

# LAW OFFICES OF PHILIP S. NERNEY, LLLC

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

February 23, 2023

Chair Karl Rhoads  
Vice Chair Mike Gabbard  
Committee on Judiciary  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **SB 921 SUPPORT**

Dear Chair Rhoads, Vice Chair Gabbard 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.<sup>1</sup> 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.

---

<sup>1</sup> §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 23, 2023  
Page 2 of 2

SB 921<sup>2</sup> 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.

Oral testimony before the prior committee provided a real world example of the prejudice that could accrue to an association if the statute were construed to not toll the statute of repose. SB 921 provides an important clarification to the law.

Very truly yours,

*/s/ Philip Nerney*

Philip S. Nerney

---

<sup>2</sup> 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: 2/23/2023 5:31:10 PM

Testimony for JDC on 2/24/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Michael Ayson	Individual	Support	Written Testimony Only

Comments:

I support this bill.