

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 1, 2017 9:38 AM  
**To:** CPCtestimony  
**Cc:** richard.emery@associa.us  
**Subject:** Submitted testimony for HB649 on Feb 2, 2017 15:00PM

**HB649**

Submitted on: 2/1/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard Emery	Associa	Oppose	No

Comments: We oppose this Bill and support HB244 as a better alternative.

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

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**LATE**



P.O. Box 976  
Honolulu, Hawaii 96808

January 31, 2017

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

Re: HB 649-OPPOSE

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

I am a member of the Community Associations Institute Legislative Action Committee. CAI strongly opposes HB 649.

HB 649 dramatically departs from the pay first, dispute later principle that is essential to the efficient and effective functioning of condominiums. CAI is concerned about any such departure.

CAI has been able to support a different bill, HB 244, because that bill is narrowly tailored and carefully crafted, the process to be followed is clear and the impact on the finances and operations of condominiums should be manageable.

HB 649 altogether lacks the virtues of HB 244. HB 649 is vague, lacks objective standards and timelines and is otherwise extremely objectionable.

It appears, for example, that the owner might avoid the payment of legal fees simply by never initiating an action or proceeding to determine the validity of those fees. That would be ruinous to associations, and completely unwarranted.

Community Associations Institute, by

*Philip Nerney*

For its Legislative Action Committee

January 31, 2017

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

Re: **Support for the Concepts Contained in HB649**

Dear Chair McKelvey and Vice Chair Ichiyama:

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

I submit this testimony in support of the concepts contained in HB649; however, I respectfully submit that the language contained in HB244 should be the vehicle for this measure. Therefore, HB649 should be deferred and HB244 should be advanced.

Thank you for your consideration.

Very truly yours,



Christian P. Porter

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, January 27, 2017 9:17 AM  
**To:** CPCtestimony  
**Cc:** mrckima@gmail.com  
**Subject:** Submitted testimony for HB649 on Feb 2, 2017 15:00PM

**HB649**

Submitted on: 1/27/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marcia Kimura	Individual	Support	No

Comments: I am in favor of this measure, because although the bill still does not prevent unreasonable continued legal fees applied to specific cases, it at least suspends the demand for immediate payment until resolution procedures take place.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, January 28, 2017 9:50 AM  
**To:** CPCtestimony  
**Cc:** mrckima@gmail.com  
**Subject:** Submitted testimony for HB649 on Feb 2, 2017 15:00PM

**HB649**

Submitted on: 1/28/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marcia Kimura	Individual	Support	No

Comments: I am completely in support of this measure, but another measure to limit the influence and participation of attorneys in condo association administration is sorely needed.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, January 30, 2017 9:12 AM  
**To:** CPCtestimony  
**Cc:** mrckima@gmail.com  
**Subject:** Submitted testimony for HB649 on Feb 2, 2017 15:00PM

**HB649**

Submitted on: 1/30/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marcia Kimura	Individual	Support	No

Comments: Among the grossly unfair legislation against condo owners, the measure requiring that no more than 25% can be charged by collection attorneys, yet excluding this stipulation for condo association attorneys, must be considered the worst. This unlimited opportunity to gouge owners is probably the single factor causing an owner to lose his/her home. There is no justification for unlimited legal charges against a homeowner whose property often would not be in foreclosure or lien status, were it not for these monstrous legal fees. Why should attorneys be so involved in the collection proces; this is a Board function. It's time to return common decency in making every effort towards a condo owner's maintaining ownership of property, or at least avoiding personal financial devastation!

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

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

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

Rep. Henry J.C. Aquino  
Rep. Beth Fukumoto  
Rep. Ken Ito  
Rep. Calvin K.Y. Say  
Rep. Chris Todd  
Rep. Ryan I. Yamane  
Rep. Gregg Takayama

RE: **Testimony In Support of HB 649**, Relating to Association Legal Fees

Aloha:

1. I testify in favor of House Bill 649.
2. Hawaii collections attorneys are generally held to receiving no more than 25% of proceeds they may recover as compensation for their time. An exemption is made however for condo collections attorneys and they are free to charge amounts which greatly exceed whatever amounts they might recover from a condo owner. This disparate treatment of attorneys is unfair and if a condo owners chooses to dispute the appropriateness of what a condo collections attorney is charging, this amount should NOT be added to their maintenance fees debt.
3. In more than eight years serving on our Board of Directors at Makaha Surfside I've seen time and again where a persons 'debt' to an association more than triples after attorneys jump into it. In my opinion associations should avail themselves of Small Claims Court. I have several friends who lost their condos to this swamp of fees.
4. Please vote in favor of and pass House Bill 449.

