P.O. Box 976
Honolulu, Hawaii 96808

February 26, 2020

Honorable Chris Lee, Chair
Honorable Joy A. San Buenaventura, Vice Chair
Committee on Judiciary
415 South Beretania Street
Honolulu, Hawaii 96813

Re: HB 2161 HD1 SUPPORT INTENT

Dear Chair Lee, Vice Chair San Buenaventura and Committee Members:

The Community Associations Institute ("CAI") supports the intent of HB 2161 HD1 to clarify condominium law.

Current law provides for amendment of a condominium declaration with approval by "at least sixty-seven per cent of the common interest" holders. Condominium associations often found it difficult to achieve the 75% threshold for amendment that prevailed prior to the enactment of the current threshold.

HB 2161 HD1 clarifies in Section 2 that 67% is the threshold that remains in effect for the amendment of *declarations*, in the absence of affirmative action by association members to require a higher percentage. HB 2161 HD1 does not address by-laws. The Committee may wish to consider maintaining uniformity with respect to the amendment of both declarations and by-laws.

Consistent with the intention to clarify condominium law, the Committee may also wish to consider omitting the words "at least" at page 4, line 5. The words "at least" become superfluous and potentially confusing if the goal is to clarify that the threshold for amendment *is* 67% "unless the declaration is amended by the owners to require a higher percentage."

Section 3 provides useful clarity with respect to eligibility for service on a condominium board. CAI offers no comment on that language.

Section 4 appears to be intended to relieve a condominium association and its representatives from potential liability for defamatory communications that it may be obliged to publish pursuant to section 514B-123(i). To the extent that an association is compelled to publish material authored by others over whom it lacks control, such relief is indicated.

Within that context, it may be more apt to relieve an association and its representatives from tort liability generally because publication under compulsion may expose associations to torts (like, perhaps, invasion of privacy) that are unnamed in HB 2161 HD1. That said, HB 2161 HD1 provides immunity "for any action taken with respect to any statement submitted by an owner[,]" (emphasis added), which may be overbroad.

Amendments to HB 2161 reflected in HB 2161 HD1 address prior comments related to Section 5.

CAI suggests that the Committee consider amendments to HB 2161 HD1 if it is to move forward.

Very truly yours,

Philip Nerney

Philip Nerney

HB-2161-HD-1
Submitted on: 2/26/2020 7:48:08 PM
Testimony for JUD on 2/28/2020 2:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jane Sugimura	Hawaii Council for Assoc. of Apt. Owners	Oppose	Yes

Comments:

HCCA requests that revisions be made to Sections (3) and (4) before passing this bill out.

HAWAIʻI STATE ASSOCIATION OF PARLIAMENTARIANS
LEGISLATIVE COMMITTEE
P. O. BOX 29213
HONOLULU, HAWAIʻI 96820-1613
E-MAIL: STEVEGHI@GMAIL.COM

February 26, 2020

Honorable Rep. Chris Lee, Chair
Honorable Rep. Joy A. San Buenaventura, Vice-Chair
House Committee on Judiciary (JUD)
Hawaii State Capitol, Room 325
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in SUPPORT OF HB2161 HD1; Hearing Date: February 28, 2020 at 2:15 p.m. in House conference room 325; sent via Internet

Dear Rep. Lee, Chairman; Rep. San Buenaventura, Vice-Chair; Committee Members,

Thank you for the opportunity to provide testimony on this bill.

The Hawaii State Association of Parliamentarians ("HSAP") has been providing professional parliamentary expertise to Hawaii since 1964.

I am the chair of the HSAP Legislative Committee. I'm also an experienced Professional Registered Parliamentarian who has worked with condominium and community associations every year since I began my parliamentary practice in 1983 (more than 1,800 meetings in 37 years). I was also a member of the Blue Ribbon Recodification Advisory Committee that presented the recodification of Chapter 514B to the legislature in 2004.

This testimony is provided as part of HSAP's effort to assist the community based upon our collective experiences with the bylaws and meetings of numerous condominiums, cooperatives, and Planned Community Associations.

This testimony is presented in SUPPORT OF HB2161 HD1 with a couple of minor amendments.

Summary of Bill:

This Bill proposes to clarify and resolve several practical issues that have occurred in the past few years with both Condominium Associations. They include the following:

Section 1: Description
Section 2: Vote required to amend association's declaration
Section 3: Eligibility for the board of directors
Section 4: Protection of association for mailing statements
Section 5: Solar Installation
Section 6: Standard wording

Section 7: Effective date

We support Sections 2 through 3, offer comments on Section 4, and take no position on the other Sections.

Section 4 Comments:

An association that intends to use funds for proxies is currently required by law to send out a timely filed statement by any owner who wishes to solicit proxies for use at an association meeting.

There is currently no limitation on the content of the statement. This can be problematical.

In one case this year, an owner provided a link that, when accessed, attempted to download a service pack from China. Fortunately, it was detected before the mailing went out.

In several cases during the past few years, the association has been forced to send out nasty and potentially actionable statements.

The dilemma is whether to:

(a) remove the requirement to mail these statements entirely,
(b) grant some entity the right to review and potentially censure the statements, or
(c) continue to order associations to mail them out without the option to alter them.

Hawaii is not alone regarding protection of the association with respect to candidate statements. At least one other state has already adopted language protecting the association from liability for these statements.[1]

The proposed language in Section 4 of the bill provides some legal protection to associations.

Summary:

We ask that you pass the bill.

If you require any additional information, your call is most welcome. I may be contacted via phone: 423-6766 or through e-mail: Steveghi@Gmail.com. Thank you for the opportunity to present this testimony.

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[1] Florida Statutes §718.112(d)(4)(a) http://www.leg.state.fl.us/STATUTES/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0718/Sections/0718.112.html

Sincerely,

Steve Glanstein

Steve Glanstein, Professional Registered Parliamentarian
Chair, HSAP Legislative Committee
SG:tbs

HB-2161-HD-1
Submitted on: 2/27/2020 10:01:06 AM
Testimony for JUD on 2/28/2020 2:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Support	No

Comments:

We support the testimony by CAI LAC and its comments.

TESTIMONY OF NAHELANI WEBSTER FOR THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPOSITION TO H.B. 2161 HD1

Monday February 28, 2020
2:15 PM
Room 325

LATE

To: Chair Chris Lee and Members of the House Committee on Judiciary:

My name is Nahelani Webster and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in opposition to H.B. 2161 HD1, Relating to Condominiums.

