association members in understanding their rights and the processes available under the declaration and bylaws of the community association, maintain data on inquiries and complaints received, and if requested, be responsible for providing an assessment of proposed and existing laws. Statutorily the office has authority to do the following:

- Assist members in understanding their rights and the processes available to them according to the declaration and bylaws of the association;
- Answer inquiries from members and other citizens by telephone, mail, electronic mail, and in person;
- Provide to members and other citizens information concerning common interest communities upon request;
- Make available, either separately or through an existing Internet website utilized by the director, information concerning common interest communities and such additional information as may be deemed appropriate;
- Receive the notices of complaint filed;
- In conjunction with complaint and inquiry data maintained by the director, maintain data on inquiries received, the types of assistance requested, notices of complaint received, any actions taken, and the disposition of each such matter;
- Upon request, assist members in using the procedures and processes available to them in the association, including nonbinding explanations of laws or regulations governing common interest communities or interpretations thereof by the board, and referrals to public and private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members. Such assistance may require the review of the declaration and other records of an association. An association shall provide such information to the Office of the Common Interest Community Ombudsman within a reasonable time upon request;
- Ensure that members have access to the services provided through the Office of the Common Interest Community Ombudsman and that the members receive timely responses from the representatives of the Office of the Common Interest Community Ombudsman to the inquiries;
- Upon request to the director by (i) any of the standing committees of the General Assembly having jurisdiction over common interest communities or (ii) the Housing Commission, provide to the director for dissemination to the requesting parties assessments of proposed and existing common interest community laws and other studies of common interest community issues;
- Monitor changes in federal and state laws relating to common interest communities;

- Provide information to the director that will permit the director to report annually on the activities of the Office of the Common Interest Community Ombudsman to the standing committees of the General Assembly having jurisdiction over common interest communities and to the Housing Commission. The director’s report shall be filed by December 1 of each year, and shall include a summary of significant new developments in federal and state laws relating to common interest communities each year; and
- Carry out activities as the board determines to be appropriate.²⁷

The Common Interest Community Ombudsman Regulations—which required associations to create an internal complaint procedure and guide the work of the office—became effective July 1, 2012. As a result, the focus of the office transitioned from reviewing complaints to determining outcomes of “final adverse decisions,” as required under Section 55-530 of the Code of Virginia. Notices of Final Adverse Decision, as described in Section 55-530 and the new regulations, are obtained after an association member or owner submits a complaint to its association, through the newly required internal complaint procedure, alleging a violation of common interest community law or regulation (not association governing documents). Upon receipt of such a complaint, every association board must provide a final decision to the complainant, and if that final decision is adverse to whatever action or outcome the complainant sought, the complainant may then submit a Notice of Final Adverse Decision to the office for review. The notice must be submitted along with the statutorily mandated \$25 fee or a fee waiver request.²⁸

The office is funded by the Common Interest Community Management Information Fund. The revenue sources for this management fund include: the annual filing fees for associations and annual assessment fees and licensing fees for association managers. The annual filing fees for associations range on the number of lots or units within it; for example, associations with 1-50 units have an application fee of \$45 and a renewal fee of \$30, and associations with over 5001 lots or units have an application fee of \$180 and a renewal fee of \$170.²⁹ Community association managers are required to pay a \$100 registration fee. Additionally, managers are required to annually pay an assessment fee, which is calculated by the

²⁷ Virginia Revised Statutes Section 55-530, 2008 Chapter 851. <http://lis.virginia.gov/cgi-bin/legp604.exe?081+ful+CHAP0851>

²⁸ Office of the Common Interest Community Ombudsman, Report to the House Committee on General Laws and Technology Housing Commission, Annual Report 2011-2012. <http://www.dpor.virginia.gov/uploadedFiles/MainSite/Content/News/CIC%20Ombudsman%20Annual%20Report%202011-2012.pdf>

²⁹ Virginia Common Interest Community Management Information Fund Regulations. <http://www.dpor.virginia.gov/uploadedFiles/MainSite/Content/Boards/CIC/CIC%20Management%20Info%20Fund%20Regulations.pdf>

managing firm's gross receipts multiplied by 0.0005, with a minimum of \$10 and a maximum of \$1000.³⁰ The expenses for the operations of the Office of the Common Interest Community Ombudsman, including the compensation paid to the ombudsman, are paid first from interest earned on deposits in the management fund and the balance from the money collected annually in the fund.³¹

The office is staffed by an ombudsman and a complaint analyst position, and is located in the Compliance and Investigations Division, of the Department of Professional and Occupational Regulation. The ombudsman is appointed by the director of the department.

Efficacy of Programs

The efficacy of ombudsman programs may be measured by the reports statutorily required of the offices. We can see the progression of the programs in the states. Below is a section dedicated to the kind of complaints each office receives, and, if available, the amount of complaints that are filed, reviewed and completed. To date, the Delaware and Illinois programs are too new to understand their impact.

Colorado

The HOA Information and Resource Center is statutorily directed to collect information by registrations and from inquiries and complaints filed by homeowners. The office provides assistance and information to homeowners, HOA boards, declarants and other interested parties concerning their rights and responsibilities pursuant to the Colorado Common Interest Ownership Act (CCIOA).

During the program's infancy, Aaron Acker, former HOA Information Officer, stated that many matters handled by the office pertain to transparency. Specifically, the office receives complaints from unit owners regarding the transparency of records, particularly the ability to access financial records; governance, and the ability of residents to have a say in how the association is governed; and elections, especially notice of nominating and voting events. Mr. Acker stated the HOA Information Office is successful and has received good feedback from helping residents understand their association's covenants and explaining residents' rights.

According to the 2012 Annual Report of the HOA Information and Resource Center, the office addressed approximately 2,873 inquiries. Most of the inquiries to and assistance from the office pertained to the following:

- The general operation of an HOA, such as assessments, accounting, insurance, budgets, and reserves;

³⁰ Virginia Common Interest Community Manager Application.

<http://www.dpor.virginia.gov/uploadedFiles/MainSite/Content/Boards/CIC/MGR LIC.pdf>

³¹ 2008 Virginia House Bill 516, Fiscal Note. <http://lis.virginia.gov/cgi-bin/legp604.exe?081+oth+HB516FER122+PDF>

- Board of directors responsibilities, such as election, voting and proxy issues;
- Enforcement capabilities of an HOA, including fees, costs, fines, liens, foreclosure and receiverships;
- Declarant issues such as disclosure of documents, following or adhering to CC&Rs and termination of control;
- Maintenance and upkeep of the community;
- Disclosure of HOA records to owners;
- Concerns over manager/management company and vendors; and
- The HOA registration process.

In regards to complaints, the office received 576 complaints from 309 different homeowners and residents in 2012. The majority of the complaints received pertained to following governing documents, performing maintenance, general allegations of mismanagement and transparency, homeowner communications, production of HOA records, and accounting issues. Of the complaints received, 73 percent were directed toward the HOA and board, and 27 percent at managers. The office notes its particular concern is the serious nature of many of the complaints received and the inability of homeowners to resolve their issues without resorting to legal channels. At this time the office only collects data and reports it to the Director of the Division of Real Estate, and does not have investigatory or enforcement powers.³²

In 2013 the Division of Real Estate, pursuant to statute, studied the functions and duties of the ombudsman offices in Florida, Nevada and Virginia. The division prepared a list of recommendations and analysis for the legislature to consider. When considering future compliance programs for HOAs, the division's first objective is the successful implementation of the manager licensing program. The report concluded that waiting until manager licensing is underway will give the Division an opportunity to plan for any broader enforcement of the CCIOA, as well as analyze potentially cost-reducing overlaps between manager licensing and possible HOA compliance programs.³³

³² 2012 Annual Report of the HOA Information and Resource Center, <http://cdn.colorado.gov/cs/Satellite/DORA-DRE/CBON/DORA/1251623736434>

³³ Colorado Division of Real Estate, 2013 Study of Comparable HOA Information and Resource Centers, hosted on [caionline.org](http://www.caionline.org), http://www.caionline.org/govt/advocacy/LAC/LegislativeYearbookBills/2013_CO_Ombudsman_Study.pdf

Florida

In 2008, the office reportedly logged 16,000 phone calls.³⁴ During Fiscal Year 2010-11 the Office of the Condominium Ombudsman with 7 full-time positions accomplished the following: approximately 52,000 contacts made or received to and from staff, customers and outside entities by telephone, fax, regular mail, e-mail and walk-ins; processed 84 petitions for appointment of an election monitor and appointed a monitor in 71 instances; attended and spoke at 67 meetings, seminars, educational classes, or tradeshows, and provided instruction to approximately 4,391 persons throughout the state.

August 1, 2013, marked the anniversary of the Office's implementation of an electronic database to collect and analyze information from calls and correspondence received. The office is estimated to have received 8-9,000 cases and over 20,000 phone calls over that one-year mark. The office received a high percentage of questions regarding the cause, repair, and prevention of household leaks.

While the office receives phone calls from owners and board members in HOAs, timeshares and cooperatives, its powers and duties are limited to condominiums. The legislature is working to address this looking forward to determine whether the ombudsman should have its duties expanded to cover HOAs, or whether the housing model should have its own office.³⁵

Nevada

In 2008, David Garrick, an investigator for the Nevada Office of the Ombudsman for Owners in Common-Interest Communities, stated that many of the matters handled by the office deal with money, specifically, complaints about fines or assessments. Residents regularly lodge complaints alleging injustices stemming from a board's failure to punish a violation of the governing documents or enforce the governing documents uniformly.³⁶

Pursuant to a 2008 formal opinion of the Attorney General's Office, the Commission for Common-Interest Communities does not have jurisdiction to investigate the interpretation, application and/or enforcement of governing document disputes nor does the Commission and its Administrative Law Judges (ALJs) have jurisdiction to hear or decide governing document disputes.³⁷

More recently, the office has published executive summaries and reports on the efficacy of its alternative dispute resolution (ADR) and intervention programs. During its July 1, 2010, through June 30, 2011,

³⁴ Monica Thatcher, Florida lawmakers tap condo fund as owners' complaints rise, *The Miami Herald*. May 27, 2009. <http://www.ccfj.net/condotapfund.html>

³⁵ Rick Luther, State of Florida, Office of the Condominium Ombudsman.

