



P.O. Box 976
Honolulu, Hawaii 96808

February 10, 2020

Honorable Roy M. Takumi
Honorable Linda Ichiyama
Committee on Consumer Protection & Commerce
415 South Beretania Street
Honolulu, Hawaii 96813

Re: HB 1789/SUPPORT

Dear Chair Takumi, Vice Chair Ichiyama, and Committee Members:

This testimony in SUPPORT of HB 1789 on behalf of the Community Associations Institute ("CAI") Legislative Action Committee.

I have personal knowledge and experience with the important need to provide structure for associations that are currently not protected by any state laws; associations that collect thousands of dollars in fees from homeowners with literally no oversight. I have served as an expert witness in two lawsuits and seen firsthand the problems that currently exist:

- The Bylaws have a low threshold for a quorum and minimal meeting notices to owners. Competing boards found it easy to get a quorum and remove another competing board. One result was their bank freezing their funds and bills could not be paid.
- One competing group locked the newly elected board from the community center and refused to grant access to the records.
- An employee managed the checking account without supervision.
- Audits are not performed.
- Owners have written that they do not want to pay their fees because they do not trust the directors as they do not know who constitutes the correct board.

There is the potential for great harm as the safeguards that are provided to homeowner associations in HRS 421J simply do not exist for these few typically per-statehood associations. This is a serious problem that leaves the homeowners unprotected from fraud and abuse without state regulations. HB 1789 should be amended to require an annual audit and that the audit be provided to every homeowner.

CAI represents the condominium industry, and respectfully requests the Committee approve HB1789.

Very truly yours,

Richard Emery

Richard Emery
Co-Chair, CAI LAC

House of Representatives
Committee on Consumer Protection and Commerce
Wednesday, February 12, 2020
2:05 p.m.
Conference Room 329

To: Chair Takumi
Re: HB1789, relating to Associations

Aloha Chair Takumi, Vice-Chair Ichiyama, and Members of the Committee,

I am Lila Mower, president of Kokua Council, one of Hawaii's oldest advocacy groups. We focus on policies and practices which can impact the well-being of seniors and our community.

Kokua Council holds an annual Policy and Legislative Priorities Community Meeting attended by representatives from over 50 organizations* to present their priorities. At the end of the 2019 meeting, a poll of participants indicated **strong support for the protection of condominium owners' rights**.

I am also leader of Hui `Oia`i`o, informally known as "COCO," a coalition of over 300 property owners--mostly seniors--from over 150 common-interest associations. And I write this testimony on their behalf.

HB1789 appears to delegate the responsibility of infrastructure maintenance from the counties in which these properties are located to owners in planned residence communities.

If HB1789 is enacted, these assessments will essentially be a tax—a mandatory financial obligation--to owners were not apprised of this mandatory financial responsibility at purchase.

There is the strong possibility that purchasers of those properties may have presumed that they were free from community assessments which made those properties more attractive to them than properties in communities with established associations and shared fee structures in place.

For these reasons, **Hui `Oia`i`o opposes this measure**.

Aloha,

Lila Mower

*AARP - Advocacy Director, Altres Home Care, Alzheimer's Association, Arcadia Family Of Companies, Caring Across Generations, Catholic Charities, Child And Family Services, Common Cause Hawaii, Community Alliance On Prisons (CAP), Condo 411, Drug Policy Forum, Elderly Affairs Division, City and County Of Honolulu (EAD), Executive Office On Aging (State Of Hawaii), Faith Action (fka Faith Action For Community Equity), Foster Grandparent Program, Grassroot Institute Of Hawaii, Hawaii Disability & Communication (DCAB), Hawaii Alliance Of Non-Profits (HANO), Hawaii Appleseed Center For Law And Economic Justice, Hawaii Alliance Of Retired Americans (HARA), Hawaii Community Foundation, Hawaii Family Caregiver's Coalition (HFCC), Hawaii Disability Rights Center, Hawaii Long Term Care Ombudsman, Hawaii Meals On Wheels, Helping Hands Hawaii, Hui `Oia`i`o, Institute For Human Services (IHS), KAHEA, Kokua Kalihi Valley, Kupuna Caucus, Kupuna Education Center at KCC, Lanakila Meals On Wheels, League Of Women Voters, Manoa Cottage Care Home, Mediation Center Of The Pacific,

National Alliance On Mental Illness (NAMI), Native Hawaiian Legal Group, Osher Lifelong Learning Institute, Pacific Alliance To Stop Slavery (PASS), Partners In Care, Phocused, Policy Advisory Board For Elderly Affairs (PABEA), Pono Action, Project Dana, Public Health Nursing, Sierra Club, Senior Companion Program, Times Pharmacy, UH Center On Aging, and the State of Hawaii Governor's Coordinator on Homelessness.