Our opposition pertains only to Section 4, page 9, lines 3 – 15. Granting immunity for libelous, slanderous or otherwise defamatory statements goes against good public policy to protect individuals from harm.

A similar issue has recently been discussed by Congress, relating to the web, such as Google, Facebook and Yelp. Within online platforms, people are posting libelous or slanderous comments on website reviews or in ads. The web companies claim they are not responsible; therefore, they will not remove the statements. The law has been moving away from this type of "it's not my problem" attitude and finding that Facebook, Yelp and Google are responsible, and they must remove inaccurate or false information.

Hawaii law currently holds people responsible if they knowingly disseminate slanderous and false statements - even if they are written by others. In this proposed amendment, the association representatives would not be liable if they disseminate libelous, slanderous and defamatory statements, written by an owner about another owner.

It is my understanding that public policy is moving away from this stance. Congress is making Facebook and Google responsible for false advertising and requiring them to take such statements down. All the web sites now must make a proactive effort to investigate the ads content to make sure it is accurate.

Likewise, the AOAO's representative can try to ensure that they do not disseminate libelous, slanderous and defamatory statements. These harmful or unfair statements could have lifetime negative impacts on an individual's reputation. Allowing immunity from liability would be against public policy. We respectfully ask the committee to remove the language on page 9, lines 3 – 15.

Thank you for allowing me to testify regarding this measure. Please feel free to contact me should you have questions or need additional information.

HB-2161-HD-1
Submitted on: 2/26/2020 4:56:48 PM
Testimony for JUD on 2/28/2020 2:15:00 PM

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

Comments:

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

I support H.B. 2161, H.D.1 for the following reasons:

Section 2 - HRS Section 514B-32:

The proposed amendment to HRS Section 514B-32(a)(11) will clarify that, except as stated in Section 514B-32(a)(11), all condominiums may amend their declarations by the vote or written consent of owners representing at least sixty-seven percent of the common interest, unless their declarations are amended by the unit owners to require a higher percentage. This will eliminate any confusion regarding the application of this section now that HRS Chapter 514A has been repealed.

Section 3 - HRS Section 514B-107:

HRS Section 514B-107(b) was amended in 2017 to clarify that tenants may not serve on an association's board. A tenant is defined in that section as "... any person who occupies a dwelling unit for dwelling purposes who is not also an owner of a dwelling unit in the same condominium." This was intended to clarify that an owner of a unit is not disqualified from serving on the board simply because he lives in a unit he does not own. While the definition of tenant clearly makes this point for individuals, it does not clearly make this point for units owned by legal entities. For example, if the sole member of a member managed LLC occupies a unit owned by the LLC, someone could take the position that the member of the LLC is not eligible to serve on the board because he is deemed a "tenant" under the definition in this section. However, if this same person were to live elsewhere, then he would be qualified to serve because then, he would not fall under the definition of a "tenant" in this statutory section. In other words, as drafted, the statute could be construed as prohibiting people who buy condominium units and take title in the name of an LLC (which is becoming rather common) from serving on the board if they occupy the unit that they purchased in the name of the LLC. The same could apply to officers of corporations or partners in partnerships that own units.

The definition of tenant is amended in the bill to clarify that a tenant shall not include persons who are qualified to serve under subsection (a). The amendment also clarifies who is qualified to serve in the event that a unit is owned by a corporation, partnership, or limited liability company. Additionally, it limits the reference to "other person authorized to act" to legal entities that are not specifically referenced.

The reference to "other person authorized to act on behalf of any other legal entity" is contained the existing law. This language is not new. The bill is intended to make it clear that this reference does not refer to any of the legal entities mentioned (i.e. corporations, partnership, and limited liability companies) and that it applies only to legal entities that are not mentioned. An example of a legal entity that is not mentioned is a governmental entity such as the State of Hawaii or the United States of American.

Section 4 - HRS Section 514B-123:

Condominium associations are required by law to mail to all owners statements submitted by owners indicating the owner's qualifications to serve on the board or reasons for wanting to receive proxies. Owners sometimes make defamatory remarks in their statements which could expose associations, and their boards, directors, officers, agents, attorneys, and representatives who may be involved in the mail out of statements, to potential liability. This provision will provide protection from defamation claims in those instances.

This is a far better option than allowing associations to edit statements or refuse to mail them out because any editing or refusal to mail will undoubtedly result in disputes between associations and owners. Providing immunity from liability for performing the statutorily required act of mailing out owner statements is a far better solution.

Section 5 - HRS Section 514B-140:

The amendment to HRS Section 514B-140 clarifies that subsection (c) applies to additions and alterations by unit owners and not associations, which is consistent with Section 514A-89, the original source of Section 514B-140. The amendment to HRS Section 514B-140(c)(1) and (c)(2) are for clarification because as written, these provisions are subject to more than one interpretation.

HRS Section 514B-140(d) allows associations to install solar and wind energy devices on common elements, but requires the approval of the owners of units to which limited common elements are appurtenant before solar and wind energy devices may be installed on the limited common elements. This has created a problem for condominium projects that have multiple buildings and each building is a limited common element appurtenant to all of the units in the building because it prohibits the association from installing solar and wind energy devices, such as solar panels, on any portion of the building, including the roof, without the approval of 100% of the owners in the building. This bill will make it possible for these condominium associations to install solar and

wind energy devices without having to obtain 100% approval. This is consistent with the purpose of this section and the overall goal increasing the use of clean energy.

For these reasons, I urge the committee to pass H.B. 2161, H.D.1.

Respectfully submitted,

Mark McKellar

HB-2161-HD-1
Submitted on: 2/26/2020 3:15:55 PM
Testimony for JUD on 2/28/2020 2:15:00 PM

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

Comments:

I oppose allowing tenants to serve on the Board of a Condo Association.

I've rented my unit out for the last 10 years and can't think of any tenant that I would want to represent my interests in any Condo Management related matter.

My most recent tenant could not even figure out what the work "prorated rent" meant and she is going to school to be a teacher. She could not figure it out on her own and I had to explain it to her.

They also can't figure out the relationship of paying rent by due date and late fee associated with late payments. So how can they make important Board decisions?

I OPPOSE HB 2161 as it relates to Tenants serving on Condo Boards.

