

SB2626

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums; Associations of Apartment Owners; Unit Owners' Association Managing Agents; Functions

Description: Establishes managerial functions in the operation of the property of a managing agent of a condominium. Exempts certain persons from managing agent licensing and registration requirements.

Companion:

Package: None

Current Referral: CPH

Introducer(s): GALUTERIA, INOUYE, KIDANI, Baker, S. Chang, Dela Cruz, K. Kahele, Nishihara, Shimabukuro, Wakai

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Friday, February 23, 2018
10:00 a.m.

TESTIMONY ON SENATE BILL NO. 2626, RELATING TO CONDOMINIUMS.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Nikki Senter, and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). Thank you for the opportunity to testify on S.B. 2626, Relating to Condominiums. The Commission offers the following comments.

S.B. 2626 proposes to amend Hawaii Revised Statutes ("HRS") chapter 514B by adding a new section that would regulate condominium managing agents.

As defined in HRS section 514B-132, condominium managing agents are real estate brokers who are governed by the Hawaii real estate licensing law, HRS chapter 467. Many of the duties listed in S.B. 2626 are duplicative of those listed in HRS section 467-1. The Commission is unclear of the intent of this measure.

If the intent of this measure is to regulate those individuals commonly known as account executives or site managers, a sunrise review is required where new regulations are being considered. HRS section 26H-6 requires that new regulatory measures being considered for enactment be referred to the Auditor for a sunrise analysis. The statute further requires that the analysis shall set forth the probable effects of regulation and assess whether its enactment is consistent with the legislative policies of the Hawaii Regulatory Licensing Reform Act.

Thank you for the opportunity to comment on S.B. 2626.

HAWAII CHAPTER

community

ASSOCIATIONS INSTITUTE

Honorable Rosalyn H. Baker
Honorable Jill N. Tokuda
Committee on Commerce, Consumer Protection and Health
415 South Beretania Street
Honolulu Hawaii 96813

RE: Senate Bill 2626 - Oppose

Dear Chair Baker, Vice-Chair Tokuda and Committee Members

This testimony is submitted on behalf of the Community Associations Institute (CAI). The CAI does not oppose the intent of adding a section in Section 514B regarding Condominium Managing Agents. However, the CAI opposes Senate Bill 2626 in its current form for the reasons stated herein.

Definitions: SB 2626 proposes to add a new section to 514B to define the role and function of a condominium managing agent. However this attempt to define, or even outline, the myriad functions of a managing agent is woefully inadequate. It attempts to provide an arbitrary simplified definition of these roles and it is unclear whether the statutory limitation would supersede a contractual provisions already negotiated and in place in nearly every condominium association in the state. There are well over a thousand condominium projects in the state. Each one is unique and has a managing agent contract custom tailored to the needs and configuration of that project.

Some of these contracts are very limited in scope. For example, there are 'fiscal only' management contracts. There are 'covenants compliance' management contracts. There are 'maintenance management only' contracts. This bill does not mention any of these variants on the managing agent contract.

Some of the other functions performed by the managing agent, not listed or mentioned in the bill, include: handling internal and external communications for the association; working to enhance the 'community spirit' within the complex; handling rules compliance and disciplinary actions on behalf of the Board of Directors; distribution and collection of consent ballots for amendments to the project documents. These are just a few. Also not mentioned is the main function of every board of directors and every managing agent – that of 'preserving, protecting and maintaining the assets of the association.'

The Community Associations Institute supports the concept of adding a section in 514B to establish managerial functions of the managing agent. SB 2626 does not properly define those managerial functions. This bill should be referred to an interim study committee to research the subject and draft a more comprehensive bill for a future session.

Submitted by:

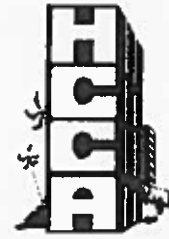
Allen Wilson

Allen Wilson | Vice President
Hawaiiana Management Company, Limited

Member of the Legislative Action Committee
Community Associations Institute, Hawaii Chapter



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



February 21, 2018

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

Re: Testimony in opposition to
SB2626 RELATING TO CONDOMINIUMS
Hearing: Friday, Feb. 23, 2018, 10 a.m., Conf. Rm. #229

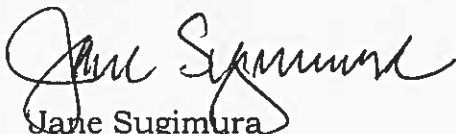
Chair Baker and Vice-Chair Tokuda and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA).

