

HB
707

A BILL FOR AN ACT

RELATING TO CONDOMINIUM ASSOCIATIONS.

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

1 SECTION 1. The legislature finds that associations of
2 apartment owners enjoy special protection as consumers.
3 Currently, the legislature has deemed individual condominium
4 owners deserving of the same level of protection as the owners
5 of single-family detached homes in recognition of the fact that
6 condominium owners may not have access to sufficient resources
7 to hire attorneys, consultants, and other advocates to act on
8 their behalf in dealings with Hawaii's business community.

9 The legislature further finds that when corporate interests
10 are in charge of these associations, they are neither
11 inexperienced in dealing with the business community nor do they
12 lack resources to hire professional services firms to represent
13 their interests. Therefore, giving them the special status of a
14 consumer is unnecessary and unwarranted. Importantly, this Act
15 preserves the special consumer status that association boards
16 enjoy in any and all cases where the board is not under the
17 control of a corporate entity or entities.



1 The purpose of this Act is to close a loophole in Hawaii
2 law that allows large, out-of-state corporations that control
3 apartment associations to masquerade as consumers and exploit
4 Hawaii's consumer protection legislation to their own benefit.

5 SECTION 2. Section 514B-104, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) Except as provided in section 514B-105, and subject
8 to the provisions of the declaration and bylaws, the
9 association, even if unincorporated, may:

- 10 (1) Adopt and amend the declaration, bylaws, and rules and
11 regulations;
- 12 (2) Adopt and amend budgets for revenues, expenditures,
13 and reserves and collect assessments for common
14 expenses from unit owners, subject to section
15 514B-148;
- 16 (3) Hire and discharge managing agents and other
17 independent contractors, agents, and employees;
- 18 (4) Institute, defend, or intervene in litigation or
19 administrative proceedings in its own name on behalf
20 of itself or two or more unit owners on matters
21 affecting the condominium. For the purposes of



1 actions under chapter 480, [~~associations~~] an
2 association shall be deemed to be [~~"consumers"~~] a
3 "consumer" only if more than fifty per cent of the
4 units in the project are owned by individuals;

- 5 (5) Make contracts and incur liabilities;
- 6 (6) Regulate the use, maintenance, repair, replacement,
7 and modification of common elements;
- 8 (7) Cause additional improvements to be made as a part of
9 the common elements;

- 10 (8) Acquire, hold, encumber, and convey in its own name
11 any right, title, or interest to real or personal
12 property; provided that:

13 (A) Designation of additional areas to be common
14 elements or subject to common expenses after the
15 initial filing of the declaration or bylaws shall
16 require the approval of at least sixty-seven per
17 cent of the unit owners;

18 (B) If the developer discloses to the initial buyer
19 in writing that additional areas will be
20 designated as common elements whether pursuant to
21 an incremental or phased project or otherwise,



1 the requirements of this paragraph shall not
2 apply as to those additional areas; and

3 (C) The requirements of this paragraph shall not
4 apply to the purchase of a unit for a resident
5 manager, which may be purchased with the approval
6 of the board;

7 (9) Subject to section 514B-38, grant easements, leases,
8 licenses, and concessions through or over the common
9 elements and permit encroachments on the common
10 elements;

11 (10) Impose and receive any payments, fees, or charges for
12 the use, rental, or operation of the common elements,
13 other than limited common elements described in
14 section 514B-35(2) and (4), and for services provided
15 to unit owners;

16 (11) Impose charges and penalties, including late fees and
17 interest, for late payment of assessments and levy
18 reasonable fines for violations of the declaration,
19 bylaws, rules, and regulations of the association,
20 either in accordance with the bylaws or, if the bylaws
21 are silent, pursuant to a resolution adopted by the