Thank you for allowing me the opportunity to submit testmony online

Raelene Tenno

Pokai Bay Beach Cabanas

HB-2161-HD-1
Submitted on: 2/26/2020 4:40:05 PM
Testimony for JUD on 2/28/2020 2:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Anne Anderson	Individual	Support	Yes

Comments:

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

I support H.B. 2161, H.D.1 for the following reasons:

Section 2 - HRS Section 514B-32:

The proposed amendment to HRS Section 514B-32(a)(11) will clarify that, except as stated in Section 514B-32(a)(11), all condominiums may amend their declarations by the vote or written consent of owners representing at least sixty-seven percent of the common interest, unless their declarations are amended by the unit owners to require a higher percentage. This will eliminate any confusion regarding the application of this section now that HRS Chapter 514A has been repealed.

Section 3 - HRS Section 514B-107:

HRS Section 514B-107(b) was amended in 2017 to clarify that tenants may not serve on an association's board. A tenant is defined in that section as "... any person who occupies a dwelling unit for dwelling purposes who is not also an owner of a dwelling unit in the same condominium." This was intended to clarify that an owner of a unit is not disqualified from serving on the board simply because he lives in a unit he does not own. While the definition of tenant clearly makes this point for individuals, it does not clearly make this point for units owned by legal entities. For example, if the sole member of a member managed LLC occupies a unit owned by the LLC, someone could take the position that the member of the LLC is not eligible to serve on the board because he is deemed a "tenant" under the definition in this section. However, if this same person were to live elsewhere, then he would be qualified to serve because then, he would not fall under the definition of a "tenant" in this statutory section. In other words, as drafted, the statute could be construed as prohibiting people who buy condominium units and take title in the name of an LLC (which is becoming rather common) from serving on the board if they occupy the unit that they purchased in the name of the LLC. The same could apply to officers of corporations or partners in partnerships that own units.

The definition of tenant is amended in the bill to clarify that a tenant shall not include persons who are qualified to serve under subsection (a). amendment also clarifies who is qualified to serve in the event that a unit is owned by a corporation, partnership, or limited liability company. Additionally, it limits the reference to "other person authorized to act" to legal entities that are not specifically referenced.

The reference to "other person authorized to act on behalf of any other legal entity" is contained the existing law. This language is not new. The bill is intended to make it clear that this reference does not refer to any of the legal entities mentioned (i.e. corporations, partnership, and limited liability companies) and that it applies only to legal entities that are not mentioned. An example of a legal entity that is not mentioned is a governmental entity such as the State of Hawaii or the United States of American.

Section 4 - HRS Section 514B-123:

Condominium associations are required by law to mail to all owners statements submitted by owners indicating the owner's qualifications to serve on the board or reasons for wanting to receive proxies. Owners sometimes make defamatory remarks in their statements which could expose associations, and their boards, directors, officers, agents, attorneys, and representatives who may be involved in the mail out of statements, to potential liability. This provision will provide protection from defamation claims in those instances.

This is a far better option than allowing associations to edit statements or refuse to mail them out because any editing or refusal to mail will undoubtedly result in disputes between associations and owners. Providing immunity from liability for performing the statutorily required act of mailing out owner statements is a far better solution.

Section 5 - HRS Section 514B-140:

The amendment to HRS Section 514B-140 clarifies that subsection (c) applies to additions and alterations by unit owners and not associations, which is consistent with Section 514A-89, the original source of Section 514B-140. The amendment to HRS Section 514B-140(c)(1) and (c)(2) are for clarification because as written, these provisions are subject to more than one interpretation.

HRS Section 514B-140(d) allows associations to install solar and wind energy devices on common elements, but requires the approval of the owners of units to which limited common elements are appurtenant before solar and wind energy devices may be installed on the limited common elements. This has created a problem for condominium projects that have multiple buildings and each building is a limited common element appurtenant to all of the units in the building because it prohibits the association from installing solar and wind energy devices, such as solar panels, on any portion of the building, including the roof, without the approval of 100% of the owners in the building. This bill will make it possible for these condominium associations to install solar and

wind energy devices without having to obtain 100% approval. This is consistent with the purpose of this section and the overall goal increasing the use of clean energy.

For these reasons, I urge the committee to pass H.B. 2161, H.D.1.

Respectfully submitted,

M. Anne Anderson

HB-2161-HD-1
Submitted on: 2/26/2020 4:46:36 PM
Testimony for JUD on 2/28/2020 2:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Paul A. Ireland Koftinow	Individual	Support	Yes

Comments:

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

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wind energy devices without having to obtain 100% approval. This is consistent with the purpose of this section and the overall goal increasing the use of clean energy.

For these reasons, I urge the committee to pass H.B. 2161, H.D.1.

Respectfully submitted,

Paul A. Ireland Koftinow

HB-2161-HD-1
Submitted on: 2/26/2020 5:21:01 PM
Testimony for JUD on 2/28/2020 2:15:00 PM

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

Comments:

- Dear Representative Lee, Chair, Representative San Buenaventura, Vice Chair, and Members of

  the Committee:

  I support H.B. 2161, H.D.1 for the following reasons:

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  any confusion regarding the application of this section now that HRS Chapter 514A has been

  repealed.

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dwelling unit for dwelling purposes who is not also an owner of a dwelling unit in the same

condominium." This was intended to clarify that an owner of a unit is not disqualified from

serving on the board simply because he lives in a unit he does not own. While the definition of

tenant clearly makes this point for individuals, it does not clearly make this point for units owned

by legal entities. For example, if the sole member of a member managed LLC occupies a unit

owned by the LLC, someone could take the position that the member of the LLC is not eligible

to serve on the board because he is deemed a "tenant" under the definition in this section.

However, if this same person were to live elsewhere, then he would be qualified to serve because

then, he would not fall under the definition of a "tenant" in this statutory section. In other words,

as drafted, the statute could be construed as prohibiting people who buy condominium units and

take title in the name of an LLC (which is becoming rather common) from serving on the board

if they occupy the unit that they purchased in the name of the LLC. The same could apply to

officers of corporations or partners in partnerships that own units.

The definition of tenant is amended in the bill to clarify that a tenant shall not include persons

who are qualified to serve under subsection (a). The amendment also clarifies who is qualified

to serve in the event that a unit is owned by a corporation, partnership, or limited liability

company. Additionally, it limits the reference to "other person authorized to act" to legal entities

that are not specifically referenced.

