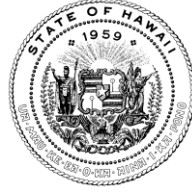


# SB722

Measure Title:	RELATING TO PLANNED COMMUNITY ASSOCIATIONS.
Report Title:	Planned Community Associations; Real Estate Commission; Registration; Administration; Enforcement; Planned Community Association Education Trust Fund; Mediation; Arbitration
Description:	On or before June 30, 2021, requires planned community associations to register with the real estate commission. Requires the real estate commission to administer and enforce planned community association laws. Establishes the planned community association trust fund for specific purposes related to planned community associations, including the use of mediation and arbitration of association related disputes.
Companion:	<a href="#">HB432</a>
Package:	None
Current Referral:	CPH, JDC/WAM
Introducer(s):	SHIMABUKURO, Baker, Ihara, Kim, Nishihara



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310

P.O. BOX 541

HONOLULU, HAWAII 96809

Phone Number: 586-2850

Fax Number: 586-2856

cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Commerce, Consumer Protection, and Health  
Thursday, February 7, 2019  
9:30 a.m.  
State Capitol, Conference Room 229**

**On the following measure:  
S.B. 722, RELATING TO PLANNED COMMUNITY ASSOCIATIONS**

Chair Baker and Members of the Committee:

My name is Daria Loy-Goto, and I am the Complaints and Enforcement Officer of the Department of Commerce and Consumer Affairs' (Department) Regulated Industries Complaints Office (RICO). RICO opposes this bill.

S.B. 722 amends Hawaii Revised Statutes (HRS) chapter 421J to grant additional powers to planned community associations (PCAs) and provide additional means for the self-governance of PCAs. S.B. 722 also requires PCAs to register with the Real Estate Commission (Commission) and authorizes the Commission to enforce certain provisions of chapter 421J. S.B.722 also creates an education trust funded by fees paid by PCAs. Among other responsibilities, the education trust is tasked with creating procedures for resolving association disputes, supporting mediation of association-related disputes, and supporting voluntary binding arbitration between parties in association-related disputes.

RICO concurs with the Commission's testimony that notes the need for a sunrise analysis by the Auditor. A sunrise analysis would help identify the number of entities potentially within the scope of this legislation, the form of regulation, evidence of abuses that would support regulation, and the cost of oversight.

RICO notes that although S.B. 722 appears to be patterned after the condominium law in HRS chapter 514B, the bill represents a significant departure from the self-governing principles that are in effect for that chapter. As such, it would be especially important that a review be conducted to assess and estimate the costs of enforcement and to evaluate the pros and cons of fundamentally changing the character of entities governed by chapter 421J.

Thank you for the opportunity to testify on this bill.



P.O. Box 976  
Honolulu, Hawaii 96808

February 4, 2019

Senator Rosalyn H. Baker, Chair  
Senator Stanley Chang, Vice Chair  
Committee on Commerce, Consumer Protection, and Health  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: SB 722 OPPOSE

Dear Chair Baker, Vice Chair Chang and Committee Members:

This testimony is submitted on behalf of the Community Associations Institute ("CAI"). CAI opposes SB 722.

Planned community associations ("PCAs") have historically been regarded as creatures of contract. Condominiums, in contrast, are creatures of statute.

While there are certain efficiencies to be obtained by harmonizing *some* procedural aspects of governing PCAs with condominium law, CAI opposes SB 722 because it provides for more governmental regulation than is warranted. If a bill of this sort is to be considered, CAI respectfully requests that there *at least* first be careful study to test the thesis that such regulation is needed.

To the extent that SB 722 seeks to provide for alternative dispute resolution opportunities available to condominiums, some study of the condominium education trust fund seems in order. Careful review of the receipts and expenditures of that fund should precede the creation of a similar fund for PCAs.

Community Associations Institute, by

*Philip Nerney*

For its Legislative Action Committee

## Testimony of the Real Estate Commission

Before the  
Senate Committee on Commerce, Consumer Protection, and Health  
Thursday, February 7, 2019  
9:30 a.m.  
State Capitol, Conference Room 229

On the following measure:  
**S.B. 722, RELATING TO PLANNED COMMUNITY ASSOCIATIONS**

Chair Baker and Members of the Committee:

My name is Michael Pang, and I am the Chairperson of the Real Estate Commission (Commission). The Commission opposes this bill.

The purposes of this bill are to: (1) require planned community associations to register with the Commission; (2) require the Commission to administer and enforce planned community association laws; and (3) establish the planned community association trust fund for specific purposes related to planned community associations, including the use of mediation and arbitration of association related disputes.