³⁶ Meghan Reilly, Connecticut OLR Research Report, Condominium Ombudsman, October 9, 2009. <http://www.cga.ct.gov/2009/rpt/2009-R-0342.htm>

³⁷ Attorney General's Opinion Regarding the Commission's Jurisdiction Over Common-Interest Communities' & Condominium Hotels' Governing Documents, 2008. http://red.state.nv.us/publications/AGO_CICCCH_2007-41.pdf

reporting period, the office reported opening 97 ADR claims and closing 97 ADR claims, with 44 claims having been issued certificates of completion. The top reason for the ADR claims were, in the order provided, the following: maintenance of landscape and property; delinquent assessments; collection of fees improperly; homes placed in foreclosure improperly; and fines.³⁸ According to its executive summary on intervention for the same time period as above, the office reportedly opened 195 cases, closed 182, and had 121 cases carried forward. The report found the vast majority of the claims were unsubstantiated allegations.³⁹

Virginia

During its 2008 initial reporting period, the Office of Common Interest Community Ombudsman received or placed 222 telephone calls and more than 300 emails. In addition, the office received 77 requests for assistance requiring staff review – 38 concerning property owners’ associations, 18 concerning condominium associations, and 21 concerning timeshare associations. The office resolved or closed 17 of these inquiries, and analysis – including review of documents (i.e. declarations, bylaws, etc.) – was completed for 83 percent of the remaining inquiries.

The majority of inquires related to association management or governance, including issues such as meeting notices, financial management, board member resignations, and general board communications and leadership. Several inquiries from association members also expressed interest in disbanding due to statutory requirements and general acrimony among members and their boards.⁴⁰

During the 2009-10 reporting period, the office received 1,551 telephone calls and 1,129 e-mails. These phone calls and emails were primarily requests for information or questions related to common interest communities.

In addition, the office received 276 complaints during the 2009-10 reporting period. The office resolved or closed 271 complaints, which included resolution or closure of complaints received during the prior reporting period. In accordance with departmental procedures for complaint processing, the Common Interest Community Board (CICB) considered cases stemming from investigations, with 11 complaints under investigation at the time the report was issued. The majority (53 percent) of condominium and property owners’ association complaints related to actions by the association board, including lack of notice for meetings, questionable election processes, lack of responsiveness, and inappropriate use of

³⁸ FY 2011 Executive Summary of the Alternative Dispute Resolution Program, Nevada Ombudsman’s Office for Owners in Common-Interest Communities and Condominium Hotels.

http://www.red.state.nv.us/cic/stats/2011June/n_adr_exec_summary.pdf

³⁹ FY 2011 Executive Summary of Ombudsman Intervention, Nevada Ombudsman’s Office for Owners in Common-Interest Communities and Condominium Hotels.

http://www.red.state.nv.us/cic/stats/2011June/a_ia_exec_summary.pdf

⁴⁰ 2008 Report on the Office of the Common Interest Community Ombudsman.

[http://www.dpor.virginia.gov/dporweb/RD391%20\(2008\)%20-%20CIC%20Ombudsman.pdf](http://www.dpor.virginia.gov/dporweb/RD391%20(2008)%20-%20CIC%20Ombudsman.pdf)

power by the board. 16 percent of the complaints were related to developer control, most typically as a result of the unwillingness (or perceived unwillingness) to relinquish control of the association to owners.

The office's 2009-10 statutorily required report to the Department of Professional Regulation also contained a section regarding constituent expectations. The following is an excerpt from that report:

After two years of full functioning, a major issue of constituent expectations continues to challenge the ability of the office and the ombudsman to provide the level of service and information demanded by stakeholders (including association members, unit owners, and legislators).

At issue is the public's understanding of the duties performed by the office, based on Sections 55-530(C) (1) and (7), which reference the bylaws and declaration of an association. These code sections lead members and unit owners to believe the ombudsman is able to interpret their governing documents. However, such service—the interpretation of legal documents—is typically reserved only to an attorney actively representing a client. In order to clarify this issue, which constituents have raised on innumerable occasions, the ombudsman—an attorney, as required by the enabling CIC statutes—contacted the Virginia State Bar regarding the potential conflict in providing an interpretation of association governing documents. Based on a lengthy conversation with an ethics professional at the Bar, it does appear that providing such information to a member or unit owner would, in fact, constitute an ethics violation.

In addition, Section 55-530(C) (7) states that the ombudsman will provide nonbinding explanations of laws and regulations governing common interest communities. Unfortunately, the vast majority of the public contacting the office assumes an explanation is identical to an interpretation. Therefore, constituents expect the ombudsman to provide legal interpretations not only of their governing documents, but also of common interest community statutes. The difficulty with the public's misperception—which is understandable, based on the statutory language establishing the office—is that it leaves constituents with the impression that the office is not fully meeting its responsibilities and obligations. Although the office operates well within appropriate legal confines, and provides tremendous service to association members and unit owners on a daily basis, constituent expectations are frustrated because the ombudsman cannot provide an interpretation of the law or governing documents. The goal of the office, and its statutory responsibility, is to educate the public, to provide direction to available common interest community resources, to review final adverse decisions, and to help members and unit owners in whatever other ways possible to help avert or resolve conflict. The office and the ombudsman cannot, however, replace the services of an attorney.⁴¹

⁴¹ 2009-10 Report of the Office of the Ombudsman for Common Interest Communities.

http://www.dpor.virginia.gov/dporweb/DPOR_CIC_Ombudsman_Annual_Report_2009-10.pdf

During the 2011-12 reporting period, the Office received 1,613 telephone calls (a 30.9 percent increase over 2010-11) and 1,833 email messages (a 54.8 percent increase over 2010-11). The phone calls and emails primarily concerned requests for information or questions related to common interest communities and time-shares, as well as clarification and explanation of the new regulations. The office resolved or closed 345 complaints in 2011-12, which includes resolution or closure of some complaints received during the prior reporting period.

The office's 2011-12 report also contained a section regarding constituent expectations. The following is an excerpt from that report:

Previous reports noted confusion and dissatisfaction as a result of the public's misunderstanding of the duties performed by the Office. Statutory language led association members and unit owners to believe the Ombudsman's authority allowed for interpretation of governing documents when, in fact, the Ombudsman is not permitted to offer legal advice or interpretation.

In an effort to align constituent expectations more closely with the Office's legal mandate, DPOR successfully sought legislation during the 2012 General Assembly Session to clarify the role of the Ombudsman by removing incorrect references to review of declarations, bylaws, or other association documents. The technical amendments should help the public better understand the nature of assistance the Office can provide, as well as its legal limitations.

During the 2011-12 reporting period, association constituencies also expressed frustration and angst in complying with the new regulatory requirement to prepare and adopt internal complaint procedures. However, the CICB provided notice to every registered association prior to the enactment of the new Ombudsman Regulations, and granted associations a 90-day grace period to meet their responsibilities under the new regulations.

While many associations are particularly nervous about the taxing nature of serial complainers on association resources, as time goes on, savvy associations will learn how best to handle these members and will come to recognize the internal complaint procedure can be an asset rather than a detriment. Associations will now be more fully aware of the areas of complaint by their members and owners, with a more complete understanding of owner perceptions as to what might be construed as violations of common interest community laws or regulations.⁴²

At the June 2013 CICB meeting, the office reported to have received over 1,700 calls and 2,000 emails, approximately a 5 and 10 percent increase respectively from last reporting period. The office received 251 new complaints and closed 258. At the meeting, the office commented on the difficulty it was having with owners who submitted their complaints to the office prior to their association. The office also commented

⁴² Office of the Common Interest Community Ombudsman, Report to the House Committee on General Laws and Technology Housing Commission, Annual Report 2011-2012.

<http://www.dpor.virginia.gov/uploadedFiles/MainSite/Content/News/CIC%20Ombudsman%20Annual%20Report%202011-2012.pdf>

on its concern over the amount of annual reports it receives from associations that have not adopted a complaint procedure, which is required by state statute.

Unsuccessful Attempts

A couple of states have attempted to create a community association ombudsman office within the last few years. California and Connecticut have a long standing history of doing so, but each piece of legislation has faced stakeholder opposition and budget restraints.

California

Since 2005 at least three measures have been introduced that sought to create an ombudsman office in California. During the 2005-06 legislative session, two bills were introduced that, if enacted, would have created an ombudsman pilot project within the Department of Consumer Affairs to provide education, informal dispute resolution and data collection on common interest developments. The assembly bill was the vehicle for the issue, which passed the legislature, but was vetoed by Governor Arnold Schwarzenegger (R) September 22, 2006. Governor Schwarzenegger cited the bill was unnecessary at the time, and recent legislation had been enacted to address various problems and it was necessary to gauge the effectiveness of the legislation before creating an entirely new state office. Additionally, the Governor cited the bill lacked clarification on the type of dispute resolution services that would be provided by the ombudsman, and it did not specify the difference between informal dispute resolution required by this bill and formal mediation, which the ombudsman would not provide.⁴³

Another assembly bill was introduced in 2008 that sought to create a new Common Interest Development Bureau/Ombudsman Pilot Program. The bill's language was similar to that of the 2005-06 bills and provided the state would have levied an annual per-unit fee ranging from \$10 to \$20, for an estimated total of more than \$107 million over five years.⁴⁴ Like the previous session, the legislation passed the legislature but was vetoed by Governor Schwarzenegger.

