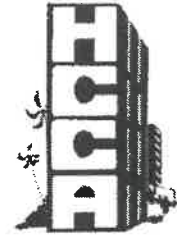


**FeHawaii Council of Associations
of Apartment Owners**
DBA: Hawaii Council of Community Associations
1050 Bishop Street, #366, Honolulu, Hawaii 96813



February 13, 2023

Sen. Jarrett Keohokalole, Chair
Sen. Carol Fukunaga, Vice-Chair
Senate Committee on Commerce and Consumer Protection

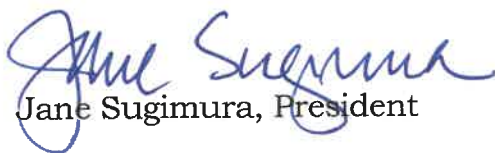
Re: Testimony in Support of
SB 921 RE to Limitations of Actions
Hearing: Thursday, February 16, 2023, 9:30 a.m., Conf. Rm. #229

Chair Keohokalole, Vice-Chair Fukunaga and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA).

HCCA supports the intent and purpose of SB 921 and joins in the position of Community Associations Institute in support of this bill.

Thank you for the opportunity to testify on this matter.


Jane Sugimura, President

LAW OFFICES OF PHILIP S. NERNEY, LLLC

A LIMITED LIABILITY LAW COMPANY
335 MERCHANT STREET, #1534, HONOLULU, HAWAII 96806
PHONE: 808 537-1777

February 11, 2023

Chair Jarrett Keohokalole
Vice Chair Carol Fukunaga
Committee on Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **SB 921 SUPPORT**

Dear Chair Keohokalole, Vice Chair Fukunaga and Committee Members:

SB 921 addresses a relatively rare but quite significant issue. Please move SB 921 forward.

Hawaii Revised Statutes ("HRS") §514B-141(c) expressly tolls a condominium association's right of action against a developer during the period of developer control. This is necessary to prevent a developer from avoiding responsibility for design and/or construction defects simply by maintaining control of an association until after the statute of limitations expires.

HRS §514B-141(c) does not *expressly* address the effect of the statute of repose contained in HRS §657-8.¹ A developer should not be allowed to avoid responsibility for design and/or construction defects by maintaining control of an association until the statute of repose expires, for the same reasons that it would be unfair and inequitable to allow the statute of limitations to expire during a period of developer control.

¹ §657-8 **Limitation of action for damages based on construction to improve real property.** (a) No action to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of any deficiency or neglect in the planning, design, construction, supervision and administering of construction, and observation of construction relating to an improvement to real property shall be commenced more than two years after the cause of action has accrued, but in any event not more than ten years after the date of completion of the improvement.

(b) This section shall not apply to actions for damages against owners or other persons having an interest in the real property or improvement based on their negligent conduct in the repair or maintenance of the improvement or to actions for damages against surveyors for their own errors in boundary surveys. The term "improvement" as used in this section shall have the same meaning as in section 507-41 and the phrase "date of completion" as used in this section shall mean the time when there has been substantial completion of the improvement or the improvement has been abandoned. The filing of an affidavit of publication and notice of completion with the circuit court where the property is situated in compliance with section 507-43(f) shall be prima facie evidence of the date of completion. This section shall not be construed to prevent, limit, or extend any shorter period of limitation applicable to sureties provided for in any contract or bond or any other statute, nor to extend or add to the liability of any surety beyond that for which the surety agreed to be liable by contract or bond.

(c) Nothing in this section shall exclude or limit the liability provisions as set forth in the products liability laws. [L 1967, c 194, §1; HRS §657-8; am L 1972, c 133, §1; am L 1974, c 73, §1; am L 1979, c 185, §1; am L 1980, c 70, §2 and c 232, §34; am L 1983, c 120, §1; am L 1994, c 164, §1]

Chair Jarrett Keohokalole
Vice Chair Carol Fukunaga
February 11, 2023
Page 2 of 2

SB 921² eliminates the potential that a court might interpret HRS §514B-141(c) to apply only to the statute of limitations and not to the statute of repose. The policy rationale for the statute of repose is absent when a developer remains in control of a condominium association for a lengthy period.