The Commission objects to this bill for the following reasons:

- A new regulatory measure requires a sunrise review by the Auditor. This bill appears to propose a new regulatory measure, as this bill would regulate a new class of unregulated activity: planned community associations. Presently, and as originally intended in 1997, planned community associations are self-governed. The Commission believes this bill is premature, as it has not undergone the required analysis by the Auditor, pursuant to Hawaii Revised Statutes (HRS) section 26H-6, which requires that all “new regulatory measures being considered for enactment that, if enacted, would subject unregulated professions and vocations to licensing **or other regulatory controls** shall be referred to the auditor for analysis” (emphasis added).
- The proposed measure will require significant resources to implement. The implementation of an additional area of probable registration will adversely impact the Commission’s limited resources during these difficult

economic times, as well as its priorities and program of work. The Commission's operating funds are specifically dedicated to fund those programs it was designed to be used for. Therefore, if a new regulatory area is created, a new source of revenue must be created to fund its operations for operating and personnel costs.

For these reasons, the Commission opposes the passage of S.B. 722 and recommends a sunrise review by the Auditor. Thank you for the opportunity to testify on this bill.

DAVID Y. IGE  
GOVERNOR



RODERICK K. BECKER  
DIRECTOR

ROBERT YU  
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

**STATE OF HAWAII  
DEPARTMENT OF BUDGET AND FINANCE**

P.O. BOX 150  
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)



**WRITTEN ONLY**  
TESTIMONY BY RODERICK K. BECKER  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION,  
AND HEALTH  
ON  
SENATE BILL NO. 722

**February 7, 2019  
9:30 a.m.  
Room 229**

**RELATING TO PLANNED COMMUNITY ASSOCIATIONS**

Senate Bill (S.B.) No. 722: requires planned community associations to register with the Real Estate Commission on or before June 30, 2021; requires the Real Estate Commission to administer and enforce planned community association laws; and establishes the Planned Community Association Education Trust Fund within the Department of Commerce and Consumer Affairs to be used by the Commission for educational purposes, including the use of mediation and arbitration of association related disputes.

The Department of Budget and Finance notes that it is unclear if the proposed trust fund would be self-sustaining.

Thank you for your consideration of our comments.

**SB-722**

Submitted on: 2/4/2019 9:04:05 AM

Testimony for CPH on 2/7/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard Emery	Testifying for Associa	Oppose	No

## Comments:

Planned Community Associations are vastly different than a condominium in its needs and operations. There is no evidence that additional regulation is necessary.



**SB-722**

Submitted on: 2/5/2019 8:12:43 PM

Testimony for CPH on 2/7/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jane Sugimura	Testifying for HI Council of Assoc. of Apt. Owners a	Support	No

Comments:

**SB-722**

Submitted on: 2/5/2019 7:36:22 AM

Testimony for CPH on 2/7/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Neal	Individual	Support	No

Comments:

02/05/2019 Neal, AJ

Re: Support for S.B. 722 Relating to Planned Community Associations

Dear Honorable Chairman and Committee Members:

As father of four, and a home owner currently residing in a Planned Community Association ("PCA") I sincerely thank you for your time, consideration and the opportunity to submit my testimony in support of S.B. 722 Relating to Planned Community Associations.

Currently, there is no governing entity for PCAs outside of the existing Hawaii Revised Statutes 421 Section J (HRS 421J).

As with Condo Associations, PCAs are managed by an elected Board of Directors ("Directors") who are volunteer homeowners most often inexperienced in property management.

Under the existing HRS 421J, these Directors are self governed by their Governing Documents and By-Law ("Governing Docs"), and thus take on the responsibility of hiring a Community Association Manager ("CAM") (such as Associa Hawaii) to guide and assist with managing the property, and PCA employees.

As a result, home owners such as the 243 fellow home owners in our community, have no recourse, remedy or method of appeal in event that the Directors fail to enforce, interpret Governing Docs broadly, or poorly manage the property other than requesting mediation with the Directors, arbitration or costly litigation.

Additionally, if a request for mediation is submitted to the Directors, the Directors are not obligated to participate in mediation.

This places community members in an unfair financial disadvantage, as Directors enjoy the protection of free PCA legal counsel and home owners must either hire their own counsel, leave the existing condition unchallenged, or hope Directors change or have a change in heart.

A few personally experienced examples of how failing to enforce Governing Docs with no regulating oversight can affect a community are as follows:

- Directors contracting with family members to perform work on PCA projects without bids.
- Directors using PCA resources and facilities for their own gain or benefit free of charge.
- A Director (President) seen on video witnessing a fist fight on property, yet refusing to issue fines, hold owners accountable or report the issue to police. (see Director on video in yellow here [https://youtu.be/4\\_3\\_QnFA9Gc](https://youtu.be/4_3_QnFA9Gc) for reference).

These are just a few examples of the many negative collateral cost and consequences of a PCA being self governed and not required to register or report to any regulating entity.

It is for the above and aforementioned reasons that I humbly urge you to support passing of S.B. 722 Relating to Planned Community Associations.

Respectfully Submitted,  
Neal, AJ