

Testimony of the Real Estate Commission

**Before the
House Committee on Consumer Protection & Commerce
Thursday, February 16, 2023
2:00 p.m.
Conference Room 329 and Videoconference**

**On the following measure:
H.B. 381, HD1 RELATING TO CONDOMINIUMS**

Chair Nakashima and Members of the Committee:

My name is Derrick Yamane, and I am the Chairperson of the Hawai'i Real Estate Commission (Commission). The Commission supports this bill.

The purpose of this bill is to repeal the sunset date of Act 196, Session Laws of Hawai'i 2018, that allowed for voluntary binding arbitration for condominium related disputes and amended the conditions for mediation.

The Commission supports and continues to subsidize mediation and voluntary binding arbitration and encourages the use of alternative dispute resolution for condominium-related disputes as a valuable self-governance tool.

Thank you for the opportunity to testify on this bill.

HB-381-HD-1

Submitted on: 2/13/2023 7:52:23 PM

Testimony for CPC on 2/16/2023 2:00:00 PM

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

Comments:

Our association supports HB381. Please pass this bill.

Mike Golojuch, Sr., President



P.O. Box 976
Honolulu, Hawaii 96808

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Hearing Date: Friday, February 16, 2023
Time: 2:00 PM
Place: Conference room 329, via video conference

Testimony re House Bill 381, HD1

Chair Nakashima and Members of the Committee

My name is John Morris, and I am testifying on behalf of the Legislative Action Committee Of The Community Associations Institute, Hawaii Chapter. CAI is a national organization devoted to improving the management and operation of condominiums and other homeowner associations. The Hawaii chapter is a local chapter of the national CAI organization.

CAI strongly supports HB381, which would repeal the sunset date of Act 196 (SLH 2018). That act was passed to allow for voluntary binding arbitration for condominium disputes in accordance with section 514B-162.5. The act also amended the condominium law to improve the mediation process.

Arbitration. Disputes between owners and boards about the management and operation of condominium projects continue to arise. Therefore, the more options the legislature can provide for resolving those disputes, the better. In this case, section 514B-162.5 allows the parties to a dispute to agree to submit it to binding arbitration, with the added benefit of a \$6000 subsidy from the Condominium Education Trust Fund towards the cost of the binding arbitration. (That fund is supported by fees collected from condominium owners to support education and dispute resolution.)

Continuing the option for voluntary binding arbitration can be very cost effective when boards and owners cannot resolve their disputes through negotiation or mediation, yet still want to have a final decision on the issue in dispute. In that case, they can submit the issue to a neutral arbitrator and obtain a decision, one way or another, so they can move on from their dispute.

While it is possible for the boards and owners to go to court, that takes more time and more State resources. In contrast, if the issue in dispute is relatively straightforward and simply requires a decision, voluntary binding arbitration can be the quickest, cheapest, and most effective way of resolving the dispute. Therefore, CAI supports the repeal of the sunset date of act 196 so that section 514B-162.5 can continue to offer boards and owners the option of voluntary binding

Chair Mark M. Nakashima

February 16, 2023

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arbitration.

Mediation. CAI also strongly supports HB381 to the extent that it would repeal the sunset date of Act 196 (SLH 2018) as it relates to the mediation provisions added by act 196 in 2018. The mediation provisions added by act 196 created a far more effective mediation process by focusing strongly on evaluative mediation as the preferred process for mediation of condominium disputes.

Evaluative mediation allows a mediator with experience in the subject matter to not only try to resolve the dispute. The mediator can also advise the parties on the relative strengths and weaknesses of their case and the likelihood that their claims will succeed if they fail to resolve the matter through mediation. This, in turn, allows the parties to the mediation to more effectively consider all the options for settlement of their dispute. For example, the parties to the mediation may have overestimated the strength of their case. If so, evaluative mediation can allow them to make a more informed decision on whether to proceed to a more formal dispute resolution process, such as arbitration, or simply walk away.

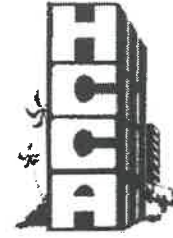
Thank you for this opportunity to testify.

