

SB 2054

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums; Associations; Unit Owners; Cure of Default; Disputed Charges; Common Expense Assessments

Clarifies the process, including payment obligations, mediation requirements, and triggers for further default, where a condominium unit owner and association reach a payment plan to resolve a nonjudicial foreclosure.

Description: Establishes procedures that provide condominium owners with the right to submit disputed legal fees, penalties or fines, late fees, lien filing fees, or other charges, except for common expense assessments, to the mediation process prior to payment.

Companion: [HB1873](#)

Package: None

Current Referral: CPH, JDC

Introducer(s): BAKER, ESPERO, GABBARD, GALUTERIA, INOUE, S. Chang, Harimoto, Ihara, Kim, Shimabukuro



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



February 2, 2018

Sen. Rosalyn Baker, Chair
Sen. Jill Tokuda, Vice-Chair
Senate Committee on Commerce, Consumer Protection & Health


Re: Testimony in support of
SB2054 RELATING TO CONDOMINIUMS
Hearing: Wed., Feb. 7, 2018, 10 a.m., Conf. Rm. #229

Chair Baker, Vice-Chair Tokuda and Members of the Committee:

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

HCAAO supported this bill when it was part of HB1499 and will continue to do so. This bill provides important safeguards to unit owners so that they do not lose their homes to foreclosure while ensuring that the Association is able to collect its maintenance fees. With respect to the "pay now and dispute later", this bill clarifies that only the maintenance fee assessments as that term is defined in the statute needs to be paid before the unit owner can dispute (in mediation or arbitration) the late charges and legal fees. For these reasons, we respectfully request that that you pass this bill without amendments.

Thank you for the opportunity to testify on this matter.


Jane Sugimura
President

SB-2054

Submitted on: 2/4/2018 11:59:21 AM

Testimony for CPH on 2/7/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Hawaiian Affairs Caucus, DPH	Support	Yes

Comments:

Support SB2054. Finally, I feel the introducers of this measure have heard the voice of condominium homeowners. Agree with the need to pay for common expenses and to provide for use of mediation for all other penalties or fines, late fees, lien filing fees, or other charges in an assessment. Such change in law would benefit all, since condominium boards, in carrying out their fiduciary responsibilities, find themselves in a difficult position when law requires these penalties or fines to be satisfied before curing a default. The changes proposed would help the Association and homeowners to find a middle ground, thus, allowing for better negotiations to settle these penalties or fines, and to mitigate the adverse outcome of lost of home and becoming homeless.



P.O. Box 976
Honolulu, Hawaii 96808

February 5, 2017

Sen. Rosalyn Baker, Chair
Sen. Jill Tokuda, Vice-Chair
Senate Committee on Commerce, Consumer Protection & Health

Re: Testimony in SUPPORT of SB 2054 RELATING TO CONDOMINIUMS
Hearing: Wed., Feb. 7, 2018, 10 a.m., Conf. Rm. #229

Chair Baker, Vice-Chair Tokuda and Members of the Committee:

This testimony is submitted on behalf of the Community Associations Institute ("CAI"). CAI supports SB 2054, *in its current form*, for reasons stated herein.

SB 2054 derives from a 2017 bill (HB 1499 HD1 SD2) that CAI was able to support in its *final* form. CAI notes that SB 2054 excludes parts of former HB 1499 HD1 SD1. Those excluded parts are reflected in SB 2060.

SB 2054 has been controversial within the condominium community, because it alters a fundamental doctrine. Condominium law is premised on an obligation to "pay first, dispute later" because money is the *lifblood* of every association.

Condominiums simply could not function if owners could withhold payment of common expense assessments.

SB 2054 alters the "pay first, dispute later" doctrine under certain specific circumstances. CAI is able to support SB 2054 in its current form only because it is carefully crafted, and the exception to "pay first, dispute later" is narrowly tailored.

The exception to "pay first, dispute later" in SB 2054 relates to disputed "attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charges, except common expense

Honorable Roy Takumi
Honorable Linda Ichiyama
February 3, 2018
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assessments[.]” It is worth noting that there are meritorious reasons to refrain from creating this exception.

For one, condominiums are not businesses for profit. Owners pay all the expenses of the association. Attorneys’ fees and costs, lien filing fees, and the like are actual expenditures from the common fund of an association.

Innocent owners should not be obligated to pay expenses caused by the default and/or misconduct of other owners. Stated differently, one consumer should not be obligated to pay the just debt of another consumer.

Also, owners should not be incentivized to engage in disputes. The common fund of an association is depleted by things like legal expense.

The availability of the condominium education trust fund to subsidize the cost of accessing professional mediation services for condominium disputes, however, lessens the burden imposed by SB 2054’s mediation requirement. CAI supports the use of mediation.

The great benefit of SB 2054 is that it allows owners due process when they contest fines or legal fees related to fines thus preventing misunderstandings or abuse. The specific mediation mechanism in SB 2054 is not unduly onerous and it cannot readily be used as a means for substantial mischief. The mediation requirement adds a responsibility to covenant enforcement, but in a manageable and reasonable fashion.