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reference does not refer to any of the legal entities mentioned (i.e. corporations, partnership, and

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example of a legal entity that is not mentioned is a governmental entity such as the State of

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  owners indicating the owner's qualifications to serve on the board or reasons for wanting to

  receive proxies. Owners sometimes make defamatory remarks in their statements which could

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alterations by unit owners and not associations, which is consistent with Section 514A-89, the

original source of Section 514B-140. The amendment to HRS Section 514B-140(c)(1) and (c)(2)

are for clarification because as written, these provisions are subject to more than one

interpretation.

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common elements, but requires the approval of the owners of units to which limited common

elements are appurtenant before solar and wind energy devices may be installed on the limited

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buildings and each building is a limited common element appurtenant to all of the units in the

building because it prohibits the association from installing solar and wind energy devices, such

as solar panels, on any portion of the building, including the roof, without the approval of 100%

of the owners in the building. This bill will make it possible for these condominium associations

to install solar and wind energy devices without having to obtain 100% approval. This is

consistent with the purpose of this section and the overall goal increasing the use of clean

energy.

For these reasons, I urge the committee to pass H.B. 2161, H.D.1.

Respectfully submitted

- Dear Representative Lee, Chair, Representative San Buenaventura, Vice Chair, and Members of

  the Committee:

  I support H.B. 2161, H.D.1 for the following reasons:

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  consent of owners representing at least sixty-seven percent of the common interest, unless their

  declarations are amended by the unit owners to require a higher percentage. This will eliminate

  any confusion regarding the application of this section now that HRS Chapter 514A has been

  repealed.

  Section 3 - HRS Section 514B-107:

  HRS Section 514B-107(b) was amended in 2017 to clarify that tenants may not serve on an

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However, if this same person were to live elsewhere, then he would be qualified to serve because

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company. Additionally, it limits the reference to "other person authorized to act" to legal entities

that are not specifically referenced.

The reference to "other person authorized to act on behalf of any other legal entity" is contained

the existing law. This language is not new. The bill is intended to make it clear that this

reference does not refer to any of the legal entities mentioned (i.e. corporations, partnership, and

limited liability companies) and that it applies only to legal entities that are not mentioned. An

example of a legal entity that is not mentioned is a governmental entity such as the State of

Hawaii or the United States of American.

- Section 4 - HRS Section 514B-123:

  Condominium associations are required by law to mail to all owners statements submitted by

  owners indicating the owner's qualifications to serve on the board or reasons for wanting to

  receive proxies. Owners sometimes make defamatory remarks in their statements which could

  expose associations, and their boards, directors, officers, agents, attorneys, and representatives

  who may be involved in the mail out of statements, to potential liability. This provision will

  provide protection from defamation claims in those instances.

  This is a far better option than allowing associations to edit statements or refuse to mail them out

  because any editing or refusal to mail will undoubtedly result in disputes between associations

and owners. Providing immunity from liability for performing the statutorily required act of

mailing out owner statements is a far better solution.

Section 5 - HRS Section 514B-140:

The amendment to HRS Section 514B-140 clarifies that subsection (c) applies to additions and

alterations by unit owners and not associations, which is consistent with Section 514A-89, the

original source of Section 514B-140. The amendment to HRS Section 514B-140(c)(1) and (c)(2)

are for clarification because as written, these provisions are subject to more than one

interpretation.

HRS Section 514B-140(d) allows associations to install solar and wind energy devices on

common elements, but requires the approval of the owners of units to which limited common

elements are appurtenant before solar and wind energy devices may be installed on the limited

common elements. This has created a problem for condominium projects that have multiple

buildings and each building is a limited common element appurtenant to all of the units in the

building because it prohibits the association from installing solar and wind energy devices, such

as solar panels, on any portion of the building, including the roof, without the approval of 100%

of the owners in the building. This bill will make it possible for these condominium associations

to install solar and wind energy devices without having to obtain 100% approval. This is

consistent with the purpose of this section and the overall goal increasing the use of clean

energy.

For these reasons, I urge the committee to pass H.B. 2161, H.D.1.

Respectfully submitted

- Dear Representative Lee, Chair, Representative San Buenaventura, Vice Chair, and Members of

  the Committee:

  I support H.B. 2161, H.D.1 for the following reasons:

  Section 2 - HRS Section 514B-32:

  The proposed amendment to HRS Section 514B-32(a)(11) will clarify that, except as stated in

  Section 514B-32(a)(11), all condominiums may amend their declarations by the vote or written

  consent of owners representing at least sixty-seven percent of the common interest, unless their

  declarations are amended by the unit owners to require a higher percentage. This will eliminate

  any confusion regarding the application of this section now that HRS Chapter 514A has been

  repealed.

  Section 3 - HRS Section 514B-107:

  HRS Section 514B-107(b) was amended in 2017 to clarify that tenants may not serve on an

  association's board. A tenant is defined in that section as "... any person who occupies a

dwelling unit for dwelling purposes who is not also an owner of a dwelling unit in the same

condominium." This was intended to clarify that an owner of a unit is not disqualified from

serving on the board simply because he lives in a unit he does not own. While the definition of

tenant clearly makes this point for individuals, it does not clearly make this point for units owned

by legal entities. For example, if the sole member of a member managed LLC occupies a unit

owned by the LLC, someone could take the position that the member of the LLC is not eligible

to serve on the board because he is deemed a "tenant" under the definition in this section.

However, if this same person were to live elsewhere, then he would be qualified to serve because

then, he would not fall under the definition of a "tenant" in this statutory section. In other words,

as drafted, the statute could be construed as prohibiting people who buy condominium units and

take title in the name of an LLC (which is becoming rather common) from serving on the board

if they occupy the unit that they purchased in the name of the LLC. The same could apply to

officers of corporations or partners in partnerships that own units.

The definition of tenant is amended in the bill to clarify that a tenant shall not include persons

who are qualified to serve under subsection (a). The amendment also clarifies who is qualified

to serve in the event that a unit is owned by a corporation, partnership, or limited liability

company. Additionally, it limits the reference to "other person authorized to act" to legal entities

that are not specifically referenced.

The reference to "other person authorized to act on behalf of any other legal entity" is contained

the existing law. This language is not new. The bill is intended to make it clear that this

reference does not refer to any of the legal entities mentioned (i.e. corporations, partnership, and

limited liability companies) and that it applies only to legal entities that are not mentioned. An

example of a legal entity that is not mentioned is a governmental entity such as the State of

Hawaii or the United States of American.