HCCA opposes this bill for the following reasons:

- The duties enumerated in subparagraphs (1) – (11) and (13) are already being performed by managing agents and there is no requirement to make them statutory;
- Also, associations can draft list of duties for their managing agents and make them part of the managing agent's contract for services - there is no reason to codify these duties;
- Subparagraph (12) should not be a "duty" of managing agents - "pre-arbitration demands" should be drafted by association counsel and not by managing agents;
- Subparagraph (13) should not be a "duty" of managing agents. Compliance issues are a board function and the board should be addressing any issues relating to compliance with counsel and not with the managing agent.

Accordingly, HCCA believes that this bill is unnecessary and respectfully requests that you defer action on this bill. Thank you for the opportunity to testify on this matter.


Jane Sugimura
President

SB-2626

Submitted on: 2/21/2018 6:22:43 PM

Testimony for CPH on 2/23/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Testifying for Associa	Oppose	Yes

Comments:

There are many types and sizes to condominium associations. The scope of work is defined by a management contract and may be very limited or expanded in scope. One size does not fit all. SB2626 attempts to mandate the agent's duties when in fact it is the board's duty to define the requirements and make business decisions. Some proposed obligations are outside the ability of a managing agent and might be construed as practicing law. Bill SB 2626 is unnecessary and impractical.

SB-2626

Submitted on: 2/22/2018 6:41:57 AM

Testimony for CPH on 2/23/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lila Mower for Kokua Council	Testifying for Kokua Council	Support	No

Comments:

Studies show that as people age, they often migrate to condos to “downsize” or for the perceived convenience and ease of living in a community which requires less maintenance and upkeep. Thus, Seniors make up a large percentage of the condo population and some condo communities are dedicated entirely to Seniors.

Once there, most seniors prefer to remain in their own condos, unable financially or physically to make moves as younger people can.

Managing agents perform many tasks which affect the enjoyment of life in a condo. But some do not perform those tasks with skill or knowledge and put those Seniors who reside in their managed condos at financial or physical risk. Recent articles* document the average Senior’s limited income while also exposing catastrophic increases in their maintenance fee costs of as much as 50% or special assessments as high as \$85,000**, which could have been avoided with better fiscal management and building maintenance.

The Legislature must protect the most vulnerable of its constituents who live in condos as an accommodation to their personal circumstances and must demand accountability from those who make earn an attractive living managing condominiums. Many managers’ incomes are in excess of \$100,000, not including free residences and annual bonuses.

Kokua Council supports SB2626.

*http://www.aarp.org/content/dam/aarp/research/surveys_statistics/general/2014/ssqf/Social-Security-2014-Hawaii-Quick-Facts-AARP-res-gen.pdf?sf23370444=1 and <http://www.staradvertiser.com/business/business-breaking/paycheck-to-paycheck-living-most-likely-in-hawaii/>

**<http://www.civilbeat.org/2016/05/the-brutal-reality-of-owning-a-condo-in-hawaii/>

SB-2626

Submitted on: 2/21/2018 9:49:50 PM

Testimony for CPH on 2/23/2018 10:00:00 AM

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

Comments:

Government exists to protect its citizens. Based on data provided by the condo industry itself, it is time that the government protects owners and residents from onsite and account managers (“managing agents”) whose performances are less than satisfactory and whose skills and education may be lacking, but have thus far escaped true accountability because they are not required to be licensed.

The condo industry may want to give the impression that their performance is satisfactory, but that is not true for thousands of residents in Hawaii. From the survey, “2016 Homeowner Satisfaction Survey from Community Associations Institute,”

- **More than 1/5th of condominium residents do not think that Community Managers provide value or support.***
- **More than 1/3 of condo residents do not find their overall community association experience as positive.***

Managing agents each manage millions of dollars in real estate and liquid assets but are not held to any standards except that of their employers. And based on recent news reports, one may wonder if those standards may be nonexistent; see <http://khon2.com/2015/10/27/former-ceo-sentenced-for-stealing-from-condo-associations/> and <http://www.hawaiitribune-herald.com/2017/12/08/hawaii-news/ex-vice-chairman-of-commission-wife-indicted-for-theft/>

The lack of protection for such a large percentage of Hawaii’s population is perplexing from a government which requires educational standards of and licensure compliance from the neighborhood barber.

*https://www.caionline.org/AboutCAI/2016%20Homeowner%20Satisfaction%20Survey/HOAsweetHOA_2016_WEB.pdf

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ATTORNEY AT LAW

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February 22, 2018

Senator Rosalyn H. Baker, Chair
Senator Jill N. Tokuda, Vice Chair
Members of the Senate Committee on
Commerce, Consumer Protection, and Health
Twenty-Ninth Legislature
Regular Session, 2018

Re: S.B. 2626
Hearing on February 23, 2018, 10:00 a.m.
Conference Room 229

Dear Chair, Vice Chair and Members of the Committee:

My name is Charles Pear. I am testifying as legislative counsel for ARDA Hawaii.