CAI supports SB 2054, in its current form.

Community Associations Institute, by

Richard Emery

For its Legislative Action Committee

SB-2054

Submitted on: 2/5/2018 12:44:06 PM

Testimony for CPH on 2/7/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Anne Anderson	Anderson Lahne & Fujisaki LLP	Oppose	No

Comments:

Dear Senator Rosalyn H. Baker, Chair, and Senator Jill N. Tokuda, Vice Chair, and Members of the Committees:

I OPPOSE the proposed change to HRS Section 514B-105(c) as set forth in Section 3 S.B. 2054. The change to this section will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents.

HRS Section 514B-105(c), as currently written in the law, allows for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the

change to HRS Section 514B-105(c) will prejudice associations by impairing their ability to collect sums due. Finally, many associations have amended their governing documents by a vote of the membership to give the association the authority to apply payments in accordance with an application of payment policy. The changes to HRS Section 514B-105(c) will have the effect of substantially impairing contract rights.

Finally, I oppose the change in Section 4 which allow an owner to delay payment of fines late fees, lien filing fees, and other charges, except common expenses, while the matter is mediated. This could be used by delinquent owners as a delay tactic in making payment of sums due and owing, requiring all of the other owners to make up the shortfall.

For these reasons, I urge the committee to strike Section 3 and the pertinent portion of Section 4 from S.B. 2054.

Sincerely,

M. Anne Anderson

SB-2054

Submitted on: 2/5/2018 1:29:35 PM

Testimony for CPH on 2/7/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lila Mower	Hui `Oia`i`o	Support	No

Comments:

Support but with the following comments regarding **514B-146 Association fiscal matters; lien for assessments**, under Part III, Section 4:

For clarity, please add the phrase, "from the association" as indicated below in the following section (g) A unit owner who contests the amount of any attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charges, except common expense assessments, may make a demand in writing for mediation on the validity of those other charges. The unit owner has thirty days from the date of the written statement requested **FROM THE ASSOCIATION** pursuant to subsection (d) to file demand for mediation on the disputed charges, other than common expense assessments. If the unit owner fails to file for mediation within thirty days of the date of the written statement requested **FROM THE ASSOCIATION** pursuant to subsection (d), the association may proceed with collection of the other charges..."

Then, the last line sentence in the same proposed aforementioned section (d) **is unfair to owners**. The sentence, "The mediation shall be completed within sixty days of the unit owner's request for mediation; provided that if the mediation is not completed within sixty days or the parties are unable to resolve the dispute by mediation, the association may proceed with collection of all amounts due from the unit owner for attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charge that is not imposed on all unit owners as a common expense," suggests a presumption that a delay in the mediation process is caused by an owner, however that is not in the experience of some owners in Hui `Oia`i`o and as reported in many of the DCCA's REC Hawaii Condo Bulletins. Allegedly many delays in mediation are caused by associations. And many mediation cases are reported by the DCCA as "board declined mediation."

SB-2054

Submitted on: 2/5/2018 2:28:34 PM

Testimony for CPH on 2/7/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Philip L. Lahne	Anderson Lahne & FujisakiLLP	Oppose	No

Comments:

SB-2054

Submitted on: 2/3/2018 1:15:51 AM

Testimony for CPH on 2/7/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Deborah Ramirez		Support	No

Comments:

SB-2054

Submitted on: 2/3/2018 11:01:43 AM

Testimony for CPH on 2/7/2018 10:00:00 AM

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

Comments:

The main reason I am in support of this measure is the provision for owners to dispute all principal non maintenance fees, fines or charges BEFORE paying them. This should have been established years ago, and the unfair status quo requirement that owners pay up front for so many unfair, incorrect or fraudulent charges, and dispute them after payment is extremely unfair. The tendency is for management to prevail in litigation or mediation with those non principal charges, while owners are at risk for home loss due to unfair charges. Legislators, please do the right thing and support this bill yourselves!

SB-2054

Submitted on: 2/3/2018 10:00:24 PM

Testimony for CPH on 2/7/2018 10:00:00 AM

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

Comments:

This is a good bill. Presently too many owners are subjected to arrogance and bullying by predatory property management companies.

SB-2054

Submitted on: 2/4/2018 6:09:29 AM

Testimony for CPH on 2/7/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lourdes Scheibert	Condo Owner	Support	No

Comments:

SB-2054

Submitted on: 2/5/2018 2:10:54 PM

Testimony for CPH on 2/7/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Paul A. Ireland Koftinow		Oppose	No

Comments:

Dear Senator Rosalyn H. Baker, Chair, and Senator Jill N. Tokuda, Vice Chair, and Members of the Committee:

I OPPOSE the proposed change to HRS Section 514B-105(c) as set forth in Section 3 S.B. 2054. The change to this section will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents.