Governor Schwarzenegger vetoed the measure stating:

"...Creating another layer of government bureaucracy is costly and unnecessary. Numerous bills have been signed into law in the past few years to address the various problems cited by the author. There is little or no evidence that these measures have proven ineffective in addressing the current situation. Today, several other government agencies are handling issues raised with

⁴³ 2005 Assembly Bill 770 Veto Message, Governor Arnold Schwarzenegger. http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0751-0800/ab_770_vt_20060922.html

⁴⁴ CAI 2008 Legislative Yearbook. <http://www.caionline.org/govt/advocacy/LAC/LAC%20Activities/Legislative%20Yearbook%20Public%20Copy%20008.pdf>

these associations. As such, I can see no reason to create an entirely new state entity at this time...⁴⁵

Connecticut

The General Assembly had a consecutive history of considering an ombudsman's office; a bill has been introduced every session between 2008-11. The first measure, which was backed by the attorney general's office, the Connecticut Bar Association and, among others, the Senate majority whip, would have established an ombudsman's office to represent unit owners, and allow the ombudsman to investigate and resolve complaints and, if requested, monitor election of board members. The bill also required community association managers to be licensed and clarified certain animal control statutes with respect to property that is a part of common elements of a common interest community.⁴⁶ The bill eventually failed upon adjournment likely because of its broad spectrum; the cost of the ombudsman office, which was estimated at \$300,000 annually; and the anticipated significant increase in the workload of the Department of Consumer Protection, which would have required a Staff attorney/ombudsman, two consumer protection real estate examiners, and a consumer information representative and a paralegal specialist to staff the proposed office.⁴⁷

In 2009, the Senate introduced a bill that was again backed by Attorney General Richard Blumenthal.⁴⁸ According to the attorney general's testimony, the bill would create a commission to review condominium unit owner complaints and complaints about violations of condominium bylaws and grant the authority to the ombudsman to review the disputes and, if necessary, hold a hearing and issue orders to resolve the problems. The proposal allowed the attorney general's office to impose civil action to enforce provisions of the condominium's bylaws and/or state statutes, and impose a civil penalty of not more than \$200 for any knowing violation. The costs of the commission would have been paid through an annual assessment on condominium associations in the state: \$50 for condominiums with less than 20 units; \$100 for condominiums with 20-100 units and \$200 for condominiums with over 100 units.⁴⁹ These costs were one of many complaints against the bill. Other complaints were the bill favored unit owners and thereby created an imbalance, as boards were not given the opportunity to file a grievance against an abusive unit owner. Additionally, all boards would be required to pay a fee to defend a grievance filed by a unit owner,

⁴⁵ 2008 Assembly Bill 567 Veto Message, Governor Arnold Schwarzenegger. http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0551-0600/ab_567_vt_20080927.html

⁴⁶ 2008 Connecticut Senate Bill 706. <http://www.cga.ct.gov/2008/TOB/S/2008SB-00706-R00-SB.htm>

⁴⁷ 2008 Fiscal Note for Senate Bill 706 (File Copy 546). <http://www.cga.ct.gov/2008/FN/2008SB-00706-R000546-FN.htm>

⁴⁸ 2009 Connecticut Senate Bill 1119. <http://www.cga.ct.gov/2009/FC/2009SB-01119-R000696-FC.htm>

⁴⁹ Testimony of Attorney General Richard Blumenthal on Senate Bill 1119, March 19, 2009. <http://www.cga.ct.gov/2009/JUDdata/Tmy/2009SB-01119-R000319-Attorney%20General%20Richard%20Blumenthal-TMY.PDF>

and would likely incur additional expenses due to the likelihood of the need to hire legal counsel to defend against the grievance.⁵⁰

Again in 2010, legislation was introduced to provide any unit owner or group of unit owners may file a request with the Office of Condominium Ombudsman to have the commissioner or the commissioner's designee review the complaint regarding alleged violations of any provision of the Condominium and Common Interest Ownership Acts. The office could also review a bylaw of a condominium association or common interest community association concerning the budget and appropriation of funds, as well as the calling and conduct of meetings and access to public records. The bill was tabled by the senate for the end of the legislative session.⁵¹

The General Assembly also proposed a bill in 2011, but that bill failed to receive a hearing and have official text drafted.

CAI's Position and Concerns:

To date, existing ombudsman programs in Florida, Nevada and Virginia have, at best, a mixed record in support of homeowners living in community associations. Such offices face several obstacles in meeting its statutory objectives. Among these obstacles are structural issues, the lack of mutuality in the ombudsman process, added cost/complexity for homeowner dispute resolution, lack of education of boards and homeowners, the lack of need for such programs and more effective alternatives to expanding state control over locally elected community association boards.

First, disputes between a homeowner and an elected community association board are disputes of private contract. State agencies typically do not have authority to intervene in such private disputes. As such, many ombudsman offices can offer little in terms of recourse to parties complaining about their community association, and merely become the repository of negative stories about community associations.

To date, no ombudsman program provides a fair and balanced process to adjudicate community association disputes. Most often it serves to create a process by which a homeowner may file a complaint against the elected board, but does not provide the ability for the board to file a complaint against a homeowner. As often as not, many association complaints result from uncooperative homeowners who choose to ignore the community rules they agreed to abide by when they moved into the community. Their actions have a negative impact on the majority of residents in the community who benefit from the rules and policies adopted by the membership or board; elected boards too should have the ability to use

⁵⁰ CAI Testimony on Senate Bill 1119, Kim McClain, March 19, 2009.

<http://www.cga.ct.gov/2009/JUDdata/Tmy/2009SB-01119-R000319-Kim%20McClain-TMY.PDF>

⁵¹ 2010 CAI Legislative Yearbook.

<http://www.caionline.org/govt/news/Political%20HeadsUp%20Public%20Document%20Library/CAI%20Leg%20Yearbook%202010.pdf>

an ombudsman program to enforce community rules. As such, data gathered by such programs are unfairly biased against community associations as they only are empowered to represent one side in any dispute. As noted by the Nevada Office of the Ombudsman for Owners in Common-Interest Communities, a vast majority of complaints filed with the ombudsman's office were unsubstantiated.

Establishing a state ombudsman office also adds complexity to dispute resolution within a community. Homeowners associations are democratically elected governing bodies who are responsible to residents of their community. The adoption of a state ombudsman program moves the center of gravity for dispute resolution from the community, to a state level office. Such a move typically adds complexity and expense to the dispute resolution process. CAI believes the focus should be on empowering individuals to solve problems within communities rather than to place the burden on the state. Mandating a state-commissioned office to investigate complaints is essentially outsourcing the administrative and democratic process of community associations over issues that are easily resolved through a process listed in an association's governing documents. This type of outsourcing of having state employees sorting out disputes relating to private contractual agreements between association boards and unit owners is not an efficient use of resources.

Homeownership in a community association requires an understanding of a homeowner's rights and responsibilities to the community. Residents in a community association enjoy a range of amenities and rules that serve to protect and enhance the value of their property. However, these benefits come with responsibilities for each resident such as payment of mandatory assessments, adherence to rules and the ability of the association to enforce those rules. In most cases, disputes between homeowners and their associations arise from a lack of understanding of these rules and responsibilities. Adopting a policy of mandatory disclosure prior to purchase in a community association helps ensure that those buying into a community association are provided with an opportunity to understand the requirements of community association living and the responsibilities it imposes on them prior to moving in.

Finally, CAI has conducted national surveys over the course of several years on homeowner satisfaction in community associations. This survey, entitled, *What do Americans say about their Community Associations*, was prepared in conjunction with the survey firm Zogby International⁵². This survey is conducted every two or three years and the findings on owner satisfaction with their community associations have been remarkably consistent, with close to 9 of 10 residents expressing positive views of their association in 2005, 2007, 2009 and 2012. This same survey also finds that residents are consistently satisfied with the actions of their elected boards, with 88 percent of residents surveyed reporting that the board absolutely or 'for the most part' serves the best interest of their community. This empirical and longitudinal data demonstrates that community association boards serve the needs of their residents and that a majority of cases of complaints, as supported by the findings of the Nevada office as well, are unfounded. The notion that association problems are wide spread is not supported by national surveys.

⁵² *What do Americans Say About Their Community Associations?*, Community Associations Institute w/Zogby International, 2012. http://www.caionline.org/info/research/Documents/National_Homeowner_Research.pdf

CAI does not dismiss the fact that there are homeowners in community associations who have difficulty with their association and could benefit from mechanisms to assist in dispute resolution. CAI does believe that there are more appropriate alternatives that serve to empower residents and associations rather than expanding state government powers. CAI believes that these mechanisms work to provide greater transparency and clear processes to assist with dispute resolution in community associations.

First, CAI supports requirements that community association boards adopt an internal dispute resolution process if state law does not already impose such a requirement. Having a clear process helps manage the expectations of the board and the residents in managing and working through problems. CAI also supports the ability of the community association to adopt bylaws or amendments to their governing documents to mandate alternative dispute resolution (ADR) prior to litigation. ADR allows for a neutral entity to assist the parties in finding a resolution to a dispute outside of court and often at a lower cost to the parties. In fact, many jurisdictions offer affordable community resolution services. CAI also supports mandated disclosures to purchasers in community association prior to closing. CAI believes that all buyers in a community association should be provided with the opportunity to understand their rights and obligations prior to moving into a community association. Finally, in many states, the laws that govern community associations are outdated and do not adequately address the rights and responsibilities of homeowners, boards, developers and other key parties in community associations. CAI supports the adoption of the Uniform Common Interest Ownership Act (UCIOA) for states currently operating under older legal frameworks for community associations.