Respectfully, **Dale A. Head**

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

*(808) 696-4589 home (808) 228-8508 cell sunnymakaha@yahoo.com*

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

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, January 30, 2017 9:53 AM  
**To:** CPCtestimony  
**Cc:** pennym@hmcmtg.com  
**Subject:** Submitted testimony for HB649 on Feb 2, 2017 15:00PM

**HB649**

Submitted on: 1/30/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Penelope Munroe	Individual	Oppose	No

Comments: Delay of payment attributable to a single unit places an undue burden on the whole, who are unfairly expected to pay without any expectation of relief or return of funds.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, January 30, 2017 10:20 AM  
**To:** CPCtestimony  
**Cc:** piercel001@netscape.net  
**Subject:** Submitted testimony for HB649 on Feb 2, 2017 15:00PM

**HB649**

Submitted on: 1/30/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

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

Comments: I support this bill, and that attorneys should not receive more than 25% of proceeds. They should be held to the amount that collection attorneys receive and not pad their pockets at the cost of a owner.

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ichiyama2 - Brandon

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From: mailinglist@capitol.hawaii.gov  
Sent: Monday, January 30, 2017 4:09 PM  
To: CPCtestimony  
Cc: makahababy@aol.com  
Subject: \*Submitted testimony for HB649 on Feb 2, 2017 15:00PM\*

**HB649**

Submitted on: 1/30/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sara Perry	Individual	Support	No

Comments:

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January 31, 2017

Aloha

1. I testify in favor of house bill 649

2. Hawaii collections attorneys are generally held to receiving no more than **25%** of proceeds they may recover as compensation for their time. An exemption is made however for condo collections attorneys and they are free to charge amounts which greatly exceed whatever amounts they might recover from a condo owner. This disparate treatment of attorneys is unfair and if a condo owner chooses to dispute the appropriateness of what a condo collections attorney is charging, this amount should **NOT** be added to their maintenance fees debt.

I've seen time and again where a persons 'debt' to an association more than triples after attorneys jump into it. In my opinion associations should avail themselves of Small Claims Court. I have several owners in Makaha Surfside in Waianae have lost their condos to this swamp of pyramiding fees. As 'legal fees' are not maintenance fees, from a consumer perspective, they can be seen as 'fabricated debt', in my opinion.

**4. Please vote in favor of and pass House Bill 649.**

Respectfully, **Margaret A Baker**

Owner at Makaha Surfside in Waianae, Unit C-224 since 2009

(425)432-1806 cell margaretann baker @yahoo.com

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, January 31, 2017 10:38 AM  
**To:** CPCtestimony  
**Cc:** harveym003@hawaiiantel.net  
**Subject:** Submitted testimony for HB649 on Feb 2, 2017 15:00PM

**HB649**

Submitted on: 1/31/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
William Harvey	Individual	Support	No

Comments: 1. I testify in favor of House Bill 649. I too have seen outrageous inflation of debts due by a condo owner after the association lawyer(s) start adding their fees for every thing they can think of: Reviewing docs, answering phone calls, sending emails, and of course, court appearances. In most cases, a simple filing in small claims court would allow the defendant to present his case as to whether or not the claims were valid, and at a much lower potential cost to him/her.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, January 31, 2017 3:38 PM  
**To:** CPCtestimony  
**Cc:** dabodysurfer@hotmail.com  
**Subject:** Submitted testimony for HB649 on Feb 2, 2017 15:00PM

**HB649**

Submitted on: 1/31/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Derek Cabral	Individual	Comments Only	No

Comments: Please support this bill.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, January 31, 2017 1:51 PM  
**To:** CPCtestimony  
**Cc:** aycockburr@aol.com  
**Subject:** Submitted testimony for HB649 on Feb 2, 2017 15:00PM

**HB649**

Submitted on: 1/31/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Virginia Aycock	Individual	Support	No

Comments: I support HB649, as an owner at One Waterfront Towers. It's really not fair for Association Boards to collect fees prior to a determination of guilt. Arbitration or small claims court should speedily help decide the issues, rather than relying on expensive attorneys, and then whatever is owed, if anything, should be paid. I agree with a previous testifier, ... 'legal fees' are not maintenance fees, from a consumer perspective, they can be seen as 'fabricated debt'. Please vote in favor of and pass House Bill 649.