HRS Section 514B-105(c), as currently written in the law, allows for application of payment policies so long as the board adopts a policy and distributes it to the owners giving them advance notice of the policy. This has worked well for years and there is no compelling reason for the proposed change. Condominium associations need an effective means of collecting late fees, fines, interest, and attorneys' fees, and application of payment policies have proven to be effective in this regard. If condominium associations are not able to collect these sums via an application of payment policy, owners may have no incentive to pay these amounts when they are assessed to their account. In many cases, these sums will not rise to a dollar amount that would warrant the filing of a legal action to obtain a judgment against the owners, leaving the association with no effective means of collecting these sums if application of payment policies are no longer allowed. Even if the dollar levels warrant the filing of a legal action, the associations will be required to incur additional attorneys' fees in prosecuting those legal actions and collecting on judgments, which could be avoided by having an effective application of payment policy in place. Once owners realize that the Legislature has taken away the ability of their association to apply common expense payments to late fees, fines, attorneys' fees, and interest, they will be less likely to make timely payment of assessments or to promptly cure covenant violations. As a result, the change to HRS Section 514B-105(c) will prejudice associations by impairing their ability

to collect sums due. Finally, many associations have amended their governing documents by a vote of the membership to give the association the authority to apply payments in accordance with an application of payment policy. The changes to HRS Section 514B-105(c) will have the effect of substantially impairing contract rights.

Finally, I oppose the change in Section 4 which will allow an owner to delay payment of fines late fees, lien filing fees, and other charges, except common expenses while the matter is mediated. This could be used by delinquent owners as a delay tactic in making payment of sums due and owing, requiring all of the other owners to make up the shortfall.

For these reasons, I urge the committee to strike Sections 3 and 4 from S.B. 2054 and leave HRS Sections 514B-105(c) and 514B-146, as they exist in law today, intact.

Sincerely,

Paul A. Ireland Koftinow

SB-2054

Submitted on: 2/6/2018 7:47:56 AM

Testimony for CPH on 2/7/2018 10:00:00 AM

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

Comments:

Priority of payments are necessary for condo associations to survive financially. Without them the good owners, those who pay their dues, etc. will be forced to cover the expenses of the bad actors. My association has a policy, it has been provided to all owners. My association also has electric sub metering. HECO sends us a bill and we allocate the expenses among the owners, depending on their individual usage. Some owners have small bills, around \$40.00 monthly. Others use a lot of energy, air conditions on all day, every day, wine refrigeration systems, etc. some bills run as high as \$800.00. We have to collect these fees. As we sub meter, the association pays the HECO bill. If an owner does not pay the association we are out the money. Without priority of payments we could be forced to lay off employees, do deferred maintenance instead of I

keeping the physical plant operating efficiently, etc.

i urge re you to reject this bill. There is no valid excuse for abolishing priority of payments.

lynne matusow

S.B. 2054 – set for hearing 2/7/18 at 10:00 a.m.

Dear Senator Rosalyn H. Baker, Chair, and Senator Jill N. Tokuda, Vice Chair, and Members of the Committees:

I OPPOSE the proposed change to HRS Section 514B-105(c) as set forth in Section 3 S.B. 2054. The change to this section will invalidate application of payment policies adopted by a vast majority of condominium associations in this state. Application of payment policies have been in place for many years and have proven very effective in enabling condominium associations to collect late fees, legal fees, fines, and interest from owners who have failed to timely pay assessments or to comply with their associations' governing instruments. A condominium association's ability to apply payments to late fees, legal fees, fines, and interest before being applied to common expense assessments facilitates the healthy operation of an association while alleviating additional financial burdens on members who timely pay their assessments and comply with the governing documents.

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For these reasons, I urge the committee to strike Section 3 and the pertinent portion of Section 4 from S.B. 2054.

Sincerely,

Primrose K. Leong-Nakamoto
Board of Director

Richard J. Port

1600 Ala Moana Blvd. #3100

Honolulu, Hawaii 96815

Tel 808-941-9624

e-mail: portr001@hawaii.rr.com**Measure:** SB 2054 Relating to Condominiums**Date and Time of Hearing:** Wednesday, February 7, 2018, 8:30 a.m.
Conference room 229**Committee:** Committee on Commerce, Consumer Protection, and Health
Committee on Judiciary

I am testifying in strong support of SB 2054. I have been involved in testifying on condominium bills for more than thirty-five years. Although I have been president or a member of my condominium board for most of those years, I have generally supported legislation in support of owner rights in relation to their Boards because I know that condominium boards exercise great authority through their executive, legislative, and judicial powers.

I support SB 2054 because it both ensures that condo associations will be able to collect owners' maintenance fees, but also ensures that unit owners will have safeguards so that they do not unnecessarily lose their homes through foreclosure. This bill clarifies that assessments will need to be paid before the unit owner can dispute in mediation or arbitration late charges and legal fees.

I appreciate this opportunity to provide my testimony in support of SB 2054 and request that your committee approve SB 2054 as written.

Richard Port