HB-1789

Submitted on: 2/10/2020 7:34:27 PM

Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
R Laree McGuire	Individual	Support	No

Comments:

Support with amendments.

mahalo,

Laree McGuire

HB-1789

Submitted on: 2/10/2020 11:45:48 AM

Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lois Crozer	Individual	Support	No

Comments:

HB-1789

Submitted on: 2/11/2020 9:26:36 AM

Testimony for CPC on 2/12/2020 2:05:00 PM

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

Comments:

Aloha: My, many sponsors on this bill. HB1789 synopsis is too simplistic. And yet, county assessments on property owners will be disadvantaged in Home Owners Associations as it constitutes another layer of taxation, which was not obvious when people bought into those communities. Back to the drawing board on this one. Respectfully, I oppose this bill.

Dale A. Head sunnymakaha@yahoo.com (808) 696-4589

HB-1789

Submitted on: 2/11/2020 1:13:28 PM

Testimony for CPC on 2/12/2020 2:05:00 PM

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

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

While I support the objectives of HB 1789, a bill of this nature should be studied and carefully analyzed before being adopted. As drafted, the bill will create more problems than solutions for homeowners.

This bill will add a new section to HRS Chapter 421J that would allow any landowner in a “planned residential subdivision,” where there is no separate association designated or created through a recorded declaration, to form an after-the-fact association governing the subdivision, subject to certain conditions. The problems that will be created by this bill include, without limitation:

The bill requires that the association shall be incorporated as a nonprofit corporation for the primary purpose of maintaining “common areas” of the real property in the planned residential subdivision. “Common area” is defined in HRS Section 421J-2 as “real property within a planned community which is owned or leased by the association or is otherwise available for the use of its members or designated as common area in or pursuant to the declaration.” Accordingly, common area, as defined in HRS Chapter 421J is real property which is already in a “planned community” as defined in HRS Section 421J-2. HRS Section 421J-2 defines a “planned community” in such a way that it involves an existing association, which renders the formation of a new association unnecessary. Accordingly, the bill, as drafted, is confusing and will not likely achieve its intended purpose.

Subsection (a)(1) includes private driveways, private parks, and private meeting halls in the definition of common property. This is a bit confusing, because it seems to imply that a single owner can create an association and obligate his neighbors to share in the cost of maintaining private property owned by a person or persons other than the association.

Subsection (a)(3) sets a cap on the initial assessment which is tied to the dollar value of real property taxes. This cap appears to be arbitrary and unrelated to any actual funds needed to maintain the common areas or manage the association. It is not clear whether there is any cap on subsequent assessments and no mention is made as to the

timing of subsequent assessments or how they are to be paid by the members. For example, it is not clear whether future assessments are the same for each lot or whether they are to be based on the size of a lot.

Subsection (a)(4) requires notice to the owners in the subdivision of the creation of the association, but does not specify how notice will be given or what is to be done when an owner cannot be found.

Subsection (a)(5) states that the “association” shall be recorded in the Bureau of Conveyances. This is confusing. “Associations” are not recorded. Their declarations are recorded, but the bill does not address how declarations are to be created for these newly formed associations. Additionally, if the property is Land Court property, it is not clear whether recording at the Bureau alone will be sufficient.

Subsection (b) acknowledges that more than one association might be created, which will create a great deal of controversy and confusion, especially since the definition of “planned residential subdivision” refers to real property where there is no separate association. Accordingly, it is not clear how two associations might be created for the same property. In any event, Subsection (b) provides that when more than one association is created, a majority of the landowners will decide which association shall be authorized to assess dues and fees and manage the common areas. However, the bill does not clarify how voting rights are assigned. For example, it does not clarify whether there is one-vote per lot or one vote for each co-owner. Likewise, the bill does not state that once the vote is taken, it is final and no further associations may be created.

This bill needs to be studied before it is adopted. It would be better to refer this matter to the Legislative Reference Bureau for study and recommendations or to create a blue ribbon panel of stakeholders to report back to the Legislature next year with recommendations.

Respectfully submitted,

M. Anne Anderson

HB-1789

Submitted on: 2/11/2020 1:14:30 PM

Testimony for CPC on 2/12/2020 2:05:00 PM

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

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

While I support the objectives of H.B. 1789, a bill of this nature should be studied and carefully analyzed before being adopted. As drafted, the bill will create more problems than solutions for homeowners.