In light of our concerns and the availability of less intrusive remedies for dispute resolution in community associations, CAI is skeptical and inclined not to support the imposition of ombudsman offices at the state level.

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To: CPCtestimony
Cc: w_honolulu@hotmail.com
Subject: *Submitted testimony for HB35 on Jan 31, 2017 14:00PM*

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Jayne Cloutier	Individual	Oppose	No

Comments:

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Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Penelope Munroe	Individual	Oppose	No

Comments: There is no need for another layer of government on issues that have been and can be dealt with if owners would merely read and abide by the governing documents. In 20 plus years in AOA/HOA management my experience shows that less than 1/2 of 1% of matters needed to be elevated beyond mediation/arbitration.

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To: CPCtestimony
Cc: nalan@myhawaiiilaw.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Na Lan	Individual	Oppose	No

Comments: I am a practicing attorney representing condominium and community associations and a member of the Legislative Action Committee of the Hawaii Chapter of Community Associations Institute. I oppose HB35 for the following reasons: First, it is based on biased view of a small number of disputes between homeowners and the associations and misrepresentation of the overall status of the condo associations operation. The vast majority of the Associations operate well under the current self-governance system. Second, the proposed method simply will not work given the prior failure track record of the very similar condo court program in Hawaii and the CAI national survey reports on several condo ombudsman programs ran by other states. All of those sister states programs are inefficient and not worthwhile when comparing the small number of disputes they actually help resolve with the substantial amounts of administrative expenses assessed on condo unit owners. Third, there are better alternatives available to resolve the issues concerned by the bill, e.g., the newly established evaluative mediation program should be further promoted and improved. Mediation, not administrative hearing, has been tested and proved in the legal industry to be the most effective way of resolving disputes and reducing litigation. Finally, having the government step in to micromanage private properties flies in the face of the restrictive covenants running with the land and the principles of private contracts. I agree with the testimonies submitted by CAI LAC and Mr. Richard Emery.

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HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Walter Guild	Individual	Oppose	No

Comments:

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HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Pat	Individual	Oppose	No

Comments:

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Cc: ingridlandon@gmail.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Ingrid Landon	Individual	Oppose	No

Comments: No on HB 35

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To: CPCtestimony
Cc: watercrazy70@yahoo.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Julie Wassel	Individual	Oppose	No

Comments: I oppose this bill. Julie Wassel

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To: CPCtestimony
Cc: faytoy@yahoo.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Nancie Fay	Individual	Oppose	No

Comments: Hello, as a property owner in Maui, I strongly oppose HB35. Condominiums should be self-governing. Due to human nature, and democratic process, there will always be a handful of folks who did not get results they wanted in a request/dispute/ballot issue. It is not up to the state to step in and try to solve these issues. The cost, oversight and time it would take the state to intervene on matters such as these is too much. In every decision there is going to be someone who does not get their way. As adults we don't go running to 'mommy'. Most condo boards have some form of mediation. That is the correct forum to pursue unresolved issues. Thank you for taking the time to consider the opinions of those who cannot be present.

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Sean Cooke
480 Kenolio Rd Apt 12-202
Kihei HI 96753

Hello and thank you for your time and service,

I am submitting testimonial speaking in opposition of bill HB35. I currently serve on the board of directors of Southpointe Condos in Kihei, Maui. This is my first experience of owning and living in a condo and I joined the board as a means to serve the immediate community I live in. I was elected at an annual board meeting where all owners have representation and a vote. All members are volunteers and give their time to help insure the wellbeing of the property for everyone. I have been impressed with the dedication and knowledge of some of the members. The monthly board meeting function well and open with time for any owners to express concerns and hear from anyone disputing a fine given them.

The self-governing dynamic of our board is crucial in our ability to quickly address problems, needed repairs, and other issues that arise. Southpointe is managed very well and everyone seems quite happy with the board's work.

I especially value the democratic process of the current structure, it is designed to produce the best result for the greatest number and listens to the minority voice before making decisions. Government oversight of the type proposed in HB35 would be an unnecessary hindrance to the democracy of condo associations, a burden to the state, and likely a burden to taxpayers whom do not own condos.

Thank You,

Sean Cooke

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 10:37 AM
To: CPCtestimony
Cc: aanderson@alf-hawaii.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Anne Anderson	Individual	Oppose	No

Comments: Dear Chair McKelvey, Vice-Chair Ichiyama, and Committee Members: For the reasons set forth in the testimony submitted by the Legislative Action Committee of the Hawaii Chapter of Community Associations Institute, H.B. No. 35 should not be adopted. Thank you for the opportunity to comment on the bill. Sincerely, Anne Anderson

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To: CPCtestimony
Cc: ckk808hi@gmail.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Clayton Kunitake	Individual	Oppose	No

Comments: I have lived in condos and owned a few for the past 30 years and the association of home owners is essential for self management and maintaining common infrastructure to preserve property values and enjoyment of use by all owners. The board of directors is an crucial component to ensuring that all owners are treated fairly and equally but most important is that proper financial planning is in place to facilitate proper maintenance and long term upkeep of the condo building and common shared elements. Every condo building is unique due to construction materials and age so maintenance needs will vary from building to building.

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To: CPCtestimony
Cc: slabuguen@gmail.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Sandra Labuguen	Individual	Support	No

Comments: As a condo owner, I support HB35.

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Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Puckett	Individual	Oppose	No

Comments: I strongly oppose this bill. I am a longtime resident of and a Resident Manager of a large complex in Kihei. We are doing well without the measures that this bill would impose. Thank you, Brian Puckett Southpointe at Waiakoa Resident Manager

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Robert P. Brennan

Representative Angus McKeivey, Chair
Representative Linda Ichiyama, Vice Chair

Committee on Consumer Protection & Commerce

Regarding H.B. 35
Tuesday, January 31, 2017 @ 2:00 p.m.

Testimony in Support of H.B. 35

“Ua Mau ke Ea o ka Aina I ka Pono”. (The Life of the Land is Perpetuated in Righteousness) Thru education, we as a people can attain this goal. Financial disclosures will help a board be honest in its financial dealings. An office of condominium complaints and enforcement will help the owners and board members keep the peace and settle disputes without being too costly thus upholding our Constitutional Rights to the pursuit of happiness with our money.

I support this measure.

Most board of directors are volunteers. They come from a wide range of backgrounds with the same goal of protecting, serving the community and protecting their investments. Most board members do not have an education background in Condominium rules and laws. It's usually learn on the fly. Education will help owners and board members protect their expensive investment. I would also include property managers and council to be included in this group so we all can be on the same level of intelligence regarding condominiums.

People are human. They will have disputes. An office that helps settles disputes is a wise move. If there is no way to settle disputes without going to court, people generally go nuts and do stupid things. That is human nature. A dispute office is long overdue. It will help people stay honest with their neighbors and investments.

Financial disclosures are important. For instance, if a president of the board owns a security company, he might insist that the condo have security 24/7. The president then gains the benefits of financial gain without question.

We are all together in this journey of life. We need to honest with one another to live in harmony. If not, then “Ua Mau ke Ea o ka in a I ka Pono” will not work. Life will then be miserable cause we can't trust each other.

Thank you for the opportunity to testify in favor of this measure.

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 11:10 AM
To: CPCtestimony
Cc: deborahb@hmcmtg.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Debi Balmilero	Individual	Oppose	No

Comments: This bill should not be passed because: • We already have alternative dispute resolution programs in place - evaluative mediation and we are proposing voluntary binding arbitration to be funded by the condo-ed fund. • It will use the condo education fund to set up a brand new bureaucracy of people who know nothing about condominiums or understand HRS 514B – this is a waste of the funds that condo owners have to pay into the fund. • The ombudsman program on other states (Nevada, Colorado, Florida, Del) are not working to resolve disputes. The provision in this bill talk about reviving the “condo Court” that was a temporary program about 10 years ago that was an utter failure and total waste of time and money.

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Sent: Monday, January 30, 2017 12:05 PM
To: CPCtestimony
Cc: davescastle@mac.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
David Tiller	Individual	Oppose	No

Comments: The State tried this round 10 years ago and the program failed with nothing but expense to the taxpayers for matters belonging to self-governing associations. I do not want my tax dollars to pay for any mediation nor court involving these disputes which already have paid mediation by the parties involved. If the conflicts are not resolved, they still have the same court system available to them as the rest of the citizens have. I don't expect the State of Hawaii to provide special courts for specialized parties so that the State bears any of the costs.

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Cc: divnut@hawaiiantel.net
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017
Testimony for CPC on Jan 31, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Scott	Individual	Oppose	No

Comments: I believe this measure does not represent the interests and rights of the majority of condominium owners.

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To: CPCtestimony
Cc: steveghi@gmail.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017
Testimony for CPC on Jan 31, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Steve Glanstein	Individual	Oppose	No

Comments: This is well intentioned but attempts to solve a problem that I don't believe exists on a large scale in Hawaii. Page 10, lines 18ff proposes annual mandatory filing of financial disclosure forms. With 1,700 condominium associations and an average of 5 board members, that would 8,500 financial disclosure forms each year. No purpose is provided and it would be more difficult to get board members if we told them they'd have to disclose their confidential financial information. Page 11, lines 6ff provides for mandatory classes for these 8,500 board members within 3 months. It's unrealistic and s just not going to happen.

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Cc: tammys@hmcmtg.com
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HB35

Submitted on: 1/30/2017
Testimony for CPC on Jan 31, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Tammy Segawa	Individual	Oppose	No

Comments:

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Sent: Monday, January 30, 2017 11:33 AM
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HB35

Submitted on: 1/30/2017
Testimony for CPC on Jan 31, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Kennedy	Individual	Oppose	No

Comments:

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HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Linda Morabito	Individual	Oppose	No

Comments: Another layer of government and a few people making the decisions and possibly overriding the CCRs policies (as part of the real estate laws the residents should know) is not good system. Demand mediation if a member can't get satisfaction. Teach people first please.