John Morris

For CAI Hawaii Chapter



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



February 15, 2023

Rep. Mark Nakashima, Chair
Rep. Jackson Sayama, Vice-Chair
House Committee on Consumer Protection and Commerce

Re: Testimony in Support of HB381, HD1 Re Condominiums
Hearing: Thursday, February 16, 2023, 2 p.m., Conf. Rm. #329


Chair Nakashima and Vice-Chair Sayama and Members of the Committee:

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

HCCA supports this bill for the following reasons:

- HCCA strongly supported passage of Act 187 as amended by Act 196, which supported the (i) use of mediation and voluntary arbitration to resolve disputes by and among condo owners, their board and managing agents (rather than litigating these disputes in the courts) and (ii) allowing the condo-education fund to subsidize the cost of the mediations and arbitrations.
- As a result of the passage of Act 196, condo owners and associations have had additional remedies to address and resolve condo disputes without having to resort to litigation and the parties have been able to get funds from the condo-education fund to subsidize the costs of those mediations and/or arbitrations.
- The Act has been in effect for over 4 years and HCCA has not heard concerns relating to its implement or enforcement.

For these reasons, HCCA believes that the sunset provision that will become effective on June 30, 2023 in the bill is unnecessary and should be removed. Accordingly, HCCA respectfully requests that you pass out this bill so that subsidized mediation and arbitration will remain available to condo owners and association to resolve their disputes. Thank you for the opportunity to testify on this matter.


Jane Sugimura, President

February 15, 2023



Rep. Mark M. Nakashima, Chair
Rep. Jackson D. Sayama, Vice Chair
Committee on Consumer Protection & Commerce
Wednesday, February 15, 2023
2:00 pm
Via Videoconference

RE: **HB381 HD1** Relating Chapter 457J (**Oppose or Amend**)

Dear Chair Nakashima, Vice Chair Sayama & Committee Members,

The Chamber of Sustainable Commerce testifies in **opposition to HB381 HD1**, which repeals the sunset date of Act 196, Session Laws of Hawaii 2018, that allows for voluntary binding arbitration for condominium related disputes and amended the conditions for mediation.

As business owners who believe we can strengthen our economy without hurting workers, consumers or the environment, we also believe consumer protection laws should protect consumers – not create systems that subject consumers to further financial injury. One of the reason the legislature creates a sunset date on new laws it passes is to beta test the theory of the proposed solution embedded within; the data collected over the last four years demonstrates that arbitration/mediation mandate in Act 196 offered no increased protections for consumers, nor did not deter behavior that instigated the conflict at the root of arbitrated complaint.

This committee has the opportunity to enact cost-effective laws that can offer real consumer protections to condo owners. The measure title of HB381 is broadly worded and can include inserting a step before arbitration/mediation. **Amending HB381 HD1 to include the creation of a state ombudsman** for condo-owners and associations. Most conflicts arise from non-compliance with state laws and rules – not a dispute of facts that need to be adjudicated by an arbitrator, mediator or judge. The ombudsman can easily curtail conflicts by ensuring that all parties understand which laws/rules take precedence in a particular dispute.

All condo-owners already pay a specific fee to the state that is remitted via their condo association; this fee is supposed to be used for condo law education and can be used for the ombudsman position/s. This will be cost-effective for condo owners and associations who would have spent money on attorneys for arbitration.

**Hawaii
Legislative
Council**

Maile Meyer
Na Mea Hawaii
Honolulu

Russel Rudderman
Island Naturals
Hilo / Kona

Tina Wildberger
Kihei Ice
Maui

Joell Edwards
Wainiha Country Market
Kauai

Kim Coco Iwamoto
AQuA Rentals, LLC
Honolulu

HB-381-HD-1

Submitted on: 2/15/2023 12:20:33 PM

Testimony for CPC on 2/16/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
JOY SCHOENECKER	Mauna Luan	Support	Written Testimony Only

Comments:

We strongly SUPPORT HB 381

HB-381-HD-1

Submitted on: 2/13/2023 4:28:19 PM

Testimony for CPC on 2/16/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dale A. Head	Individual	Oppose	Remotely Via Zoom

Comments:

Aloha CPC Chair Mark M. Nakashima and Vice Chair Jackson D. Sayama -

I testify in **OPPOSITION** to passage of HB381SD1, as, Mediation and Binding Arbitration only work about 1/3 of the time to satisfaction of HOA members and management. This means 2/3 of the time disagreements are not resolved, and yet, costs are burdensome to 'crushing' for many participants. Consider, who in their right mind would buy a car that would only start 1/3 of the time they turned the key. For those who have been disappointed, it can be maddening.

As the state gives unfettered power to Boards of Directors, without accountability to counter balance that, it creates a power dynamic which routinely leads to arrogance and bullying. When an HOA member pays a fee of \$375 for Mediation, they have no clue that Management will send in attorneys to oppose the owner. Very quickly legal fees pile up that far exceed the meager stipend available through the CETF (Condominium Educatiln Trust Fund). I forwarded one friend to sell her two condos and flee rather than fight her Board. Well, they beat her up pretty good, and a retired Judge socked it to her for \$260,000 in legal fees. My advice to cash out by selling her units and avoid fighting the Board, after it was ignored, cost her dearly. Now she must sell one of her two condos to pay that. Better idea/model would be a consumer friendly Office of Ombudsman to facilitate negotiations. Right now Management picks the Mediator or retired Judge for Binding Arbtration. That important matter is never given over to an HOA member.

Legislators have been tinkering with HRS14b for decades, during which an ever increasing percentage of our population is housed in HOAs. But, as no state executive office adjudicates problems which arise in HOAs, time to stop pandering to business interests and lawyers for their lobby groups, and establish a consumer friendly regime.

In the interest of fairness, why should an owner be charged 50% of costs for Mediation and Binding Arbitration? It should be done on a PCI basis, that being Percentage of Common Interest the owners has in the HOA project.

Better idea would be to schedule Hearing for and pass HB178 and HB1501 which were developed in good part by the Kokua Council, which advocates for Kupuna and other social issues, such as Voting Rights.

Respectfully, *Dale Arthur Head*

Testimony to Oppose HB381

Submitted for: Consumer Protection & Commerce (CPC) Committee Hearing, scheduled to be heard on Thursday, 2/16/23 at 2:00 PM

Aloha Chair Nakashima, Vice Chair Sayama, and Members of the Committee,

I do not support HB381.

Mediation and Arbitration have been found to not be working as hoped, and those in the condominium trade industry who say they are, are not telling the truth. Data from the DCCA's Real Estate Branch indicates that the majority of Mediations are unsuccessful.

Those that are profiting from Mediation and Arbitration are private Attorneys and the Mediators (who are also Attorneys). The cost to file for a Mediation is \$375 each time, and does not include other costs, such as hiring an Attorney to represent you, when the other side is stacked with Director & Officer (D&O) Insurance assigned Attorneys and Association Attorneys. Many homeowners on fixed budgets will

I also have first-hand experience with Mediation, to highlight further that it is not effective. The lengthy and costly experience has enabled me to talk from "experience" and not as an outsider. As Mediations are private and confidential, there can be no real data as to how successful Mediations are, and if there was a fair and equitable resolution. Arbitration is even more costly for homeowners, and subsequently is not used very often for that reason alone.

Mediation is also driving up the cost of D&O Insurance, which is passed on to every condominium owner via their maintenance fees. Companies that provide D&O Insurance are also not providing new policies to Associations. I know this well, as the D&O insurance company at my Association would not renew the policy, and our Board could only get insurance from Lloyd's of London. The policy is one third of the coverage, and the deductible is 7x more.