This bill will add a new section to HRS Chapter 421J that would allow any landowner in a “planned residential subdivision,” where there is no separate association designated or created through a recorded declaration, to form an after-the-fact association governing the subdivision, subject to certain conditions. The problems that will be created by this bill include, without limitation:

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This bill needs to be studied before it is adopted. It would be better to refer this matter to the Legislative Reference Bureau for study and recommendations or to create a blue ribbon panel of stakeholders to report back to the Legislature next year with recommendations.

Respectfully submitted,

Paul A. Ireland Koftinow

HB-1789

Submitted on: 2/11/2020 1:42:26 PM

Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lourdes Scheibert	Individual	Oppose	No

Comments:

HB-1789

Submitted on: 2/11/2020 2:13:43 PM

Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bradford Lee Hair	Individual	Oppose	No

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

While I support the objectives of H.B. 1789, a bill of this nature should be studied and carefully analyzed before being adopted. As drafted, the bill will create more problems than solutions for homeowners.

This bill will add a new section to HRS Chapter 421J that would allow any landowner in a “planned residential subdivision,” where there is no separate association designated or created through a recorded declaration, to form an after-the-fact association governing the subdivision, subject to certain conditions. The problems that will be created by this bill include, without limitation:

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Subsection (a)(1) includes private driveways, private parks, and private meeting halls in the definition of common property. This is a bit confusing, because it seems to imply

that a single owner can create an association and obligate his neighbors to share in the cost of maintaining private property owned by a person or persons other than the association.

Subsection (a)(3) sets a cap on the initial assessment which is tied to the dollar value of real property taxes. This cap appears to be arbitrary and unrelated to any actual funds needed to maintain the common areas or manage the association. It is not clear whether there is any cap on subsequent assessments and no mention is made as to the timing of subsequent assessments or how they are to be paid by the members. For example, it is not clear whether future assessments are the same for each lot or whether they are to be based on the size of a lot.

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Respectfully submitted,

Bradford Lee Hair

HB-1789

Submitted on: 2/11/2020 4:19:51 PM

Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lance S. Fujisaki	Individual	Oppose	No

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

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This bill needs to be studied before it is adopted. It would be better to refer this matter to the Legislative Reference Bureau for study and recommendations or to create a blue ribbon panel of stakeholders to report back to the Legislature next year with recommendations.

Respectfully submitted,

Lance Fujisaki

HB-1789

Submitted on: 2/11/2020 4:21:03 PM

Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marilyn Joyce Oka	Individual	Oppose	No

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

While I support the objectives of H.B. 1789, a bill of this nature should be studied and carefully analyzed before being adopted. As drafted, the bill will create more problems than solutions for homeowners, divide the interests of the community rather than uniting them.

This bill will add a new section to HRS Chapter 421J that would allow any landowner in a “planned residential subdivision,” where there is no separate association designated or created through a recorded declaration, to form an after-the-fact association governing the subdivision, subject to certain conditions. The problems that will be created by this bill include, the following:

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This bill needs to be studied before it is adopted. It would be better to refer this matter to the Legislative Reference Bureau for study and recommendations or to create a blue ribbon panel of stakeholders to report back to the Legislature next year with recommendations.

Respectfully submitted,

M. Joyce Oka



Roy Takemoto
Managing Director

Harry Kim
Mayor

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i Office of the Mayor

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KONA: 74-5044 Ane Keohokālole Hwy., Bldg C • Kailua-Kona, Hawai'i 96740
(808) 323-4444 • Fax (808) 323-4440

February 11, 2020

Representative Roy M. Takumi, Chair
Representative Linda Ichiyama, Vice Chair
Committee on Consumer Protection and Commerce

Dear Chair Takumi, Vice Chair Ichiyama, and Committee Members:


RE: HB 1789 Relating to Associations

We agree with the premise behind HB 1789, that there should be a mechanism for creating a dues-collecting association in a residential subdivision where one does not exist. However, we would ask for at least one amendment, and then offer some additional thoughts:

1. Page 2, lines 16-17, speak of a "class approved by the county or real estate commission..." The county would not have any expertise in creating such a class, and we ask that the words "the county or" be stricken.
2. Page 3, line 12. It is anticipated that there might be more than one association created.
 - a. If there is a challenge, or an election is required, the bill does not specify what entity will determine the "majority vote of the landowners." This kind of squabble can get very nasty, and again the County should not be required to resolve it. I would suggest that the bill explicitly state that this would be a matter for a court of appropriate jurisdiction.
 - b. Will the landowners have one vote each, or will voting be based on lot size, number of lots owned, or some other method? What about multiple owners of one lot? All that should be spelled out.
 - c. I don't think the bill requires that the "founding members" of the association be residents or even landowners in the subdivision. If that's the case, I could foresee some enterprising individual organizing one or more associations and then attempting to charge the owners for "all reasonable expenses necessary to form such association..." Unless that is what is intended, I would suggest requiring that all founding members be landowners in the subdivision, and probably that there be some minimum number of lot owners required to initiate the procedure.