ARDA Hawaii supports S.B. 2626 with revisions.

Section 514B-132 of the Condominium Act currently requires a managing agent to be licensed as a real estate broker pursuant to Chapter 467, HRS, or a trust company pursuant to Article 8 of Chapter 412, HRS.

S.B. 2626 contains a proposed addition to Chapter 514B. Subsection (a) of the proposed addition lists various functions that may be performed by a condominium managing agent. Section (b) provides an exemption for persons performing clerical or ministerial tasks, as well as property maintenance personnel (e.g., gardeners) from the licensing requirements of Section 514B-132, HRS.

The net result is to expand dramatically the number of managing agent employees who would be required to obtain a license as a real estate broker. For example, the account executives for each condominium would need a real estate broker license. A resident manager would likewise need to be a real estate broker. The accountants and perhaps even the security guards might need a broker license.

This is not the first time that something like this has come before the legislature. According to Report 05-10 of The Auditor of the State of Hawaii (2005):

Senate Bill No. 1454 of the 2003 legislative session proposed to regulate condominium association managers. The Legislature

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Chair, Vice Chair and Members,
Senate Committee on Commerce,
Consumer Protection, and Health
February 22, 2018
Page 2

specifically requested an analysis of this proposal in House Concurrent Resolution No. 204 of the 2005 legislative session. Condominium association managers are defined in the bill as "any person employed or retained by a managing agent for the purposes of managing the operation of the property." Property in this context means that belonging to an association of apartment owners. The Legislature sought to regulate these managers because of concern about their alleged lack of knowledge about condominium laws and operation.

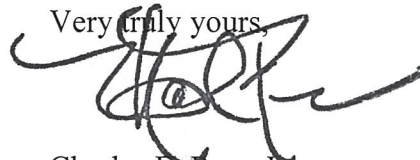
After careful consideration of the issue, the Auditor concluded:

The proposed regulation is unnecessary for several reasons. We found little evidence that condominium association managers have presented a danger to the health, safety, and welfare of the public. Most of the complaints filed at the Regulated Industries Complaints Office related to problems between condominium owners and their boards. In addition, complainants have many remedies available to them. * * *

ARDA Hawaii is not aware of any change in circumstances between the present and the date of the Auditor's report. Accordingly, ARDA Hawaii does not believe that the bill is necessary or wise, and opposes the bill in its present form.

However, ARDA Hawaii does believe that the bill raises an important issue on the extent to which the licensing requirements of the Condominium Act apply to a managing agent's employees and subcontractors, as well as whether managing agents of time share condominiums should be required to hold not only a license as a Plan Manager under the Time Share Act but also a license as a real estate broker under Section 514B-132 of the Condominium Act. Accordingly, ARDA Hawaii respectfully requests that the bill be amended as shown in the attached Exhibit A.

Thank you for your kind consideration of this legislation. I would be happy to take any questions if you think that I may be of some small assistance.

Very truly yours,

Charles E. Pear, Jr.

CEP:kn

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 514B, Hawaii Revised Statutes, is amended by adding a new section to part VI to be appropriately designated and to read as follows:

"§514B- **Managing agents; functions.** The functions that may be delegated to a managing agent retained for the purpose of managing the operation of the property shall include but not be limited to the following:

- (1) Controlling or disbursing funds of the association;
- (2) Preparing budgets or other financial documents for the association;
- (3) Assisting in providing notice of or conducting an association meeting;
- (4) Ensuring compliance with statutory notice requirements;
- (5) Determining amounts due to the association;
- (6) Collecting amounts due to the association before the filing of a civil action;
- (7) Calculating the votes required for quorum or to approve a proposition or amendment;

(8) Completing all forms related to the management of the association that are prescribed by a state agency pursuant to law or rule;

(9) Drafting association meeting notices and agendas;

(10) Calculating, preparing, and responding to inquiries regarding an assessment or estoppel letter or certificate;

(11) Negotiating monetary or performance terms of a contract subject to approval by the association;

(12) Drafting pre-arbitration demands;

(13) Coordinating or performing maintenance of real or personal property and other related routine services involved in the operation of the property; and

(14) Complying with the association's governing documents and bylaws as necessary to perform the functions of a managing agent.

