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# HONOLULU TOWER

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**February 21, 2019**

**TESTIMONY ON HB61, HD1, RELATING TO CONDOMINIUMS  
HOUSE JUDICIARY COMMITTEE, FEBRUARY 22, 2019  
via fax 586-9456**

Honolulu Tower is a 396 unit condominium, built in 1982. The Board of Directors of the Honolulu Tower Association of Apartment Owners voted unanimously at its February 4, 2019 meeting to support this bill.

There were unintended consequences when priority of payments were ended in 2018. Electricity is submetered in our condominium, whereby each unit is billed for actual usage. This means that the electric bill is not based on assessments or maintenance fees. Bills range from forty or fifty dollars a month to the hundreds, based on the unit's usage. By eliminating the priority of payments scheme from HRS 514B, Act 195 impairs the ability of AOAOs to collect submetered utility bills. Submetering has been promoted as a means to promote resource conservation, by giving individual residents responsibility to pay for their own utility consumption. In order to collect utility costs, AOAOs may be forced to abandon utility submetering and go back to collecting the utility costs as common expenses.

We need the relief this bill would provide.

Honolulu Tower Association of Apartment Owners  
Board of Directors

**HB-61-HD-1**

Submitted on: 2/20/2019 2:36:34 PM

Testimony for JUD on 2/22/2019 2:05:00 PM

| <b>Submitted By</b> | <b>Organization</b>       | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------------|---------------------------|---------------------------|
| Kevin Agena         | Hawaiian Properties, Ltd. | Support                   | No                        |

Comments:

**HB-61-HD-1**

Submitted on: 2/21/2019 10:33:32 AM

Testimony for JUD on 2/22/2019 2:05:00 PM

| <b>Submitted By</b> | <b>Organization</b>              | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|----------------------------------|---------------------------|---------------------------|
| Richard Emery       | Community Associations Institute | Support                   | Yes                       |

Comments:

This Bill clarifies that a board of directors can establish an application of payments after common expenses and before legal or late fees. In today's electronic world, an owner submits a single check for many types of charges and these payments are applied electronically. We agree that the current law mandating payments first to common expenses and last to legal and late fees is appropriate. This Bill clarifies that an application of payments is allowed under certain circumstances. WE SUPPORT.

**HB-61-HD-1**

Submitted on: 2/20/2019 10:36:11 PM

Testimony for JUD on 2/22/2019 2:05:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Philip Nerney       | Individual          | Support                   | Yes                       |

Comments:

Act 195 (2018) created substantial problems. HB 61 HD1 addresses those problems constructively.

**HB-61-HD-1**

Submitted on: 2/20/2019 3:33:08 PM

Testimony for JUD on 2/22/2019 2:05:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| R Laree McGuire     | Individual          | Support                   | No                        |

Comments:

**HB-61-HD-1**

Submitted on: 2/20/2019 8:41:44 PM

Testimony for JUD on 2/22/2019 2:05:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| John Morris         | Individual          | Support                   | No                        |

Comments:

My name is John Morris and I am testifying in favour of House Bill 61, HD 1. Last year, the law was changed to prohibit priority payment plans that allowed associations to apply payments received in a predetermined priority.

Instead, the law now indicates that payments received from an owner that are less than the full amount owed for maintenance fees, legal fees, late fees, et cetera, can only be applied to common expenses. The law provides no guidance as to how an association can apply surplus payments – i.e., payments received that are over and above the amount of common expenses owed. Unfortunately, the change creates a lot of unnecessary complications and uncertainty if an owner pays more than just common expenses but less than the full amount owed. To avoid violating the law, associations are simply allowing the surplus to sit on the owner's account without applying it to anything specific.

HB 61 helps resolve that problem by allowing associations to apply any surplus received from an owner – i.e. funds received that are more than the common expenses owed – in a particular order. In that way, the original legislative purpose of requiring payments to 1st be applied to common expenses is met, while reducing the confusion of what to do with any surplus.