- Section 4 - HRS Section 514B-123:

  Condominium associations are required by law to mail to all owners statements submitted by

  owners indicating the owner's qualifications to serve on the board or reasons for wanting to

  receive proxies. Owners sometimes make defamatory remarks in their statements which could

  expose associations, and their boards, directors, officers, agents, attorneys, and representatives

  who may be involved in the mail out of statements, to potential liability. This provision will

  provide protection from defamation claims in those instances.

  This is a far better option than allowing associations to edit statements or refuse to mail them out

  because any editing or refusal to mail will undoubtedly result in disputes between associations

and owners. Providing immunity from liability for performing the statutorily required act of

mailing out owner statements is a far better solution.

Section 5 - HRS Section 514B-140:

The amendment to HRS Section 514B-140 clarifies that subsection (c) applies to additions and

alterations by unit owners and not associations, which is consistent with Section 514A-89, the

original source of Section 514B-140. The amendment to HRS Section 514B-140(c)(1) and (c)(2)

are for clarification because as written, these provisions are subject to more than one

interpretation.

HRS Section 514B-140(d) allows associations to install solar and wind energy devices on

common elements, but requires the approval of the owners of units to which limited common

elements are appurtenant before solar and wind energy devices may be installed on the limited

common elements. This has created a problem for condominium projects that have multiple

buildings and each building is a limited common element appurtenant to all of the units in the

building because it prohibits the association from installing solar and wind energy devices, such

as solar panels, on any portion of the building, including the roof, without the approval of 100%

of the owners in the building. This bill will make it possible for these condominium associations

to install solar and wind energy devices without having to obtain 100% approval. This is

consistent with the purpose of this section and the overall goal increasing the use of clean

energy.

For these reasons, I urge the committee to pass H.B. 2161, H.D.1.

Respectfully submitted

- Mary S. Freeman
- Ewa Beach

HB-2161-HD-1
Submitted on: 2/26/2020 5:23:43 PM
Testimony for JUD on 2/28/2020 2:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dante Carpenter	Individual	Support	No

Comments:

Chair Rep. Chris Lee, Vice Chair Rep. San Buenaventura & Members of the Committee:

I support all the noted changes to Section 514B as noted in HB2161. I have 24 years of experience with being an elected condominium owner and officer serving on the Board of Directors.

Thank You,

Dante Carpenter -

Director, Country Club Village, Phase 2, AOAO

HB-2161-HD-1
Submitted on: 2/26/2020 5:49:38 PM
Testimony for JUD on 2/28/2020 2:15:00 PM

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

Comments:

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

I support H.B. 2161, H.D.1 for the following reasons:

Section 2 - HRS Section 514B-32:

The proposed amendment to HRS Section 514B-32(a)(11) will clarify that, except as stated in Section 514B-32(a)(11), all condominiums may amend their declarations by the vote or written consent of owners representing at least sixty-seven percent of the common interest, unless their declarations are amended by the unit owners to require a higher percentage. This will eliminate any confusion regarding the application of this section now that HRS Chapter 514A has been repealed.

Section 3 - HRS Section 514B-107:

HRS Section 514B-107(b) was amended in 2017 to clarify that tenants may not serve on an association's board. A tenant is defined in that section as "... any person who occupies a dwelling unit for dwelling purposes who is not also an owner of a dwelling unit in the same condominium." This was intended to clarify that an owner of a unit is not disqualified from serving on the board simply because he lives in a unit he does not own. While the definition of tenant clearly makes this point for individuals, it does not clearly make this point for units owned by legal entities. For example, if the sole member of a member managed LLC occupies a unit owned by the LLC, someone could take the position that the member of the LLC is not eligible to serve on the board because he is deemed a "tenant" under the definition in this section. However, if this same person were to live elsewhere, then he would be qualified to serve because then, he would not fall under the definition of a "tenant" in this statutory section. In other words, as drafted, the statute could be construed as prohibiting people who buy condominium units and take title in the name of an LLC (which is becoming rather common) from serving on the board if they occupy the unit that they purchased in the name of the LLC. The same could apply to officers of corporations or partners in partnerships that own units.

The definition of tenant is amended in the bill to clarify that a tenant shall not include persons who are qualified to serve under subsection (a). The amendment also clarifies who is qualified to serve in the event that a unit is owned by a corporation, partnership, or limited liability company. Additionally, it limits the reference to "other person authorized to act" to legal entities that are not specifically referenced.

The reference to "other person authorized to act on behalf of any other legal entity" is contained the existing law. This language is not new. The bill is intended to make it clear that this reference does not refer to any of the legal entities mentioned (i.e. corporations, partnership, and limited liability companies) and that it applies only to legal entities that are not mentioned. An example of a legal entity that is not mentioned is a governmental entity such as the State of Hawaii or the United States of American.

Section 4 - HRS Section 514B-123:

Condominium associations are required by law to mail to all owners statements submitted by owners indicating the owner's qualifications to serve on the board or reasons for wanting to receive proxies. Owners sometimes make defamatory remarks in their statements which could expose associations, and their boards, directors, officers, agents, attorneys, and representatives who may be involved in the mail out of statements, to potential liability. This provision will provide protection from defamation claims in those instances.

This is a far better option than allowing associations to edit statements or refuse to mail them out because any editing or refusal to mail will undoubtedly result in disputes between associations and owners. Providing immunity from liability for performing the statutorily required act of mailing out owner statements is a far better solution.

Section 5 - HRS Section 514B-140:

The amendment to HRS Section 514B-140 clarifies that subsection (c) applies to additions and alterations by unit owners and not associations, which is consistent with Section 514A-89, the original source of Section 514B-140. The amendment to HRS Section 514B-140(c)(1) and (c)(2) are for clarification because as written, these provisions are subject to more than one interpretation.

HRS Section 514B-140(d) allows associations to install solar and wind energy devices on common elements, but requires the approval of the owners of units to which limited common elements are appurtenant before solar and wind energy devices may be installed on the limited common elements. This has created a problem for condominium projects that have multiple buildings and each building is a limited common element appurtenant to all of the units in the building because it prohibits the association from installing solar and wind energy devices, such as solar panels, on any portion of the building, including the roof, without the approval of 100% of the owners in the building. This bill will make it possible for these condominium associations to install solar and

wind energy devices without having to obtain 100% approval. This is consistent with the purpose of this section and the overall goal increasing the use of clean energy.