SECTION 2. Chapter 514B, Hawaii Revised Statutes, is amended by amending Section 514B-132 to add new subsections (f), (g), and (h), to read as follows:

(f) The licensing, registration, and bonding requirements of this section shall not apply to:

- (1) Any person employed by a managing agent that is licensed or registered pursuant to this section; or
- (2) Any subcontractor employed by a managing agent that is licensed or registered pursuant to this section.

(g) A managing agent assumes responsibility for all condominium management functions performed by employees or subcontractors of the managing agent that, under subsection (f), are exempt from licensing, registration and bonding requirements of this section.

(h) The licensing requirements of subsection (a) shall not apply to the managing agent of a time share condominium if the managing agent is registered under chapter 514E as the plan manager of a time share plan in such time share condominium.

SECTION 2. Section 514B-3, Hawaii Revised Statutes, is amended by adding a new definition to read as follows:

“Time share condominium” means a condominium project in which time share use is permitted under section 514E-6 and which is the subject of a time share plan registered pursuant to chapter 514E.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: _____

Report Title:

Condominiums; Associations of Apartment Owners; Unit Owners' Association Managing Agents; Functions

Description:

Authorizes delegation of managerial functions in the operation of the property to a managing agent of a condominium. Exempts certain persons from managing agent licensing, registration, and bonding requirements, and requires managing agent to assume responsibility for certain exempt persons.

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(h) The licensing requirements of subsection (a) shall not apply to the managing agent of a time share condominium if the managing agent is registered under chapter 514E as the plan manager of a time share plan in such time share

condominium. ~~— (b) A person shall be exempt from the licensing or registration requirements under section 514B-132 if the person:~~

~~— (1) Performs clerical or ministerial functions under the direct supervision and control of a managing agent licensed or registered pursuant to section 514B-132; or~~

~~— (2) Performs only maintenance functions of the operation of the property and does not assist with any functions enumerated under subsection (a)."~~

SECTION 2. Section 514B-3, Hawaii Revised Statutes, is amended by adding a new ~~amending the definition of~~ "managing agent" to read as follows:

"Time share condominium" means a condominium project in which time share use is permitted under section 514E-6 and which is the subject of a time share plan registered pursuant to chapter 514E."

~~"Managing agent" means any person retained, as an independent contractor, for the [purpose] purposes of managing the operation of the property[.], including performing any of the functions described under section 514B—."~~

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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ATTORNEY AT LAW

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January 22, 2018

Senator Rosalyn H. Baker, Chair
Senator Jill N. Tokuda, Vice Chair
Members of the Senate Committee on
Commerce, Consumer Protection, and Health
Twenty-Ninth Legislature
Regular Session, 2018

Re: S.B. 2626
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SB-2626

Submitted on: 2/20/2018 11:26:23 AM

Testimony for CPH on 2/23/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Harendra Panalal	Individual	Support	No

Comments:

Aloha

I SUPPORT SB2626.

I have lived in Honolulu continuously for well over 40 years.

For many years, I have been on BOD of several large condominiums AOUO.

It is a step towards having complete transparency in all condominium matters.

This will minimize abuses of hard earned money of owners by BOD, management companies, attorneys, etal.

We must restore complete transparency in all condominium affairs.

Mahalo

Harendra Panalal, MSE, PE, RME

Off 792-0455, Home 538-6202, harenp2009@hotmail.com

SB-2626

Submitted on: 2/20/2018 12:04:09 PM

Testimony for CPH on 2/23/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

As a condo owner at 909 Kapiolani and board member I have seen a diverse array of managing agents (3 in the last 9 years). Most have shown a lack of knowledge of our staff and property, causing payment delays to our vendors, collecting amounts due from owners, manging contracts, knowing the governing documents and bylaws of the association, and addressing owner concerns with the management company.

I support SB2626.

Benton Pang

SB-2626

Submitted on: 2/21/2018 9:27:04 PM

Testimony for CPH on 2/23/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Manali-Leonardo	Individual	Support	No

Comments:

I support the bill without revisions. Mahalo, Nancy Manali-Leonardo

SB-2626

Submitted on: 2/21/2018 10:07:16 PM

Testimony for CPH on 2/23/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dale A. Head	Individual	Support	No

Comments:

This is a worthy bill. The condo complex I bought into and resided at for 30+ years, has experienced criminal management. For instance, we had a Resident Manager skimming monies, harassing staff, to include sexual harassment, bullying residents (to include owners, and, we are less than 10% of residents, the rest being tenants), and driving people into giving up and moving out of the complex to escape his amazing acts of misconduct. The fellow took advantage of a mentally incompetent man, getting him to accept him as a trustee for his condo, then kidnapping the old fellow out of the complex and selling his unit for \$130,000 cash.