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Subject: *Submitted testimony for HB35 on Jan 31, 2017 14:00PM*

HB35

Submitted on: 1/30/2017
Testimony for CPC on Jan 31, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Nan N, Cain	Individual	Oppose	No

Comments:

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HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Jeff Newman	Individual	Oppose	No

Comments: The majority of the boards do a great job, we don't need more government intervention. Mahalo, Jeff

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LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 1:06 PM
To: CPCtestimony
Cc: chucklavis@gmail.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Charles Lavis	Individual	Oppose	No

Comments: I am often dismayed at the speed, financing and efficiency of the groups calling themselves oppressed. I have served on many HOA boards and there is always a small contingent of owners looking for some sort of bizarre holy war. The fact is that owners are well represented with the current HOA system. This bill would gut the healthy volunteer nature of HOA boards. It would not take long to run out of volunteers should ridiculous term limits be imposed on HOA boards. There is no holy war here, just a pile of money fighting to get larger. Please reject this "speedy" bill before it does real damage to property rights within stratified communities.

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LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 1:20 PM
To: CPCtestimony
Cc: deborahjwilliams@hawaii.rr.com
Subject: *Submitted testimony for HB35 on Jan 31, 2017 14:00PM*

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Deborah Williams	Individual	Oppose	No

Comments:

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From: Rise Doi on behalf of Rep. Linda Ichiyama
Sent: Monday, January 30, 2017 1:25 PM
To: ichiyama2 - Brandon
Subject: FW: Please vote NO HB35

From: giftandgourmethawaii@gmail.com [mailto:giftandgourmethawaii@gmail.com]
Sent: Monday, January 30, 2017 12:09 PM
To: Rep. Angus McKelvey <repmckelvey@capitol.hawaii.gov>; Rep. Linda Ichiyama <repichiyama@capitol.hawaii.gov>; Rep. Gregg Takayama <reptakayama@capitol.hawaii.gov>; Rep. Cindy Evans <repevans@capitol.hawaii.gov>
Subject: Please vote NO HB35

Dear Representatives,

HB 35 is a Scary proposal! What a total waste of Tax payers Dollars!

I currently sit on a Board, made up of Fellow owners of a condo.

No board wants rules that destroy the building or owner neighbors.

There are already venues for an individual owner to fight the board. Without spending money, They can send out an email to all the other owners via the management company.

This dispute office, and staff salary proposal will allow the Unreasonable person to further carry out their non payment, or bad behavior.

A Condo Board looks out for the best interest of the building.

A bill or rule avoider specializes in red tape. It is much easier to get an unstable unreasonable individual rather than a whole board that is unreasonable.

They can use the proposed office to prolong their abuse.

We had a condo owner rent out her condo. This is a commercial venture, yet she expected the security to show the place for her. Clearly she should've hired a realtor, or shown at herself.

it's not the security job. She put in a complaint to the board about this. If you give her more room to complain she'll just take it to the state when she's clearly wrong.

A waste of time and the taxpayers dollars!

This bill should not be passed because:

- We already have alternative dispute resolution programs in place - evaluative mediation and we are proposing voluntary binding arbitration to be funded by the condo-ed fund.
- It will use the condo education fund to set up a brand new bureaucracy of people who know nothing about condominiums or understand HRS 614B – this is a waste of the funds that condo owners have to pay into the fund.

- The ombudsman program on other states (Nevada, Colorado, Florida, Del) are not working to resolve disputes.
- The provision in this bill talk about reviving the “condo Court” that was a temporary program about 10 years ago that was an utter failure and total waste of time and money.

Celia Khim
Board Member Aloha Iani- 2211 Ala Wai Blvd.

Celia Gourmet
Chocolate Coffee Celia. Chocolate Coffee Tea
Gift & Gourmet [\(808\) 528-5818](tel:8085285818)
212 Merchant St.
Honolulu 96813
No GMO, NO Hydrogenated oils, No high fructose corn syrup.
All Natural, No gimmicks, Items Tested for Quality, Value & Integrity of the manufacture.

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 1:33 PM
To: CPCtestimony
Cc: moniqued@hmcmgt.com
Subject: *Submitted testimony for HB35 on Jan 31, 2017 14:00PM*

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Monique Diego	Individual	Oppose	No

Comments:

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From: Myrtle Kaya <kayam002@hawaii.rr.com>
Sent: Monday, January 30, 2017 1:37 PM
To: CPCtestimony
Subject: Oppose HB 35

To: Honorable Angus L.K. McKelvey
Honorable Linda Ichiyama
and Committee members

I oppose to HB 35

Community (Condominium) Associations do not need HB 35.

Condominiums have their own Management and Board to operate in the best interest for the owners and to maintain efficiently the operation of the administration and property.

“Community Associations are private entities, not governments”

Myrtle Kaya
Woodrose Condominium
780 Amana St
Honolulu, HI 96814

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 2:00 PM
To: CPCtestimony
Cc: northpointegm@gmail.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Travis Dela Cruz	Individual	Oppose	No

Comments: I oppose HB35. This bill is unnecessary, as it creates new layers of unneeded governance. The first sentence in the proposed bill states "legislature finds that condominium self-governance has been successful in the State". This statement alone conveys that condominiums are able to provide a fair and just service to their owners. With any organization, there is always a chance for unethical behavior. It has been my experience working within the industry, that condominium association are better equipped to handle such incidents rather than reaching out to another agency to correct it. This bill also creates additional financial burden within our government, which is clearly not needed. No organization is perfect, there will always be incidents that need to taken care of. As of today condominium associations have the necessary resources needed to be self governing, which has been an success according to your own proposal. Thank you.

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LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 2:02 PM
To: CPCtestimony
Cc: alan.hayashi2@gmail.com
Subject: *Submitted testimony for HB35 on Jan 31, 2017 14:00PM*

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Alan S. Hayashi	Individual	Oppose	No

Comments:

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ichiyama2 - Brandon

LATE

From: ichiyama1 - Kaci
Sent: Monday, January 30, 2017 2:12 PM
To: ichiyama2 - Brandon
Subject: HB35 Rachel Glanstein-opposed

Rachel Glanstein called stating that she is opposed to HB35.
Rachel has worked professionally on condo issues and wanted to express
that it is a focal minority trying to change the law because they cannot convince their companies.

-Kaci Takara

LATE

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Testimony Regarding HB 35

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 writing in opposition to HB 35. It will create a whole new division in the attorney general's office for processing condominium complaints without any clear evidence that such a new "Office of Condominium Complaints and Enforcement" is necessary." Moreover, the bill fails to even consider less expensive and burdensome alternatives, such as promoting mediation.

The preamble to the bill indicates that "*many condominium owners... sometimes fear retribution from certain boards when challenging their governance.*" If the legislature is proposing to create a whole new office to handle the complaints, it seems like there should be more research to determine the actual number and severity of the complaints. The time and expense of this new office should not be based simply on anecdotal evidence.

For example, I was recently at a town hall meeting of a large condominium association which the board had called to outline to owners how it was proposing to handle the replacement of the common elements main drainpipes in the building. Following the presentation, an owner stood up and said the board should have informed the owners sooner and, and, regardless, could not proceed with the work without owner approval.

In fact, that was not the case: the declaration, bylaws, and even Hawaii's reserves law requires the board to properly maintain and repair the common elements of a condominium. Owner approval is not required for that work because it is essential. (The board president also pointed out to the owner that the board had been discussing the project at every monthly board meeting for the prior year, but the owner had not bothered to attend.)

That owner could well contact his legislator and make a complaint based on his mistaken understanding. If there was no investigation, the legislator might well be of the opinion that the complaint was valid. Moreover, if the new office

of complaints is established, the new office could spend valuable state time and resources investigating complaints like that, complaints that have no validity under the law.

Nor, given the number of condominium units in the state, it is surprising that there are complaints about condominium boards. For example, the Real Estate Commission indicates that there are over 1600 condominium associations in the state representing over 160,000 units. If each of those units has just two owners or occupants living in the close confines of their respective condominiums, there are potentially 320,000 people in the state who could complain about their condominium boards.

If legislators received documented complaints from 3200 owners, that would only be one percent of all the potential complainants. If the legislators received complaints from 30 owners, that would only be one hundredth of one percent of all the potential complainants. If those 30 complaints are not independently investigated to determine their validity, the legislature is essentially proposing to create a large new office based on questionable information.

Even if some of the complaints are valid, rather than change the law or create a whole new office of complaints, it might be more effective to actively promote other means of resolving individual disputes, particularly mediation. For example, although mediation has long been part of the system of self-governance for condominiums in Hawaii, the Real Estate Commission only established its new "evaluative" mediation program less than two years ago – see attached.

(The evaluative mediation program, unlike the regular mediation program, provides mediators with subject matter background to better advise the participants on the merits of their claims. Mediation in general is an educational process as well as a dispute resolution process and usually does not result in the long-standing rancor or enmity that litigation, and even arbitration can produce)

Given the size of the condominium industry, it is not surprising that it is taking a while to convince boards and owners of the benefits of evaluative mediation. If the legislature would like to speed the process along, it could consider other options short of establishing a whole new office of complaint.

- There are three condominium specialists, and the legislature could task them with evaluating disputes and demands for mediation. Since mediation is a non-binding process that does not impose a decision on the parties but allows them to reach their own solutions, the three condominium specialists could make an informal determination of

"probable cause" as to whether the dispute justified mediation. If so, the condominium specialists could require both sides to participate without severely undermining or disadvantaging the rights of either side (since mediation is not a binding process).