Homeowners in Hawaii need a "fair" and "cost effective" means to resolve disputes with their Condominium Associations and HOAs, and hearings should have been scheduled for:

- 1) HB178 - Ombudsman's Office for Condominium Associations, Planned Community Associations, and Cooperative Housing Corporations
- 2) HB1501 - Ombudsman's Office for Condominium Associations

Both measures are supported by the Kokua Council, and are the means to solve this longstanding problem by providing fair and equitable dispute resolution and enforcement of

HRS 514B statutes. Unfortunately, both measures were “triple” referred and did not follow the correct process of going to the Subject Matter Committee first. That committee should have been your committee, Consumer Protection & Commerce. We are counting on all Legislators to be fair and honest in their decisions, and this includes the process that leads to those decisions.

I ask the Committee and all State Legislators to oppose HB381.

I also ask you to support HB176, HB178, HB1297, and HB1501, which were introduced by the Kokua Council on behalf of our kupuna and all residents of Hawaii.

Mahalo,

Gregory Misakian

2nd Vice President, Kokua Council
Board Member, Waikiki Neighborhood Board

The Kokua Council is one of Hawaii’s oldest elder advocacy groups. We advocate for issues, policies, and legislation that impact the well-being of seniors and our community.

HB-381-HD-1

Submitted on: 2/13/2023 1:43:55 PM

Testimony for CPC on 2/16/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Philip Nerney	Individual	Support	Written Testimony Only

Comments:

Support for voluntary binding arbitration facilitates claims resolution and should be preserved.
Please pass HB 381.

**House of Representatives
Committee on Consumer Protection and Commerce
Thursday, February 16, 2023
2:00 p.m.**

To: Representative Mark M. Nakashima, Chair
Re: HB 381 HD1, Relating to Condominiums

Aloha Chair Nakashima, Vice-Chair Sayama, and Members of the Committee,

I am Lila Mower, president of Kokua Council, one of Hawaii's oldest advocacy groups with over 800 members and affiliates in Hawaii.

I serve on the board of the Hawaii Alliance for Retired Americans, with a local membership of over 20,000 retirees.

And I am the leader of a coalition of, at last count, over three hundred property owners, mostly seniors. from over 150 common-interest associations throughout Hawaii and served as an officer on three condominium associations' boards.

Mahalo for allowing me to submit testimony in **opposition to HB 381 HD1**.

A review of the DCCA Real Estate Commission publication, *Hawaii Condominium Bulletin*, reveals that the current Condominium Education Trust Fund (CETF) subsidized alternative dispute resolution models (ADR) has been **unsuccessful** for condominium owners. ADR case summaries for the period starting March 2016 through its December 2022 publication¹ indicate that an overwhelming majority, nearly 80%, of the CETF subsidized mediation or arbitration cases were initiated by owners against their association and/or board.

But only 37% of these ADR cases during this period were mediated to an agreement, leaving **more than three (3) out of every five (5) CETF-subsidized ADR cases unresolved**, hardly a success by any metric.

And of the cases that reached an agreement, many of those which were settled in favor of owners were allegedly disregarded, lacking enforcement.

Further, HRS 514B-146(g) states that when ADR fails, the association may proceed with the collection of all amounts due from the condominium owner for attorneys' fees and costs, or any other charges that are not imposed as a common expense, revealing a **statute which disincentivizes associations and/or their boards from resolving disputes**.

¹ <https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2016-2020/> and <https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2021-2025/>

Claims from experts from the insurance industry² corroborate that Hawaii has a greatly disproportionate degree of malfeasance and infidelity to fiduciary duties, reporting that, **nationally Hawaii has the most Directors and Officers Insurance claims and among the highest insurance settlements**, despite Hawaii having only a small fraction of homeowners' associations of more populous states like Florida, California, and New York.

The apparent goal of the legal profession serving associations is to make it difficult for owners to file complaints and to prevent those complaints from becoming a part of the public record. Thus, association attorneys may be reluctant to end CETF-subsidized ADR because they are cloaked by nondisclosure agreements, making it impossible for the condo community to learn constructively from the legal dispute and resolution (if any).

Additionally, some legal professionals, including those who lobby at the Legislature for the condominium trade industry, market their ADR services to associations, creating an additional income stream for themselves while creating the possibility of biased and lopsided ADR.