Very truly yours,

/s/ Philip Nerney

Philip S. Nerney

² SECTION 2. Section 514B-141, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any statute of limitation affecting the association's right of action against a developer is tolled until the period of developer control terminates[-]; provided that, notwithstanding section 657-8, no statute of repose shall affect the association's right of action against a developer sooner than two years after the period of developer control terminates. A unit owner is not precluded from maintaining an action contemplated by this section because the unit owner is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section 514B-147."

SB-921

Submitted on: 2/11/2023 2:07:38 PM

Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
terry revere	Individual	Support	Remotely Via Zoom

Comments:

I am an attorney that represents homeowners in construction defects cases against developers. This bill is necessary to protect homeowners from unscrupulous developers. I will give one example that I hope demonstrates the urgent need to clarify the law regarding the statute of repose. A developer held control of a Big Island condominium's board for 11 years. Once the homeowners took control of the Board they filed a lawsuit immediately based on serious construction defects. However, the developer argued to the Court that because the statute of repose is a hard and fast rule, the owners suit was not timely. This is madness because the entity that is allowed to sue (the Board of directors) was populated entirely with the developer and his employees for the first 11 years of the project. Yet the circuit court judge felt his hands were tied because of the language in the current version of the statute of repose. This ruling was eventually reversed in the homeowners' favor, but they very nearly lost claims that would require innocent homeowners to shell out millions of dollars to repair defects that were clearly the developer's fault. The law must be clarified so that the period of developer control is not counted against the homeowners. Thank you for your consideration of my testimony.

Mahalo,

Terry Revere, Esq.

SB-921

Submitted on: 2/11/2023 6:17:54 PM

Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mike Golojuch, Sr.	Testifying for Palehua Townhouse Association	Support	Written Testimony Only

Comments:

Palehua Townhouse Association supports SB921.

Mike Golojuch, Sr., President

HAWAII LEGISLATIVE
ACTION COMMITTEE


community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

February 14, 2023

Chair Jarrett Keohokalole
Vice Chair Carol Fukunaga
Committee on Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

RE: **SB921 SUPPORT**

Dear Chair Keohokalole, Vice Chair Fukunaga and Committee Members:

CAI supports SB921 because it clarifies the tolling provision in HRS 514B-141 and eliminates the potential that a court might interpret this regulation to only apply to the statute of limitations and not to the statute of repose.

This bill eliminates the potential for a developer to avoid design and construction defects by maintaining control of an Association until that statute of repose expires and gives Associations the right to file legal claims after the developer control terminates.

Sincerely,



Rebecca Lisle
CAI LAC Hawaii

SB-921

Submitted on: 2/12/2023 8:52:06 PM

Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Individual	Support	Written Testimony Only

Comments:

The Bill closes a loophole in certain case that permits Developers to be off the hook for their actions.

SB-921

Submitted on: 2/13/2023 8:41:10 AM

Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
William McKeon	Individual	Support	Written Testimony Only

Comments:

I support this bill to clarify that the period of developer control should not be used against a community association under HRS 514B-141. This bill is needed so that judges will have clearer guidance on this issue.

SB-921

Submitted on: 2/14/2023 8:39:16 PM

Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
R Laree McGuire	Individual	Support	Written Testimony Only

Comments:

Strongly support!

Mahalo,

Laree McGuire

SB-921

Submitted on: 2/15/2023 8:30:00 AM

Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
David H Levy	Individual	Support	Written Testimony Only

Comments:

The legal rights of an owner-controlled Board of Directors with respect to the developer of their project should not be impaired any further than already stipulated in Hawaii statutes. When in doubt, the rights of financially-strapped owners should take precedence over the financial strength and profit-motivated objectives of the project developer.