- The legislature could also amend the law to say that a board could not take any further enforcement action against an owner – except in an emergency or exigent circumstances – without offering the owner the opportunity to first go to mediation. That would get the parties into mediation where they might be able to take advantage of the educational and low-key mediation process to resolve the situation without the matter escalating.
- The legislature could also mandate that the Real Estate Commission conduct a statewide series of seminars helping to explain the law and promoting the advantages of evaluative mediation in resolving disputes without the rancor that typically accompanies litigation and, sometimes, even arbitration.

All of these seem more effective than creating a large new office of complaints and enforcement that will cost hundreds of thousands of dollars and may be no more effective than the solutions that are already available. Those solutions may be more effective by requiring the parties to a dispute to resolve their own disputes rather than expecting the state to come in and resolve the disputes for them.

Thank you for this opportunity to testify.

John Morris

ichiyama2 - Brandon

LATE

From: Kay Yasufuku Tam on behalf of Rep. Scott Saiki
Sent: Monday, January 30, 2017 3:20 PM
To: ichiyama2 - Brandon
Subject: FW: HB 177, HB 35

Good afternoon,

Below is testimony for Ms. Nancy Manali-Leonardo for HB35 and HB177, both of which will be heard tomorrow at 2:00 PM by CPC.

Thank you,

Kay

From: Nancy MI [mailto:relaxamommy@yahoo.com]
Sent: Monday, January 30, 2017 3:09 PM
To: Rep. Scott Saiki <repsaiki@capitol.hawaii.gov>; Rep. Scott Nishimoto <repnishimoto@capitol.hawaii.gov>
Subject: HB 177, HB 35

I am a condo owner and a senior. I am in strong support of HB 177 and HB 35. I would like to age in place...in peace-for the remainder of my life without any worries or harassment from my board members, their community managing agents and/or the managing agents attorneys. Owners of condo's should not have their blood pressure elevated unnecessarily due to the frustration of receiving a letter from the managing agent's attorney...out-of-the-blue that accuses them of unsubstantiated fake tales.

In a real case, some seniors have been ordered by the board to undergo psychological examinations for no reason other than that they were seniors! The boards are out of control with no watch-dog system in place to assure oversight of the unfair and abusive treatment of owners...much less senior owners. This unchecked behavior can also fall into the category of a financial, free-for-all way to steal property from seniors.

Mahalo for the introduction of these bills.

Nancy Manali-Leonardo
Honolulu, Hawaii 96815
(808)542-1556

Hearing date: 01-31-17 @ 2:00 PM/HB 35/HB177

LATE

2333 Kapiolani Blvd., #2708

Honolulu, HI 96826
29 January 2017

Hawaii State House of Representatives
29th Legislature Regular Session of 2017
Committee on Consumer Protection & Commerce
State Capitol
415 S Beretania St
Honolulu, HI 96813

RE: Testimony in Support of HBs 35 and 177
Hearing Date: Tuesday, January 31, 2017 / 2:00 pm Place / Conference Room 329

Dear Chair McKelvey and Committee,

As a constituent and Honolulu condominium owner, I am writing in support of HB35, to establish the Office of Condominium Complaints and Enforcement within the Department of the Attorney General, and HB 177, prohibiting retaliation against condominium owners who seek to address, prevent, or stop a violation of chapter 514A of the HRS or governing documents of an association of apartment owners.

I believe these bills will establish a more viable set of alternatives and more robust protections for condominium owners to address issues which may arise when confronting problems with management or governing Boards of their properties.

Sincerely,



DIANN K LYNN
Marco Polo Condominium Owner
Member, Hui`oia`i`o

Committee on Consumer Protection and Commerce
Tuesday, January 31, 2017
2:00 PM, Room 329

LATE

Chair Rep. McKelvey, Vice Chair Rep. Ichimura
& Members of the Committee:

RE: Testimony IN SUPORT of HB 35, Establishing an Office of Condo Complaints & Enforcement in the Dept. of the Attorney General

My name is Laurie Hirohata, and I support **HB 35** because condo owners need more protection from unethical and illegal activities conducted by the Managing Agent Companies (MA), their affiliate attorneys and the Condo Board (Board). I believe that the passage of HB 35 would go a long way in protecting the condo owners from possible scams, fraud, mismanagement of funds and intimidation and coercion.

The Hawaii Real Estate Commission (HREC) is adamant that the statutes, HRS-CH 514b, states that condominiums are supposed to have self-enforcing governance. Condominiums should have self-enforcing governance when it comes to House Rules and other daily operational management issues. However, when the MA's or its attorney or the Condo Board is involved in gross negligence; misconduct that may include fraud or other illegal activities; misappropriation of funds that are in violation of state laws, such as hiring unlicensed contractor; or are not insuring that all contracted businesses are paying their state and federal taxes, then I believe the state has a fiduciary responsibility to implement and enforce rules and regulations to ensure the safety and well-being for all of the residents in Hawaii who live in condos. Furthermore, criminal investigations for actions that may fit the definition of criminal wrongdoing or felonies should be pursued and followed up with legal action, like it is done in most other industries. Individuals are arrested for theft, embezzlement, misappropriation of funds in the public schools, in the University, in the hospitals, and in county government, as well as in private industry, so why is it not happening in the condo business arena?

Currently, there is no government office for the owners to go to with their complaints and get a satisfactory investigation conducted. The HIREC has consistently claimed that is a conflict of interest for them to conduct investigations. Although CH 514b, provides the HIREC the

authority to conduct investigations, I have come to realize that HIREC is correct in stating it is a conflict of interest for them since most of the individuals the owners are complaining about are either HIREC Commissioners or former Commissioners.

The DCCA, RICO will conduct an investigation if it is related to obtaining condo business related documents. However, more serious irregularities are usually ignored, especially if it involves the attorney hired to represent the MA or Condo Board. Therefore, most of the owners' complaints have languished because there is no other agency that will investigate these serious matter. And if there is such an agency who will conduct a criminal investigation on the owners' allegations, currently, there is no clear and simple process for the owners to file their complaints.

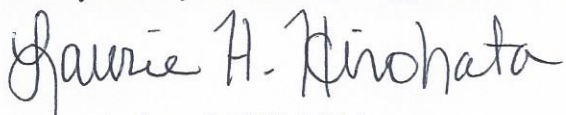
Presently, the only recourse the owners have to resolve their problems is to take it to mediation or go to court. The primary problem with going to mediation or court is that even if the owner prevails or wins the case, the case does not set precedence or change the system. Therefore, the perpetrator can go on and use the "scam" on another unsuspecting owner.

The owners need a state office to provide oversight management and investigation, including criminal investigation, so all condo owners across the state can have equal protection from the unscrupulous MA's, the attorneys and the Condo Boards.

The owners need more tools to be able to enforce their condo's self-governance. HB 35 would be instrumental for many condo owners to increase their ability to enforce self-governance as well as make it easier for owners to remove the unscrupulous individuals who do not want to 'play by the rules.'

In closing, I ask that you please pass **HB 35, to establish an Office of Condo Complaints & Enforcement within the Dept. of the Attorney General.**

Thank you for your time and support on this matter.



Laurie Hirohata, MSW, MEd
Community Advocate
Condo Owners Transparency Group

ichiyama2 - Brandon

LATE

From: Rise Doi on behalf of Rep. Linda Ichiyama
Sent: Thursday, February 2, 2017 8:39 AM
To: ichiyama2 - Brandon
Subject: FW: Revising HB35-Establishing an Office of Condo Complaints & Enforcement

From: Laurie H [mailto:lhirohat@gmail.com]
Sent: Wednesday, February 1, 2017 9:53 PM
To: Rep. Angus McKelvey <repmckelvey@capitol.hawaii.gov>; Rep. Linda Ichiyama <repichiyama@capitol.hawaii.gov>
Cc: Rep. Henry J.C. Aquino <repaquino@capitol.hawaii.gov>; Rep. Ken Ito <repito@capitol.hawaii.gov>; Rep. Calvin Say <repsay@capitol.hawaii.gov>; Rep. Gregg Takayama <reptakayama@capitol.hawaii.gov>; Rep. Chris Todd <reptodd@capitol.hawaii.gov>; Rep. Ryan Yamane <repyamane@capitol.hawaii.gov>; Rep. Beth Fukumoto <repfukumoto@capitol.hawaii.gov>
Subject: Revising HB35-Establishing an Office of Condo Complaints & Enforcement

Rep. McKelvey & Rep. Ichiyama & Members of the CPC Committee

Thank you for hearing HB35-Establishing the Office of Condo Complaints & Enforcement, yesterday.

I would like to strongly recommend that HB35 is stripped of all of the extraneous elements and it focus only on establishing an Office that will provide oversight management and monitoring of the tax exempt condo associations. The duties of the Office should include but not be limited to maintaining a registry of all of the tax exempt condo associations in the state; identifying and listing on a database the type of tax exemption category the associations are classified under; listing in a database the associations who are not up-to-date on their required documentation such as their business registration certificate, tax ID, current incorporation documents and official by-laws that are filed with the Bureau of Conveyance; and listing on a database whether the condo association has filed its tax forms including the tax forms for all of its vendors/contractors used for the condo association's business, which should include the Managing Agent Co. and the consulting attorney.

All of the aforementioned information is collected for the 501-c-3 nonprofit charitable organizations so why is it not being collected for the tax-exempt condo associations?

DCCA is suppose to keep a registry of the condominiums but it is very poorly executed, no one is really checking it for accuracy and it is not up-to-date.

NOTE: Currently, I cannot find any state agency that can accurately identify all of the condo associations who have a tax exemption either under 501-c-4, or 501-c-7 (528's).

The other provision the Office should have is the ability to hire staff, or contract investigators, who will investigate complaints on a range of infractions from ethical violations to criminal wrongdoing. The investigation may uncover infractions that would be resolved with a fine. However, may uncover a felony that would involve criminal prosecution. The Office should have the authority and the ability to prosecute the parties (individuals or companies) if criminal wrongdoing is identified, or be able to enjoin with other agencies that have the authority to pursue criminal prosecution.