Thank you for your consideration.

Respectfully Submitted,


Harry Kim
MAYOR

HB-1789

Submitted on: 2/11/2020 11:00:48 PM

Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jane Sugimura	Hawaii Council for Assoc. of Apt. Owners	Support	No

Comments:

HB-1789

Submitted on: 2/11/2020 9:12:28 PM

Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
mary freeman	Individual	Oppose	No

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

While I support the objectives of H.B. 1789, a bill of this nature should be studied and carefully analyzed before being adopted. As drafted, the bill will create more problems than solutions for homeowners. You were elected to help make our lives better, not add issue that are open ended at best.

This bill will add a new section to HRS Chapter 421J that would allow any landowner in a “planned residential subdivision,” where there is no separate association designated or created through a recorded declaration, to form an after-the-fact association governing the subdivision, subject to certain conditions. The problems that will be created by this bill include, without limitation:

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ribbon panel of stakeholders to report back to the Legislature next year with recommendations.

Respectfully submitted,

Mary S. Freeman

LATE

HB-1789

Submitted on: 2/12/2020 9:22:04 AM
Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mark McKellar	Law Offices of Mark K. McKellar, LLLC	Oppose	No

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

While I support the objectives of H.B. 1789, a bill of this nature should be studied and carefully analyzed before being adopted. As drafted, the bill will create more problems than solutions for homeowners.

This bill will add a new section to HRS Chapter 421J that would allow any landowner in a “planned residential subdivision,” where there is no separate association designated or created through a recorded declaration, to form an after-the-fact association governing the subdivision, subject to certain conditions. The problems that will be created by this bill include, without limitation:

The bill requires that the association shall be incorporated as a nonprofit corporation for the primary purpose of maintaining “common areas” of the real property in the planned residential subdivision. “Common area” is defined in HRS Section 421J-2 as “real property within a planned community which is owned or leased by the association or is otherwise available for the use of its members or designated as common area in or pursuant to the declaration.” Accordingly, common area, as defined in HRS Chapter 421J is real property which is already in a “planned community” as defined in HRS Section 421J-2. HRS Section 421J-2 defines a “planned community” in such a way that it involves an existing association, which renders the formation of a new association unnecessary. Accordingly, the bill, as drafted, is confusing and will not likely achieve its intended purpose.

Subsection (a)(1) includes private driveways, private parks, and private meeting halls in the definition of common property. This is a bit confusing, because it seems to imply that a single owner can create an association and obligate his neighbors to share in the cost of maintaining private property owned by a person or persons other than the association.

Subsection (a)(3) sets a cap on the initial assessment which is tied to the dollar value of real property taxes. This cap appears to be arbitrary and unrelated to any actual funds needed to maintain the common areas or manage the association. It is not clear whether there is any cap on subsequent assessments and no mention is made as to the timing of subsequent assessments or how they are to be paid by the members. For example, it is not clear whether future assessments are the same for each lot or whether they are to be based on the size of a lot.

Subsection (a)(4) requires notice to the owners in the subdivision of the creation of the association, but does not specify how notice will be given or what is to be done when an owner cannot be found.

1. (a)(5) states that the “association” shall be recorded in the Bureau of Conveyances. This is confusing. “Associations” are not recorded. Their declarations are recorded, but the bill does not address how declarations are to be created for these newly formed associations. Additionally, if the property is Land Court property, it is not clear whether recording at the Bureau alone will be sufficient.
2. (b) acknowledges that more than one association might be created, which will create a great deal of controversy and confusion, especially since the definition of “planned residential subdivision” refers to real property where there is no separate association. Accordingly, it is not clear how two associations might be created for the same property. In any event, Subsection (b) provides that when more than one association is created, a majority of the landowners will decide which association shall be authorized to assess dues and fees and manage the common areas. However, the bill does not clarify how voting rights are assigned. For example, it does not clarify whether there is one-vote per lot or one vote for each co-owner. Likewise, the bill does not state that once the vote is taken, it is final and no further associations may be created.

This bill needs to be studied before it is adopted. It would be better to refer this matter to the Legislative Reference Bureau for study and recommendations or to create a blue

ribbon panel of stakeholders to report back to the Legislature next year with recommendations.

Respectfully submitted,

Mark McKellar