For these reasons, I urge the committee to pass H.B. 2161, H.D.1.

Respectfully submitted,

Lance Fujisaki

HB-2161-HD-1
Submitted on: 2/27/2020 9:58:56 AM
Testimony for JUD on 2/28/2020 2:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeff Sadino	Individual	Comments	No

Comments:

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee,

I would offer a clarification in Section 3 that specifies that the member of the Board must meet the qualifications of (a) at all times:

SECTION 3. Section 514B-107, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Members of the board shall**, at all times during their membership on the Board,** be unit owners or co-owners, vendees under an agreement of sale, a trustee of a trust [~~which~~] that owns a unit, or an officer[~~, partner, member,~~] of a corporation, a partner in a general partnership or limited liability partnership, a general partner of a limited partnership, a member of a member-managed limited liability company, a manager of a manager-managed limited liability company, or other person authorized to act on behalf of any other legal entity [~~which~~] that is not referenced in this section, that owns a unit. There shall not be more than one representative on the board from any one unit.

Thank you for the opportunity to testify,

Jeff Sadino

HB-2161-HD-1
Submitted on: 2/27/2020 11:16:37 AM
Testimony for JUD on 2/28/2020 2:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sandy Ma	Individual	Oppose	No

Comments:

Dear Chair Lee, Vice Chair San Buenaventura, and Members of the Committee,

HRS Section 514B-107(b) was amended in 2017 to clarify that tenants may not serve on an association's board. It is unclear why tenants are now being considered for serving on association boards. Tenants or anyone else that does not have an ownership interest in a unit should not be allowed to serve on the condominium board.

Additionally, the "association, board of directors, association director, officer, agent, or attorney or other association representative" should not enjoy immunity from libelous, slanderous, or otherwise defamatory statements. Reckless statements may be sent with AOAO funds paid by owner maintenance fees and should not be used to injure these parties.

Sandy Ma

HB-2161-HD-1
Submitted on: 2/27/2020 11:22:37 AM
Testimony for JUD on 2/28/2020 2:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
M D Schochet	Individual	Oppose	No

Comments:

Sandra-Ann Y.H. Wong

Attorney at Law, a Law Corporation

1050 Bishop Street, #514
Honolulu, Hawaii 96813

TESTIMONY IN STRONG OPPOSITION TO HB 2161, HD1
Before the Committee on Judiciary
on Friday, February 28, 2020 at 2:15p.m.
in Conference Room 325

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

I am writing in **strong opposition to HB2161, HD1**.

I have been a condominium owner in Hawaii for the last 28 years and I have served both past and present on my condominium boards.

I am opposed to HB2161, HD1 regarding Section 3, Section 4, and the overall genesis of this bill and respectfully request that the Committee hold the bill to allow stakeholders an opportunity to work collaboratively during the off-session.

In 2017, the Legislature passed Act 71 that clarified Section 514B-107(b) to ensure that no tenants were permitted to serve on condominium boards. The clarification was consistent with the original intent of the drafters of 514B. It is simply wrong for tenants to be setting policy and rules for owners and making decisions as to how the AOAO money is spent, when they are not members of the AOAO and have "no skin in the game." Renters and owners simply have different interests.

The proposed amendments in Section 3 of this Bill would undo what the Legislature did in 2017. The proposed amendment attempts to make exceptions to 514B-107(b) by allowing "an officer of a corporation, a partner in a general partnership or limited liability partnership, a general partner of a limited partnership, a member of a member-managed limited liability company, a manager of a manager-managed limited liability company" who is a tenant serve on the board when the corporation, general partnership, limited liability partnership, limited partnership or member-managed limited liability company owns the condominium unit. I have no issue with this exception because the tenant in these cases has some ownership interest in the unit.

However, **I strongly oppose keeping in the current language that states "or other person authorized to act on behalf of any other legal entity <u>that is not referenced in this section</u>, which owns a unit."** By referencing and making subsection (a) an exception to subsection (b), this language would allow any unit owner to authorized anyone, including a tenant, with no ownership interest to serve on the board. According

to case law, a "person" is defined as a "legal entity". As stated above, tenants or anyone else that does not have an ownership interest in a unit, should not be allowed to serve on the condominium board.

Section 4 proposes to provide the "association, board of directors, association director, officer, agent, or attorney or other association representative" complete immunity for any "damages for libel, slander, or other defamation of character of person for any action taken with respect to any statement by an owner" when requesting proxies, regardless of whether the above knew that "such statement was libelous, slanderous, or otherwise defamatory." I oppose this proposed amendment because the association, board of directors, association director, officer, agent, or attorney or other association representative should have **a duty of care** to ensure that such libelous, slanderous, or otherwise defamatory statements not be included in the letters because they are the conduit/gatekeepers in the distribution of the letters. **Such libelous, slanderous, or otherwise defamatory statements if permitted in letters to be sent out to AOAO owners could permanently destroy the reputation and life of innocent parties.**

The Proponent of this bill argues that they need to distribute all letters, thus, they have no say. The easy fix to this issue is to just amend the guidelines for the letters. Section 514B-123(i)(1)(B) should be amended to state:

"The statement, which shall be limited to black text on white paper, shall not exceed one single-sided 8-1/2" x 11" page, indicating the owner's qualifications to serve on the board or reasons for wanting to receive proxies, provided that such statements shall not contain any names or reference to third parties; . . ."

By adding this simple change, the bill's current amendment to Section 4 becomes moot.

Finally, I am concerned that this bill is **not** a product of a collaborative process with the relevant stakeholders. It is my understanding that the proposals of this bill were not shared with the relevant stakeholders. **Thus, I would respectfully request that this bill be held to allow the stakeholders to meet during the off-session and work out these important issues that will affect thousands of condo owners in Hawaii.**

Thank you for the opportunity to provide Testimony in **Strong Opposition**.

HB-2161-HD-1
Submitted on: 2/27/2020 2:00:52 PM
Testimony for JUD on 2/28/2020 2:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Wong	Individual	Oppose	No

Comments:

I am opposed to HB2161. The change in definition of a tenant is too broad. Tenants typically have different objectives and won't take into account market value, maintenance fees, and other important factors that an owner would. I'm also opposed to the section regarding libel, slander, and defamation of character. As a condo owner and current board member I see first hand where these types of letters have been sent to hurt the reputation of board members just to obtain proxies. People need to be held accountable and this language appears to give them a free pass. Thank you.