- 1 board that establishes a fining procedure that states
2 the basis for the fine and allows an appeal to the
3 board of the fine with notice and an opportunity to be
4 heard and providing that if the fine is paid, the unit
5 owner shall have the right to initiate a dispute
6 resolution process as provided by sections 514B-161,
7 514B-162, or by filing a request for an administrative
8 hearing under a pilot program administered by the
9 department of commerce and consumer affairs;
- 10 (12) Impose reasonable charges for the preparation and
11 recordation of amendments to the declaration,
12 documents requested for resale of units, or statements
13 of unpaid assessments;
- 14 (13) Provide for cumulative voting through a provision in
15 the bylaws;
- 16 (14) Provide for the indemnification of its officers,
17 board, committee members, and agents, and maintain
18 directors' and officers' liability insurance;
- 19 (15) Assign its right to future income, including the right
20 to receive common expense assessments, but only to the
21 extent section 514B-105(e) expressly so provides;



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1 (16) Exercise any other powers conferred by the declaration
2 or bylaws;

3 (17) Exercise all other powers that may be exercised in
4 this State by legal entities of the same type as the
5 association, except to the extent inconsistent with
6 this chapter;

7 (18) Exercise any other powers necessary and proper for the
8 governance and operation of the association; and




9 (19) By regulation, subject to sections 514B-146, 514B-161,
10 and 514B-162, require that disputes between the board
11 and unit owners or between two or more unit owners
12 regarding the condominium be submitted to nonbinding
13 alternative dispute resolution in the manner described
14 in the regulation as a prerequisite to commencement of
15 a judicial proceeding."

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

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

19



INTRODUCED BY: 





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A handwritten signature in black ink, appearing to read "John M. ...". The signature is stylized with large loops and a horizontal line across the middle.

JAN 18 2019



H.B. NO. 707

Report Title:

Condominium Associations; Powers; Consumers; Unfair or Deceptive Acts or Practices

Description:

Removes the capacity to bring an action based upon unfair or deceptive acts or practices from condominium associations in which individuals own fifty per cent or fewer of the units in the project.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



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Submitted on: 1/30/2019 9:30:03 AM

Testimony for CPC on 2/1/2019 2:00:00 PM

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

Comments:

This Bill takes away fundamental rights of unit owners as consumers. We oppose.

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Submitted on: 1/30/2019 12:05:28 PM

Testimony for CPC on 2/1/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kevin Agena	Hawaiian Properties, Ltd.	Oppose	No

Comments:



January 30, 2019

VIA WEB TRANSMITTAL

Hearing Date: Friday, February 1, 2019

Time: 2:00 p.m.

Place: Conference Room 329

Committee on Consumer Protection & Commerce
House of Representatives, the 30th Legislature
Regular Session of 2019

Re: Community Associations Institute's **Testimony opposing HB 707**

Dear Chair Takumi, Vice Chair Ichiyama and Committee members:

I am a member of the Community Associations Legislative Action Committee ("CAI"). We represent the condominium and community association industry and we respectfully oppose HB 707 on the grounds that the Bill, as drafted, is overbroad.

The Bill provides that "[t]he purpose of the Act is to close a loophole in Hawaii law that allows large, out-of-state corporations that control apartment associations to masquerade as consumers and exploit Hawaii's consumer protection legislation to their own benefit."

To accomplish this purpose, the Bill seeks to "[r]emove the capacity to bring an action based upon unfair or deceptive acts or practices from condominium associations in which individuals own fifty percent or fewer of the units in the project" by amending HRS § 514B-104(a)(4), in part, to read as follows:

For the purpose of actions under chapter 480, an association shall be deemed to be a "consumer" only if more than fifty per cent of the units in the project are owned by individuals[.]

The language is not narrowly drafted to address the problem it seeks to resolve and it implies that all unit owners who are not "individuals" must be "large, out-of-state corporations." This language casts a wide net; it is overbroad in that it will penalize those associations whose owners hold title to their units, not only in their individual capacities such as "tenants in common" or "tenants by the entirety", but also as revocable living trusts, various local family closely-held corporations and/or family partnerships for estate planning purposes or other legitimate reasons. As drafted, this Bill could potentially penalize an association whose ownership is comprised solely of individuals and those owners who hold title to their units in revocable living trusts.

If the Bill seeks to remove consumer status from developer-controlled boards, then it should state this in unequivocal terms. Nonetheless, even if this is the objective, individual owners sitting on boards are volunteers and need the consumer protection hammer that actions brought under HRS, Chapter 480 provide. These owners should not be penalized because control has not yet been turned over to them.