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**LATE**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, January 31, 2017 9:06 PM  
**To:** CPCtestimony  
**Cc:** apices42323@mypacks.net  
**Subject:** Submitted testimony for HB649 on Feb 2, 2017 15:00PM

**HB649**

Submitted on: 1/31/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Milica Barjaktarovic	Individual	Support	No

Comments: I support this bill because attorneys' fees are incredibly high and unwaranted, and make owners lose their property. It seems intentional that everything that owners do should require an attorney, and that property management companies pay their attorneys out of AOA money to fight the owners. It is a scam that hurts owners and Hawaii economy at large, and prevents ordinary people from owning property in Hawaii. Is that intentional? This is especially worse because of huge special assessments put by management companies and corrupt boards, and if you do not pay them, they take your unit away.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 1, 2017 10:32 AM  
**To:** CPCtestimony  
**Cc:** alohajoni@hawaii.rr.com  
**Subject:** Submitted testimony for HB649 on Feb 2, 2017 15:00PM

**HB649**

Submitted on: 2/1/2017

Testimony for CPC on Feb 2, 2017 15:00PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joni Larson	Individual	Support	No

Comments: This Bill needs to be enacted as Homeowner Organizations are not adhering to governing by 421J and starting to create their own rules with regard to lien provisions on private property. Property rights are not being protected under 421J due to rogue Board members. Please advance this HB 649. I'm in Maui so I cannot attend but would if you were in Maui.

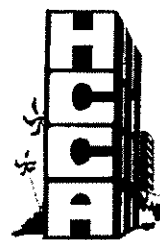
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**Hawaii Council of Associations  
of Apartment Owners**  
**DBA: Hawaii Council of Community Associations**  
1050 Bishop Street, #366, Honolulu, Hawaii 96813



February 1, 2017

**LATE**

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

Re: Testimony in Support of  
HB649 RELATING TO ASSOCIATION LEGAL FEES  
Hearing: Thurs., February 2, 2017, 3 p.m., Conf. Rm. #329

Chair McKelvey, Vice-Chair Ichiyama and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA). This organization represents the interests of condominium and community association members.

HCAAO supports the intent and purpose of this bill and requests that you pass it.

If you have any questions, please feel free to contact me. Thank you for the opportunity to testify on this matter.

Jane Sugimura  
President

**TESTIMONY IN SUPPORT OF HB649 –**  
**RELATING TO ASSOCIATION LEGAL FEES**

**LATE**

House Committee on Consumer Protection and Commerce – Room 329

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

February 2, 2017 at 3:00 p.m.

The Legal Aid Society of Hawai'i (Legal Aid) submits testimony in support of HB 649 – Relating to Association Legal Fees. For Legal Aid, my name is Dan O'Meara and I am the Managing Attorney of Legal Aid's Asset Protection Unit, a unit that provides legal assistance in housing, foreclosure, fair housing, consumer, and tax issues.

HB 649 can provide a much needed mechanism for an owner of a property in an association to dispute fees with one minor change to HB 649:

The suggested change is to add the word "mediation" before the word arbitration on line 6 of page 1 of the bill and line 20 on page 3 of the bill.

This one small addition will mean that an owner can pay the disputed amount of the association fees or assessments (leaving the reasonableness of attorney's fees to be determined) without the need to file a court case or arbitration, but can simply attempt to mediate. Without the change, the proposed language of the bill would require that an arbitration or court case be filed as a precursor to mediation. Based on that one small change, our testimony is as follows:

The current law requires that in order to mediate a dispute on any assessment, the owner must first pay the entire amount disputed, including all attorney's fees. The effect of current law is that even if an owner has a legitimate dispute regarding fees or assessments charged, the cost to dispute becomes prohibitive because of attorney's fees.

We have seen many instances in which the dispute is for fees or assessments totaling \$1,000, \$2,000, \$3,000 or \$4,000. However, we have also seen the attorney's fees be 2, 3, 4 or 5 times the amount in dispute. One client owed \$3,000, but the attorney's fees were an extra \$12,000. The \$3,000 was an amount they could have paid to dispute, but they could not afford to pay \$15,000 all at once to be able to enter into mediation.

An association may tell you that the size of the disputed amount does not correlate to the cost to collect. And that can be true. What it ignores is whether the association is making a prudent decision in its fiduciary role on behalf of all owners to pay \$5,000 or more to try to collect \$1,000. It is easy for an association to simply charge an owner whatever it takes because the attorney's fees will be part of what is recovered from the owner, through a lien for the unpaid fees and assessments. A bank might take a different approach in deciding to incur large attorney's fees to collect a debt because they are not assured they can collect anything on an unsecured loan. A bank may make a business decision that it does not make sense to pay \$5,000 or \$6,000 to collect \$1,000. The association has the luxury of using an owner's equity to assure collection, regardless of the cost.

What HB649 provides is a tool to determine what reasonable attorney's fees are. Right now association attorneys can only charge reasonable attorney's fees, but reasonable is determined simply by how much the association is charged by the attorneys, not by any independent criteria.