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

I support H.B. 2161, H.D.1 for the following reasons:

Section 2 - HRS Section 514B-32:

The proposed amendment to HRS Section 514B-32(a)(11) will clarify that, except as stated in Section 514B-32(a)(11), all condominiums may amend their declarations by the vote or written consent of owners representing at least sixty-seven percent of the common interest, unless their declarations are amended by the unit owners to require a higher percentage. This will eliminate any confusion regarding the application of this section now that HRS Chapter 514A has been repealed.

Section 3 - HRS Section 514B-107:

HRS Section 514B-107(b) was amended in 2017 to clarify that tenants may not serve on an association's board. A tenant is defined in that section as "... any person who occupies a dwelling unit for dwelling purposes who is not also an owner of a dwelling unit in the same condominium." This was intended to clarify that an owner of a unit is not disqualified from serving on the board simply because he lives in a unit he does not own. While the definition of tenant clearly makes this point for individuals, it does not clearly make this point for units owned by legal entities. For example, if the sole member of a member managed LLC occupies a unit owned by the LLC, someone could take the position that the member of the LLC is not eligible to serve on the board because he is deemed a "tenant" under the definition in this section. However, if this same person were to live elsewhere, then he would be qualified to serve because then, he would not fall under the definition of a "tenant" in this statutory section. In other words, as drafted, the statute could be construed as prohibiting people who buy condominium units and take title in the name of an LLC (which is becoming rather common) from serving on the board if they occupy the unit that they purchased in the name of the LLC. The same could apply to officers of corporations or partners in partnerships that own units.

The definition of tenant is amended in the bill to clarify that a tenant shall not include persons who are qualified to serve under subsection (a). The amendment also clarifies who is qualified to serve in the event that a unit is owned by a corporation, partnership, or limited liability company. Additionally, it limits the reference to "other person authorized to act" to legal entities that are not specifically referenced.

The reference to "other person authorized to act on behalf of any other legal entity" is contained the existing law. This language is not new. The bill is intended to make it clear that this reference does not refer to any of the legal entities mentioned (i.e. corporations, partnership, and limited liability companies) and that it applies only to legal entities that are not mentioned. An example of a legal entity that is not mentioned is a governmental entity such as the State of Hawaii or the United States of American.

Section 4 - HRS Section 514B-123:

Condominium associations are required by law to mail to all owners statements submitted by owners indicating the owner's qualifications to serve on the board or reasons for wanting to receive proxies. Owners sometimes make defamatory remarks in their statements which could expose associations, and their boards, directors, officers, agents, attorneys, and representatives who may be involved in the mail out of statements, to potential liability. This provision will provide protection from defamation claims in those instances.

This is a far better option than allowing associations to edit statements or refuse to mail them out because any editing or refusal to mail will undoubtedly result in disputes between associations and owners. Providing immunity from liability for performing the statutorily required act of mailing out owner statements is a far better solution.

Section 5 - HRS Section 514B-140:

The amendment to HRS Section 514B-140 clarifies that subsection (c) applies to additions and alterations by unit owners and not associations, which is consistent with Section 514A-89, the original source of Section 514B-140. The amendment to HRS Section 514B-140(c)(1) and (c)(2) are for clarification because as written, these provisions are subject to more than one interpretation.

HRS Section 514B-140(d) allows associations to install solar and wind energy devices on common elements, but requires the approval of the owners of units to which limited common elements are appurtenant before solar and wind energy devices may be installed on the limited common elements. This has created a problem for condominium projects that have multiple buildings and each building is a limited common element appurtenant to all of the units in the building because it prohibits the association from installing solar and wind energy devices, such as solar panels, on any portion of the building, including the roof, without the approval of 100% of the owners in the building. This bill will make it possible for these condominium associations to install solar and wind energy devices without having to obtain 100% approval. This is consistent with the purpose of this section and the overall goal increasing the use of clean energy.

For these reasons, I urge the committee to pass H.B. 2161, H.D.1.

Respectfully submitted,

Chandra R.N. Kanemaru

PMK
PORTER · McGUIRE · KIAKONA · LLP

February 27, 2020

VIA WEB TRANSMITTAL

LATE

Hearing Date: Friday, February 28, 2020
Time: 2:00 p.m.
Place: Conference Room 325

Committee on Judiciary
House of Representatives,
The Thirtieth Legislature
Regular Session of 2020

Re: **Testimony in opposition to** HB 2161

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

I am a member of the Hawaii Chapter of the Community Associations Institute Legislative Action Committee ("CAI"), a member of the HCCA Board of Directors and I have been practicing in the area of condominium and community association law since 1999. I submit this testimony in opposition to HB 2161, HD 1, with respect to Sections 3 and 4, and respectfully submit that while I respect the proponent's efforts and good intentions, I request that the Bill be amended as noted below or held to allow the stakeholders time to work out the pending issues as discussed below.

As I understand it, in 2017, the Legislature passed Act 71 that clarified Section 514B-107(b) to ensure that individual tenants of owners were not permitted to serve on condominium boards. Tenants are renters. They are not owner/members of the condominium association and thus, arguably have "no skin in the game."

The proposed amendment in Section 3 of this Bill would potentially undo the clarification passed by the Legislature in 2017. The proposed amendment attempts to make exceptions to HRS 514B-107(b) by allowing "an officer of a corporation, a partner in a general partnership or limited liability partnership, a general partner of a limited partnership, a member of a member-managed limited liability company, [and/or] a manager of a manager-managed limited liability company" who are, in effect, tenants of those legal entities serve on the board when the corporation, general partnership, limited liability partnership, limited partnership and/or member-managed limited liability company owns a condominium unit. This portion of the amendment is not problematic because the tenants in these cases have an ownership interest in the unit.