**HB-61-HD-1**

Submitted on: 2/20/2019 9:33:41 PM

Testimony for JUD on 2/22/2019 2:05:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| lynne matusow       | Individual          | Support                   | No                        |

Comments:

Please accept this testimony as strong support for HB61. I live in a condominium with 396 units. Our electricity has been submetered since the mid 1980s. We buy electricity in bulk from Hawaiian Electric and then bill the units based on their individual consumption. This results in a savings on the electric rate. However, the current law prohibits us from collecting these fees causing us to lose out on funds. These are not a common expense. If the unit owner were paying Hawaiian Electric and they were in default, they could lose service. We cannot do anything because these are not common expenses. We have units where the electric bill, based on their consumption, runs into the hundreds of dollars. It is important that the law be revised, to allow us to collect these as well as other fees.

Attorneys are not united as to whether we can collect these fees as the law is now written. Please clarify the language and do it sooner rather than later. If this bill can be enacted into law before end of session that would really help us out.

I appreciate the amendments incorporated into HD1,

Please accept this testimony as strong support for HB61. I live in a condominium with 396 units. Our electricity has been submetered since the mid 1980s. We buy electricity in bulk from Hawaiian Electric and then bill the units based on their individual consumption. This results in a savings on the electric rate. However, the current law prohibits us from collecting these fees causing us to lose out on funds. These are not a common expense. If the unit owner were paying Hawaiian Electric and they were in default, they could lose service. We cannot do anything because these are not common expenses. We have units where the electric bill, based on their consumption, runs into the hundreds of dollars. It is important that the law be revised, to allow us to collect these as well as other fees.

Attorneys are not united as to whether we can collect these fees as the law is now written. Please clarify the language and do it sooner rather than later. If this bill can be enacted into law before end of session that would really help us out.

I appreciate the amendments made in HD1, allowing a condominium board of directors to determine the manner of application for amounts in excess of common expenses

owed as long as the board has adopted a written application of payment policy rather than statutorily mandating the priority of payments.

We need this relief now.

Lynne Matusow



**HB-61-HD-1**

Submitted on: 2/21/2019 2:00:42 PM

Testimony for JUD on 2/22/2019 2:05:00 PM

| Submitted By                | Organization | Testifier Position | Present at Hearing |
|-----------------------------|--------------|--------------------|--------------------|
| Paul A. Ireland<br>Koftinow | Individual   | Support            | No                 |

Comments:

Dear Chair Lee, Vice Chair San Buenaventura, and members of the Committee:

I SUPPORT this measure (subject to a proposed revision at the end of this testimony) because this measure should resolve much confusion caused by amendments made to Section 514B-105(c), Hawaii Revised Statutes, during the 2018 Session.

Associations have long had the authority to apply payments received pursuant to a priority of payment policy, and this has helped ensure the healthy operation of condominium associations. The collection of unpaid assessments is critical to the healthy operation of condominium associations. In fact, several jurisdictions have recognized the importance of collecting assessments and other amounts owed from individual owners:

“Public policy requires that condominium associations have sufficient power to enforce the collection of assessments; otherwise the association will not be able to continue to function and meet its obligations ***without unfairly burdening the other members of the community.***”

*See, The Ventana Owners Association, Inc. v. Ventana KC, LLC*, 481 S.W.3d 75, 79–80 (Mo. Ct. App. 2015) (emphasis added); *see also, Dunhill Condo. Ass'n, Inc. v. Gregory*, 228 Ga.App. 494, 495, 492 S.E.2d 242, 243 (1997).

Your Committee should, therefore, recognize that when assessments and other amounts are not paid by an association member, this creates an unfair burden on other members in the community who are paying their share of common expense assessments. Furthermore, when the costs of collection are not reimbursed by a delinquent owner, other members will be unfairly burdened with those costs unless and until the association is able to recover its collection costs. This measure will help to alleviate those burdens and will resolve certain issues created by Act 195. For these reasons, I support this measure.

***However***, while I support this measure, I suggest that your Committee **delete the language in the bill which states, "or the payment made is more than the amounts owed under this subsection" (from lines 10 and 11 of H.B. 61 H.D. 1)**. That language is likely to be confusing. It is not entirely clear what "the amounts owed under

this subsection" refers to. This bill would be clearer without that language, and it should be stricken.

Thank you for this opportunity to submit written testimony

Sincerely,

Paul A. Ireland Koftinow