In a lawsuit on a contract (assumpsit) the prevailing party is permitted to collect reasonable attorney's fees. In certain landlord tenant cases, the attorney's fees are limited to 25% of unpaid rent, or reasonable attorney's fees if the lawsuit is about matters other than rent. However in each such instance in which a party is entitled to payment of reasonable attorney's fees, there is either a Court making a finding that the attorney's fees are reasonable or the parties negotiate a settlement addressing attorney's fees. There is oversight of what is reasonable – either the Court determines reasonable or the parties negotiate their own determination of reasonable. Not so with an association.

With the current law regarding association attorney's fees, the owner cannot dispute the reasonableness of the attorney's fees without first paying all of the dispute association fees or assessments AND all of the attorney's fees.

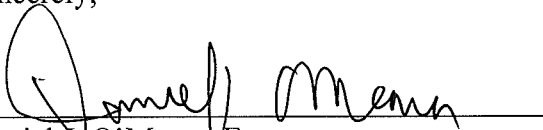
HB649 at least provides a means by which an owner can mediate their dispute with an association without first having to also pay attorney's fees.

HB649 would not open the floodgates to mediation. If an owner is not paying their fees or assessments simply because they cannot afford the payments, then they are unlikely to be able to pay those same amounts to mediate a dispute, when their dispute is simply affordability.

HB649 should not have a dramatic impact on well-run associations who deal with their owners fairly and openly and do not charge inappropriate fees and assessments. But if an owner has a genuine dispute about fees or assessments, HB649 will at least make the dispute affordable.

Thank you for this opportunity to provide testimony.

Sincerely,



Daniel J. O'Meara, Esq.  
Managing Attorney, Asset Protection Unit  
Legal Aid Society of Hawai'i

*The Legal Aid Society of Hawai'i is the only legal service provider with offices on every island in the state, and in 2016 provided legal assistance to over 8,500 Hawai'i residents in the areas of consumer fraud, public assistance, family law, the prevention of homelessness, employment, protection from domestic violence, and immigration. Our mission is to achieve fairness and justice through legal advocacy, outreach, and education for those in need.*

**LATE**

I am an owner at Makaha Surfside in Waianae who strongly supports HB649. Condominium owners who challenge the board on issues in an effort to improve governance for all condominium owners are sometimes threatened with legal fees by those in control of the HOA. I was made aware of this practice fairly recently and was surprised that such behavior is possible under current laws. This practice is unfair both because it can be used as a weapon to deter legitimate efforts by an owner to exercise his or her rights and because the legitimacy of the legal fees is not proven before they are included in assessments. The fees can be significant and pose a great financial burden upon the person who is assessed. Thank you for considering my testimony.

Richard Magnusen

Cell : 562-537-5614

Email: [mergeist@gmail.com](mailto:mergeist@gmail.com)

February 1, 2017

Hearing Date: February 2, 2017

Time: 3:00 PM

Place: Conference Room 325

**LATE**

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

**RE: Testimony for Support of HB 649** , Submitted by John White Sr.

[jwhite888@gmail.com](mailto:jwhite888@gmail.com)

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

I believe there needs to be a total rethink of what financial charges may be imposed upon a homeowner that would put that homeowner at risk of losing their very home with the exception of not maintaining their Association Maintenance Fee's obligations . Out of control collection fees ( which are not permitted for any other debt ) as well as unadjudicated " crimes against an association " should not lead to one losing their HOME.

**LATE**

January 31, 2017

RE: Testimony in Support of HB 649

To Whom It May Concern:

I am an out of State owner of two properties located at Makaha Surfside In Waianai, Hi and have personal knowledge of what I consider to be power based abuses imposed by past Homeowners Associations. The above referenced properties were purchased in year 2005.

Approximately 6 years ago I myself was involved in a dispute with the HOA Hawaii First to which I believed myself to be legitimately disadvantaged for the most part by an HOA Board that simply refused to respond to my many certified written efforts to clarify our dispute. The latter focused on the amount of dues owed given that I had a one point overpaid. The response to my multitude of communications was always to send me printouts of payments for years past. These were so poorly organized that even attorneys and my CPA could not understand them. I continued to send correspondence explaining my dilemma and was repeatedly ignored. Instead I found myself dealing with their attorneys who were just as unconcerned and who unscrupulously charged outrageous fees that increased my final payment by thousands. Desperate and defeated I paid all that was demanded.

Again years ago a substantial assessment was imposed on all owners based on what we understood to be in support of a loan incurred for the purpose of extensive improvements on the subject property. We paid the extra dues for years but to my knowledge the purported improvements did not take place.

I respectfully request that you support and vote for HB 649.

Rosemarie McElhaney  
Owner Makaha Surfside  
Units C-239 & A-304

(714) 970-2073