My concern is with the language that follows the above-quoted passage: **"or other *person* authorized to act on behalf of *any other legal entity* that is not referenced**

Porter McGuire Kiakona, LLP
841 Bishop Street, Suite 1500
Honolulu, Hawaii 96813
1189

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Fax: (808) 539-

in this section, which owns a unit." The law provides that a "person" is defined as or qualifies as a "legal entity". *See* legal cites attached. Consequently, under this provision, any individual owner (i.e., person) may permit their tenant to serve on the Board. We are now back at square one—before the 2017 passage of Act 71 amending HRS 514B-107(b). If the passage read as follows, then I would have no objection to Section 3:

> (a) Members of the board shall be unit owners or . . . . that owns a unit, or an officer of a corporation, a partner in a general partnership or limited liability partnership, a general partner of a limited partnership, a member of a member-managed limited liability company, [or] a manager of a manager-managed limited liability company that owns a unit. There shall not be more than one representative on the board from any one unit.

With respect to Section 4, I support the need to protect boards as well as their agents and representatives from claims of defamation; however, in order to better accomplish this objective, I would ask that the following language be inserted at the end of paragraph (1)(B) to specify that the candidate statements not include any references to third-parties (e.g., " . . . The statement, which shall be limited to black text on white paper, . . . indicating the owner's qualifications to serve on the board or reasons for wanting to receive proxies***[, provided that such statement shall not contain the names of or references to third parties***; and").

Based on the foregoing, I respectfully submit that HB 2161 should be amended as noted above or held. Thank you for your time and consideration.

Sincerely yours,

/s/ R. Laree McGuire
R Laree McGuire
Porter McGuire Kiakona, LLP

Legal Cites referenced above:

HAWAII

AlohaCare v. Ito, 126 Haw. 326, 363, 271 P.3d 621, 658 (2012) (discussing that Section 102 of the Revised Model State Administrative Procedures Act ("MSAPA") defines "person" as "an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity).

HRS § 425R-1 Registered Agents Act defines "Person" to mean an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. Haw. Rev. Stat. Ann. § 425R-1.

HRS § 92F-3 (1993) Uniform Information Practices Act defines "person" as "an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity." State ex rel. Atty. Gen. v. Earthjustice, 121 Haw. 201, 216 P.3d 127 (Ct. App. 2009).

HRS § 481A–2 Uniform Deceptive Trade Practices Act defines a "person" for purposes of this chapter as including "an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity." Balthazar v. Verizon Hawaii, Inc., 109 Haw. 69, 71, 123 P.3d 194, 196 (2005), as corrected (Dec. 12, 2005).

HRS § 231-1 Administration of Taxes, a "Person" includes one or more individuals, a company, corporation, a partnership, an association, or any other type of legal entity, and also includes an officer or employee of a corporation, a partner or employee of a partnership, a trustee of a trust, a fiduciary of an estate, or a member, employee, or principal of any other entity, who as such officer, employee, partner, trustee, fiduciary, member, or principal is under a duty to perform and is principally responsible for performing the act.

HRS § 91-1 Administrative Procedures: "Persons" includes individuals, partnerships, corporations, associations, agencies, or public or private organizations.

HRS § 255D-2 Hawaii Simplified Sales and Use Tax Administration Act: "Person " means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

NEW YORK

People ex rel. Nonhuman Rights Project, Inc. v. Lavery, 124 A.D.3d 148, 151, 998 N.Y.S.2d 248, 250 (2014) (recognizing Black's Law Dictionary's meaning that the term "person" is defined as "[a] human being" or, "[a]n entity (such as a corporation) that is recognized by law as having the rights and duties [of] a human being").

See Barry v. Bd. of Managers of Elmwood Park Condo. II, 18 Misc. 3d 559, 568, 853 N.Y.S.2d 827, 835 (Civ. Ct. 2007) (recognizing McKinney's Real Property Law Section 339–e(10)'s definition of a "person" as a "natural person, corporation, partnership, association, trustee or other legal entity").

CALIFORNIA

People ex rel. Gwinn v. Kothari, 83 Cal. App. 4th 759, 767, 100 Cal. Rptr. 2d 29, 35 (2000) (citing to The California Uniform Controlled Substances Act (Health & Saf.Code, § 11000 et seq.), which defines "person" as "individual, corporation, government or

governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, or association, or any other legal entity." (Health & Saf.Code § 11022))

While a layperson would most likely think the word "person" referred to a *natural* person, it is true that in law, the word can also mean a corporation or other legal entity. For example, the National Labor Relations Act (29 U.S.C. § 152(1)), the Bankruptcy Act (11 U.S.C. § 101(41)), the Clayton Act (15 U.S.C. § 12(a)), the False Claims Act (31 U.S.C. § 3729; see Cook County v. United States ex rel. Chandler (2003) 538 U.S. 119, 125, 123 S.Ct. 1239, 155 L.Ed.2d 247); and the Uniform Probate Code (§ 1–201(34)) define or otherwise treat corporate or other legal entities as "persons." Several California statutes do likewise. (See, e.g., Ins.Code, § 19; Corp.Code, § 18; Gov.Code, § 17; and Bus. & Prof.Code, § 7025.) Mirpad, LLC v. California Ins. Guarantee Assn., 132 Cal. App. 4th 1058, 1075, 34 Cal. Rptr. 3d 136, 148 (2005)

NINTH CIRCUIT

United States v. Vosburgh, 166 F.3d 344 (9th Cir. 1998) (Discussing 31 C.F.R. § 103.11(z), and that the "Code does not limit the definition of a "person " to just individuals but broadly defines the term to include legal entities such as corporations and partnerships.")

Discussing whether Indian tribes fall under the definition of person. See Confederated Tribes & Bands of Yakama Indian Nation v. Alcohol & Tobacco Tax & Trade Bureau, 843 F.3d 810, 813 (9th Cir. 2016) ("When a word is not defined by statute, we normally construe it in accord with its ordinary or natural meaning." *Smith v. United States*, 508 U.S. 223, 228, 113 S.Ct. 2050, 124 L.Ed.2d 138 (1993). Webster's defines "person" to include, *inter alia*, "a human being, a body of persons, or a corporation, partnership, or other legal entity that is recognized by law as the subject of rights and duties." Webster's Third New International Dictionary 1686 (1971). Black's similarly defines "person" to include, *inter alia*, "[a]n entity (such as a corporation) that is recognized by law as having the rights and duties of human beings." Black's Law Dictionary 1178 (9th ed. 2004). These broad definitions are consistent with the non-exhaustive list set out in § 7701(a)(1), which includes as illustrative various entities recognized by law as having rights and duties. Accordingly, relying on the ordinary meaning of the word, the term "person" in § 7701(a)(1) covers entities that are recognized by law as the subject of rights and duties, including Indian tribes.)