In earlier legislative sessions, mediation and arbitration were promoted as inexpensive avenues to dispute resolution, however, owners' experiences contradict that assertion. The cost of mediation and arbitration, even when subsidized, is beyond the means of many condo owners already burdened with increased insurance costs, increased maintenance fees, special assessments, and increased property taxes.

Owners who can afford the \$375 fee to participate in mediation complain of the escalating thousands needed to proceed against a platoon of association attorneys representing the association and/or board. Associations have the combined financial resources of all of their members, including insurance coverage that protects board members from personal liability, and the ability to raise additional funds through assessments from owners, unlike owners who are limited to their own assets.

Owners also allege that the costs of arbitration are as costly or costlier than litigation, thus CETF subsidized ADR fails its intention.

Given that a home is, for most people, the most significant asset they have, protecting the value of that asset and mitigating and resolving disputes over that asset is an important policy goal, one that has not been served well by current CETF-subsidized ADR.

The laws written now will decide how we will live our lives in the future. We should not be stuck on models that do not work. I urge you to **oppose HB 381 HD1**.

Mahalo for the opportunity to testify.

² ThinkTech "Condo Insider" program, "How Condo Disputes Can Increase Your Maintenance Fees," September 19, 2019

HB-381-HD-1

Submitted on: 2/13/2023 4:25:58 PM

Testimony for CPC on 2/16/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Sandie Wong	Individual	Support	Written Testimony Only

Comments:

I support HB381, HD1

HB-381-HD-1

Submitted on: 2/13/2023 6:24:56 PM

Testimony for CPC on 2/16/2023 2:00:00 PM

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

Comments:

Dispute resolution is valuable and the program successful.

Lourdes Scheibert
2/14/2023

Committee on Consumer Protection & Commerce: Chair Mark Nakashima, Vice Chair Jackson Sayama, Rep:Terez Amato, Della Au Belatti, Mark J. Hashem, Natalia Hussey-Burdick, Cedric Gates, Nicole Lowen, Richard Onishi, Adrian Tam, Elijah Pierick

I oppose HB381

Mediation doesn't work. 514B condominium law is written for Associations to self-govern and self-enforcement. You must have a board who is knowledgeable & willing to debate 514B, their property's project documents and building safety codes. Owner's end up in mediation because the majority board members unwilling or lack the education for due process. Although, the supporters of mediation totes the low cost of mediation, not so, an owner still would need to hire an attorney. Leading up to mediation an owner's request for documents is an added cost to take your case to mediate. Not to mention the run-around by management and the board. From my experience, my out of pocket cost was substantial with no resolve.

An Ombudsman would have better serve me. My research and documentation easily would be favorable because the facts and my opinions were based on documents. In recent Senate Informational Briefing on February 13, 2023, comment by Jane Sugimura mentioned an Ombudsman program was tried in the past and it wasn't successful. Well mediation isn't successful.

I believe in today's availability of digital information, an Ombudsman program will be successful. I believe the program would be transparent as opposed to mediation that generalize the complaint filing.

What I don't understand, the last data taken 30% of residents are condominium owners who pay for property taxes, state and federal taxes yet we have no access to meaningful consumer protection. 514B is written by large organizations made up of entrepreneurs who lobby legislatures and play a dual roll by selling their services to the Associations and the board directors. I am in favor of making public disclosure for these dual rolls by the Real Estate Commission.

The Ombudsman's program should be considered, I believe it would better serve the condominium owners. Where there's a will, there's a way.

Lourdes Scheibert

HB-381-HD-1

Submitted on: 2/14/2023 12:14:40 AM

Testimony for CPC on 2/16/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Steve Glanstein	Individual	Support	Written Testimony Only

Comments:

Support. Far cheaper than litigation.

HB-381-HD-1

Submitted on: 2/15/2023 9:00:14 PM

Testimony for CPC on 2/16/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Marcia Kimura	Individual	Oppose	Written Testimony Only

Comments:

I am opposed to the continuation of this measure which maintains the ineffectiveness of mediation, and "education" that does not benefit condo owners.