I feel that the best place for this Office is in the Dept. of the Attorney General since they have the law enforcement authority. Furthermore, they already have the Tax & Charities Division that oversees the nonprofit (501-c-3) Charitable Organizations. They also have an Investigation Div. that should have the expertise to investigate a range of complaints that may range from a misdemeanor to grand theft or more serious crimes, such as extortion and racketeering.

In the past 3-4 years there have been some really sensationalized lawsuits pursued by the condo/townhouse owners and although they won their case, there have been no criminal investigation or criminal prosecution. For example, the latest case was the Hilton Lagoons (timeshare) condo/hotel. (It made the news a few months ago.) Although the owners won a \$6 million judgment, till date, we have not been able to find out whether the Board President, who committed the scam against the association, is being investigated and will be prosecuted for a crime.

The current complaints system provided by the DCCA, DOES NOT WORK! RICO will primarily assist with the procurement of documents. HIREC does not investigate and they are correct that although CH514b gives them the authority to investigate complaints, IT IS A CONFLICT OF INTEREST FOR THEM, since most of the individuals the owners are complaining about are HIREC Commissioners or former Commissioners.

Many of the owners' complaints seem to meet the definition of a "felonious" act.

For example, a board member misusing the condo association's credit card without authorization. In any other arena, this would be considered, "theft." Or, the

Association's bookkeeping is in disarray and totally inaccurate and money is missing from the association's accounts; this scenario would be considered "theft" or "embezzlement." Or, the Managing Agent adds charges to the owner's maintenance fee account without the owner's knowledge (and the board did not approve the additional charge) and then the owner is forced to pay the added expense; in any other arena this would be considered a form of "extortion."

Again, the owners have exhausted all currently available resources and most of them do not work! To make matters worse, there is no transparent and simple process for the owners to report criminal activity and get a decent investigation and a simple method to refer the case for criminal prosecution.

As a former state planner and specialist I have worked with the federal Dept. of Justice, Office of Inspector General and the FBI. One of the things I learned over the years is that the feds will not get involved until the situation or problem meets their interpreted criteria of, "federal jurisdiction." In Human Services and Education, it usually took a pending class action lawsuit in federal court to "incite" the federal government into action.

I believe that the pending federal class action lawsuit on the non-judicial foreclosure filed by about 160 owners against the law firms of Porter McGuire Kiakona & Chow, LLC and Ekimoto & Morris, LLC and over 70 condo board is the catalyst the owners and I need to get the attention of the appropriate federal agencies to investigate the condo and townhouse owners' plight.

The two aforementioned law firms have the highest amount of complaints from the owners, as evidenced by the complaints on YELP and with the BBB. (RICO may have the same trends, but they are not willing to share their information.)

Since most of the condo and townhouse associations are "Tax Exempt" entities they are supposed follow the IRC-Internal Revenue Code. There are a number of "disallowed" items or violations I have found in my investigation into this whole condo business mess.

Please remember: Although I've been trained on tax exemption rules, contracting & procurement regulations, etc., at the federal and state level, I work in human services & education so it should not have been so easy for me to spot some of the violations I have uncovered in the past 4 years.

The first and foremost "Disallowed Item" or Violation is: There is a clear definition for who can become a nonprofit 501-c-4 corporations and the IRC is clear that most condo associations, DO NOT MEET THE CRITERIA. However, from talking to the owners who can find their tax-exempt classification, many of the condos have been incorporated as a 501-c-4 corporation!

Per the IRC, most condos are supposed to be 501-c-7 or aka 528's.

I have searched for and cannot find a clear and concise list in the DCCA or the Tax Foundation that identifies which condos are 501-c-4, nonprofit corporations vs. 501-c-7 entities. (The State DoTax is a lost cause so I gave up!)

So, why is it that the Dept. of the AG scrutinizes the 501-c-3 charitable organizations and requires (almost too much) information from these organizations and then claims that the DCCA is responsible for the tax-exempt condo associations? And, the DCCA is not required to maintain a clear and concise database with the pertinent information on tax-exempt condo associations?

The end result of this lax monitoring of the tax-exempt condo associations is that no one is checking to make sure the condo associations are filing their required tax documents, especially the tax documents for their vendors or contractors, including their contracted managing agents and affiliated attorneys to insure that the 'for-profit' vendors & contractors are paying their taxes.

I personally would welcome an investigation from the feds. I think the owners' complaints would go to the FBI, especially since a lot of the complaints could be construed as fraud and extortion. I also believe the heavy-hand method of adding fines, fees, especially 'for-profit' attorney fees to a (condo owner) member of a tax exempt condo association meets the definition of "Collusive Business Practice" and it is in violation of the IRC for tax exempt entities.

Although I would love to see a federal audit from the DOJ, Office of Inspector General, however, from past experiences in working with them, the state usually does not fair very well. The OIG auditors are very thorough and "ruthless" in their investigation. Many of the OIG auditors I've met are CPA's and JD's so they are pretty outstanding, but it is a very tedious and draining process when they are in town because they are quite relentless and demanding.

I view the audit as is a good thing because it will help to bring about systems change and hopefully create a more honest & open process. The state unfortunately, if found in violation, would then have to undertake the PIP (Program Improvement-corrective action-Plan) process. I've been through a number of these and it is a very long and drawn-out process that usually takes at least 3-5 years to complete and it wastes a lot of state resources (manpower and money).

So, if the Legislature takes the proactive step of establishing the Office of Condo Complaints & Enforcement to show that the state is trying to correct the lax oversight and management of the tax-exempt condo associations who are in violation of the IRC, it may help when the feds conduct an investigation into the condo business fiasco.

Again, I personally believe that if the owners prevail in the non-judicial foreclosure class action lawsuit, it will be the catalyst needed to get the feds interested in the condo business mess. I also believe that if the owners prevail in the federal class action lawsuit, more lawsuits from other owners will be initiated because they are waiting to see what happens with the current class action lawsuit.

So, I humbly ask you to consider my proposal to revise HB35 to remove all of the other distracting elements and focus on establishing a Office of Condo Complaints and Enforcement.

Thank you,

Laurie Hirohata, MSW, MEd

Community Advocate

Condo Owners Transparency Group

Cell: 398-3492

LATE

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

29th Legislature, Regular Session of 2017

Tuesday, January 31, 2017 2:00PM

TESTIMONY ON HB No. 35, Relating to Condominiums

To the Honorable Angus L.K. McKelvey; Chair and Members of the Committee

My names is Scott Sherley, former Vice Chair of the Hawaii Real Estate Commission and former Chair of the Condominium Review Committee and a Real Estate Educator. I appreciate the opportunity to provide testimony on House Bill 35, relating to condominiums.

Condominiums operate under the concept of "Self Governance" in Hawaii with Statute and Administrative Rules to assist and guide that Self Governance. Plus an owner of Real Property has a traditional "bundle of legal rights" transferred with the property from seller to buyer. These are the recognized rights of the holder of title to the property and include: the right of possession, the right of control, the right of exclusion, the right of enjoyment, the right of disposition. An owner in a Condominium Association realizes that their rights are also bound by the Governing Documents of that Association. However passing House Bill No. 35 would further erode those "bundle of Rights" and put the power in yet another governmental organization outside of their own Association and Board of Directors. Some of those powers include fining, vacating a Board Decision, Requiring Board Members to file financial disclosure forms, and mandatory educational requirements. Although as a Real Estate Educator I can appreciate continued education for Board Member **AND** Owners, mandating and certifying education such as this can prevent and discourage owners to even participate on the Board of their Association. Associations are already having a hard time getting owners to participate on the Board, which is a strictly voluntary position. Adding more requirements would hinder an Associations ability to find owners to serve. Additionally House Bill 35 also removes the support for mandated mediation which has always been a valuable tool for owners and board members. As well as Evaluative Mediation which was added in 2013 under Act 187 and went into effect in July of 2015. The Evaluative Mediation has barely had any time to prove effective or otherwise. Under Act 187 money to fund the program from Association Registration was specifically earmarked for the program.

House Bill No. 35 has far reaching consequences and concerns and I appreciate the Legislator taking a long hard look at the viability of such changes and additions to the "Self Governance" concept.

Thank you for the Opportunity to providing testimony opposing House Bill #35.

Scott Sherley

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2017 4:18 AM
To: CPCtestimony
Cc: ford317ms@gmail.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/31/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Bill Ford	Individual	Oppose	No

Comments: As a condo owner I am opposed to this bill. Thank you.

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

TESTIMONY IN SUPPORT
WITH EXPRESSIONS OF CONCERN AND QUESTIONS
HB 35, 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 SB 35, Relating to Condominiums, that would establish the Office of Condominium Complaints and Enforcement in the Department of the Attorney General to intervene in condominium disputes, and require the Legislative Reference Bureau to study the extent of condominium disputes and efficacy of the Office of Condominium Complaints and Enforcement.

Provisions of the bill that suspend costs and expenses for the investigation until the complaints and enforcement officer completes the investigation and issues a recommendation on the matter; and concerning fees for attorneys' services incurred by a board shall not be reimbursed by individual unit owners when the services are for the purposes listed in HRS 514B-157 should facilitate use of the proposed complaint process by the Office of Condominium Complaints and Enforcement.