This brings up one last point. Ownership interests change constantly due to the continual buying and selling of units. The Bill does not address the point in time when the percentage of ownership is measured. For example, is it when the association by and through its board of directors seeks to file suit or is it when the developer/association signs the contract?

Based on the above, we respectfully submit that HB 707 should be held. Thank you for your time and consideration.

Sincerely yours,



R Laree McGuire
CAI LAC Hawaii



2/1/2019

House Committee on
Consumer Protection and Commerce

CPC

2:00 p.m.

TESTIMONY IN SUPPORT

HB 707

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

Castaway Construction and Restoration, LLC (“Castaway”) submits this testimony in support of HB 707.

Castaway is a Maui-based general contractor that performs work statewide, including significant amounts of work for associations of apartment owners, or “AOAOs”. Castaway prides itself on its strong relationships with all of its customers, including AOAOs. However, Castaway understands that under current Hawaii law, if a legal dispute were to arise with an AOAO, the AOAO would be treated as a “consumer” and eligible to sue Castaway under the unfair and deceptive trade practices provisions of Chapter 480 of the Hawaii Revised Statutes – even if that AOAO was not composed of ordinary homeowners, but was instead owned and controlled by a Mainland bank or real estate investment firms, which is the case with a number of large AOAOs in Hawaii.

These AOAO’s that are controlled by Mainland banks and real estate investment firms have their employees—who are often bankers, lawyers, and accountants—sit on the boards of directors of these AOAOs and control the AOAO’s decisions.

It is grossly unfair that such large banks and real estate investment firms are allowed to use a consumer protection statute to sue much smaller local Hawaii companies. Because of the treble-damage provisions of Chapter 480, Hawaii contractors are often forced to settle these cases, even if they did no wrong. The net effect of this is that many contractors increase their prices on AOAO jobs to account for the risk of a deceptive trade practices claim. This is ultimately not in the best interests of either contractors or AOAOs.

HB 707 would close the current loophole that creates this problem by restricting the use of Hawaii’s consumer protection statutes to true consumers – not AOAOs that are owned and controlled by banks and corporations. I urge you to pass HB 707 out of your committee.

Sincerely,

Loren R. Osborn
President, Castaway Construction & Restoration LLC

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info@castawayhawaii.com

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Submitted on: 1/31/2019 11:57:05 AM

Testimony for CPC on 2/1/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mark R. Hagadone, Ph.D., FACFE	Condominium Owner and Past Board Member	Oppose	No

Comments:

Ladies and Gentlemen:

I am opposed to HB 707 for the following reasons:

As written the Bill is overly broad. It proposes to "close a loophole" by removing the capacity to bring an action based upon unfair or deceptive acts or practices of individuals who own fifty percent or fewer units in the project. The language of the drafted version is not narrowly addressing the problem because the language casts a wide net and implies that all unit owners who are not "individuals" must be large concerns or out-of-state corporations.

As written the Bill does not address the time when the percentage of ownership is measured. This is important because ownership interests change constantly in a typical market driven economy.

As written the Bill implies removing consumer status from developer-controlled boards. If this is the case it should be clearly stated as individuals sitting on boards are volunteers and need the consumer protection hammer in actions brought under HRS, Chapter 480.

For these reasons I respectfully request the Bill be held.

Mark Hagadone

HB-707

Submitted on: 1/29/2019 2:03:57 PM

Testimony for CPC on 2/1/2019 2:00:00 PM

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

Comments:

The language of the bill does not account for the fact that many individuals hold title to their residential units in revocable living trusts, LLCs or other entities for estate planning, or other legitimate, purposes. Thus, while the bill is expressly concerned with large corporate interests, it will prejudice individual unit owners who hold title in a trust capacity (or other legitimate entity). Also, the bill would produce anomalous results. For example, an association might qualify to be deemed a "consumer" one month and be denied that status the next. Ownership fluctuates as owners buy and sell units. The language of the bill does not match its stated intent.