After having organized a homeowners rebellion to get control of a Board of Directors (fools) who worshipped this scurrilous 'cult leader', the scoundrel sued me with the help of an 'Extortion' attorney. After relieving the association of \$40,000, he was surprised to be tracked down by investigators from the Salt Lake City Police Department, Detectives. They came to Hawaii and arrested him for murder committed in 1997. The victim was Ward Woolverton, in his 70's. The killer, our Resident Manager, was Alan Lee Marx. This fellow Alan confessed to 'manslaughter' and has been jailed for several years in Salt Lake City.

There absolutely must be licensure of condo managers, and, state of Hawaii should not be negligent by allowing criminals to swindle and harass condo residents. As it does now.

This bill should have been part of Hawaii Revised Statutes 514A & 516B WHEN they were promulgated.

SB-2626

Submitted on: 2/22/2018 11:03:42 AM

Testimony for CPH on 2/23/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lourdes Scheibert	Individual	Support	Yes

Comments:

SB-2626

Submitted on: 2/20/2018 3:35:49 PM

Testimony for CPH on 2/23/2018 10:00:00 AM

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

Comments:

I am writing to support this bill. As I see it, if the associations aren't going to allow owners the right to vote on whether or not current management contracts should be terminated, or companies replaced, there should be at least more than one licensed agent who can serve as association managers in any given company; this would make available qualified alternates to those who do not or cannot perform required duties satisfactorily.

SB-2626

Submitted on: 2/20/2018 8:51:12 PM

Testimony for CPH on 2/23/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John Morris	Individual	Comments	Yes

Comments:

My name is John Morris and I am testifying with comments on SB 2626. I spent three years as the Real Estate Commission's first condominium specialist from 1988- 91. Since then, I have practised as an attorney representing associations.

It is not clear why this bill is necessary. For more than 50 years, managing agents have been performing these functions and more without having a laundry list of what they are supposed to be doing.

A more relevant question seems to be why the current licensing law for managing agents requires them to have no training whatsoever before they perform any of these listed functions. Many of managing agents do have training, but not because the law requires them to do so.

It is unclear why this bill: 1) lists many of the important functions managing agents perform without 2) imposing any requirement that they must have any kind of training to perform those functions.

Thank you for this opportunity to testify.

John Morris

SB-2626

Submitted on: 2/22/2018 9:41:15 AM

Testimony for CPH on 2/23/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Christian Porter	Individual	Oppose	No

Comments:

Chair Baker,

We join in HCCA's comments, submitted by Jane Sugimura, in opposition to this Bill. Associations already negotiate a contract that covers the duties noted, if deemed prudent, with a management company. Again, this is a contractual matter between the Association and the management company, and such terms of the contract should not be mandated via legislation.

We respectfully request that this Bill be deferred. Thank you.

Christian Porter

SB-2626

Submitted on: 2/21/2018 1:04:28 PM

Testimony for CPH on 2/23/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
romel pasaoa	Individual	Support	No

Comments:

I strongly support this bill

SB-2626

Submitted on: 2/21/2018 9:59:43 AM

Testimony for CPH on 2/23/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Philip Nerney	Individual	Oppose	No

Comments:

I oppose SB 2626. The testimony submitted on behalf of HCCA contains a good explanation of the basis for opposition.

SB-2626

Submitted on: 2/21/2018 12:58:07 PM

Testimony for CPH on 2/23/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Christine Russo	Individual	Support	No

Comments:

I strongly support HB2072. Animals should not be confined to kennels, ropes, chains, etc. I also agree with all other measures in the bill designed to protect animal welfare.

SB-2626

Submitted on: 2/21/2018 6:22:43 PM

Testimony for CPH on 2/23/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Testifying on behalf of Associa	Oppose	Yes

Comments:

There are many types and sizes to condominium associations. The scope of work is defined by a management contract and may be very limited or expanded in scope. One size does not fit all. SB2626 attempts to mandate the agent's duties when in fact it is the board's duty to define the requirements and make business decisions. Some proposed obligations are outside the ability of a managing agent and might be construed as practicing law. Bill SB 2626 is unnecessary and impractical.

SB-2626

Submitted on: 2/22/2018 4:45:42 PM

Testimony for CPH on 2/23/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
A Denys	Individual	Oppose	No

Comments:

I oppose SB 2626. It has been determined several times in pass sessions that organizations such as CAI and IREM provided sufficient training and designations that individual licsening of property managers was not required. Current requirements under the real estate laws sufficently control managing agents/management companies and their and the AOAO employess via current broker requirements and under HRS514B etc, Mahalo.

warmest aloha

A. Denys