However, I wish to express the following questions and/or concerns with certain provisions of the bill:

1. Is there a fee for using the services of the Office of Condominium Complaints and Enforcement?
2. Is it mandatory that Homeowner Associations participate in the investigative process of the Office of Condominium Complaints and Enforcement? If not, what are the consequences?
3. Is there a financial need qualification requirement to use the Office of Condominium Complaints and Enforcement process? HB 35, HRS 514B-D, Request for dispute intervention; intervention affidavit, (a) states in part, "The written request shall be in the form of an affidavit that sets forth the facts constituting the dispute and information regarding a financial need to qualify for services." HB 35 and HRS 514B provisions contain no qualifications requirement to utilize the services, except for the latter statement. Recommend these services be made available to all homeowners regardless of their financial need, especially since Condominium Trust Fund fees paid by homeowners make no distinction among homeowners as to their financial status.
4. HB 35 proposes that 35% of all fees collected into the condominium education trust fund be deposited into the Office of Condominium Complaints and

- Enforcement Special Fund. What impact will this have on the current budget and programs of the Condominium Education Trust Fund? Will this new alternative option for addressing complaints result in an increase in the condominium education trust fund fee paid by homeowners as required by HRS 518B-72(a)(2)?
5. Regarding the proposed HRS 514B- , Board member; disclosure; education that would require every person chosen to be a new member of a board to take the condominium education class and obtain a certificate of completion within three months of acceptance to the board. What is the penalty for failure to complete this class?
 6. SB 35 amends HRS514B-71, Condominium Education Trust Fund, to delete para (a)(4) that states support for mediation of condominium related disputes. What impact will the loss of Condominium Education Trust Funds have on the Mediation process? Recommend retention of funding support for Mediation.
 7. SB 35 amends HRS 514B-105, Association; limitations on powers (f) states, “If an association or the board is involved in a dispute intervention through the office of condominium complaints and enforcement pursuant to section 514B-D, no special assessment related to the dispute, including association attorneys’ fees shall be assessed or collected from unit owners until the complaints and enforcement officer has completed the intervention enforcement.” HRS 514B-D applies to alternative dispute resolution (Mediation and Arbitration). Shouldn’t this provision be HRS 514B-E, or amended to include HRS 514B-E?

Depending on the answers to these questions and/or concerns, HB 35 may need to be further amended to make clear certain provisions of the proposed law.

Thank you for doing this. Finally, homeowners will have a place to go to have their complaints heard and investigated without the costs of Mediation and/or Arbitration. Association of Apartment Owner Boards of Directors have property managers, lawyers, and association funds to represent them in handling complaints. Homeowners don’t have these resources without personal costs. Thus, the Office of Condominium Complaints and Enforcement may bring a balanced process for addressing complaints.

Please adopt HB 35 with necessary amendments to address the unclear provisions as noted earlier.

Mahalo for the opportunity to comment.

(by on-line testimony)

MARILYN L. KHAN
Homeowner, Moana Pacific

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 10:36 PM
To: CPCtestimony
Cc: bknunies@gmail.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017
Testimony for CPC on Jan 31, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Bernard Nunies	Individual	Oppose	No

Comments: This bill should not be passed because: • We already have alternative dispute resolution programs in place - evaluative mediation and we are proposing voluntary binding arbitration to be funded by the condo-ed fund. • It will use the condo education fund to set up a brand new bureaucracy of people who know nothing about condominiums or understand HRS 614B – this is a waste of the funds that condo owners have to pay into the fund. • The ombudsman program on other states (Nevada, Colorado, Florida, Del) are not working to resolve disputes. • The provision in this bill talk about reviving the “condo Court” that was a temporary program about 10 years ago that was an utter failure and total waste of time and money.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 8:38 PM
To: CPCtestimony
Cc: buddymatic@gmail.com
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017
Testimony for CPC on Jan 31, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Lewis F Morris	Individual	Oppose	No

Comments: The ombudsman program on other states (Nevada, Colorado, Florida, Del) are not working to resolve disputes. The provision in this bill talk about reviving the “condo Court” that was a temporary program about 10 years ago that was an utter failure and total waste of time and money.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 7:22 PM
To: CPCtestimony
Cc: arbeit@hawaiiantel.net
Subject: Submitted testimony for HB35 on Jan 31, 2017 14:00PM

HB35

Submitted on: 1/30/2017
Testimony for CPC on Jan 31, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Wendy Arbeit	Individual	Oppose	No

Comments: I am strongly opposed to this bill, especially section 514B, relating to board members being required to submit a financial disclosure. This section is overly intrusive and will make finding board members almost impossible.

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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 29th Legislature
Regular Session of 2017

RE: Testimony supporting HB35

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

As an owner of multiple condominiums and one that has fought for homeowners rights from the outside looking in and also from the inside looking out as a board member I can testify to the urgent need of a fair, unbiased authority that is empowered to bring reason to the many unreasonable acts suffered at the hands of the industry. Management Companies , CPA's , Lawyers and other service providers to condo properties and condo owners are all FOR PROFIT entities thus their well being must and does come first not that of the condo homeowner.

It is my desire as well as others I am certain over the next weeks to share with you just some of the stories of an " Industry out of Control ".

Mahalo,
John White Sr.

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 5:46 PM
To: CPCtestimony
Cc: ekjos@yahoo.com
Subject: *Submitted testimony for HB35 on Jan 31, 2017 14:00PM*

HB35

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Ellen Kjos	Individual	Oppose	No

Comments:

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LATE

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Re: Testimony Regarding HB 35 and HB 177

HEARING DATE: Tuesday, January 31, 2017
TIME: 2:00 PM
PLACE: Conference Room 329
BY: Richard S. Ekimoto
(808) 523 0702

Chair Angus L.K. McKelvey and Members of the Committee,

My name is Richard Ekimoto and I am a condominium unit owner and I am also an attorney representing associations. I write in opposition to these bills. Since I know that my law partner and the Legislative Action Committee of Community Associations institute have already submitted testimony on these bills, I will not repeat their concerns. Instead, I wish to point out how these bills incorrectly assume that Boards of Directors are acting improperly and how they will increase the cost of ownership for everyone.

Polls have consistently shown that the vast majority of owners in associations are happy with their associations and that boards of directors try to act properly. What people sometimes forget is that Boards of Directors are in a difficult situation. One owner might complain that the Board is enforcing the governing documents against them and they feel that it is not right. At the same time, another owner is threatening to sue the Association or the Board because they are not enforcing the rules against that owner. Navigating these competing interests are difficult enough without subjecting board members and associations to the additional expenses of dealing with investigations or claims of discrimination. Moreover, board members are also owners and are subject to the same financial decisions as all the other owners. When a Board of Directors finds it necessary to borrow funds (after obtaining a vote in favor of it by at least 50% of the owners) or increase assessments, they have to pay for it just like the other owners. The bills' assumption that board members are borrowing funds or increasing assessments for no good reason does not make sense since they pay it just like all the other owners.

The most remarkable thing to me is that there is already a mechanism for owners to address perceived issues with board conduct and it is extremely effective. Every year, owners get to elect directors. If an owner has a legitimate complaint, they are able to get elected and can usually change the composition of the Board. If they aren't able to do that, it is almost always because most of the other owners don't agree with them.

Not only is there already an existing mechanism to address the perceived issues with association boards, each of the bills are going to cost associations and owners money. This is money that will come out of my pocket as an association member as well as every other condominium owner. Condominium associations have one major source of funds and it's from its members. If passed, these bills would require associations to respond to the office of condominium complaints and

Re: Testimony Regarding HB 35 and HB 177
House Committee on Consumer Protection and Commerce
Page 2

enforcement (HB35) or allegations that an owner has been discriminated (HB177). It makes no sense to impose these substantial expenditures and costs when there is no justification and there are existing mechanisms to address owner issues.

With respect to HB35, I have the following additional comments: The legislature should not be mandating special meetings for borrowing. The law already requires approval of 50% of the owners to borrow after having been informed of the purpose. Actually, more people have an opportunity to weigh in when the vote is taken by written consent. Usually, only a relatively small number of owners attend meetings in person, so you get more participation by written consent. If 50% of the owners vote to borrow the funds, they should not be required to have a meeting to discuss it because certain owners disagree with the owners' decision. Democracy means that you might lose a vote. In addition, preventing an association from collecting assessments while a dispute is pending could mean serious financial problems for associations unable to attend to safety and emergency situations, pay judgments, loans or other contractual obligations.

With respect to HB177, I have the following additional comment. The legislature should not be treating the rights of homeowners the same as the rights to be free from discrimination because of race, religion and other protected classes. Under civil rights laws, people are entitled to special protections because the State of Hawaii has recognized a unique concern with people's civil rights under discrimination laws. That's why those laws prohibit discrimination and retaliation. Even in the civil rights context, complainants sometimes make false accusations or makes claims solely to negotiate a settlement that is not warranted by the facts and the law. The State of Hawaii has made a policy decision that the risk of those false claims are warranted because civil rights is such an important issue. The same is not true here. As noted above, owners already have a mechanism to address their concerns. There is no evidence that there is widespread violation of owners rights and this bill will just mean that all the other owners in a project will have to pay to settle more cases.

Thank you for this opportunity to testify in opposition to these bills.

Richard S. Ekimoto

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WITH EXPRESSIONS OF CONCERN AND QUESTIONS
HB 35, RELATING TO CONDOMINIUMS

LATE

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

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Rep Linda Ichiyama, Vice Chair
and Members

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Depending on the answers to these questions and/or concerns, HB 35 may need to be further amended to make clear certain provisions of the proposed law.

Thank you for doing this. Finally, homeowners will have a place to go to have their complaints heard and investigated without the costs of Mediation and/or Arbitration. Association of Apartment Owner Boards of Directors have property managers, lawyers, and association funds to represent them in handling complaints. Homeowners don't have these resources without personal costs. Thus, the Office of Condominium Complaints and Enforcement may bring a balanced process for addressing complaints.

Please adopt HB 35 with necessary amendments to address the unclear provisions as noted earlier.

Mahalo for the opportunity to comment.

(by on-line testimony)

MARILYN L. KHAN
Homeowner, Moana Pacific