

HAWAII LEGISLATIVE  
ACTION COMMITTEE

  
**community**  
ASSOCIATIONS INSTITUTE

P.O. Box 976  
Honolulu, Hawaii 96808

January 28, 2025

Honorable Scot Z. Matayoshi  
Honorable Cory M. Chun  
Committee on Consumer Protection & Commerce  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **HB 106 SUPPORT**

Dear Chair Matayoshi, Vice Chair Chun and Committee Members:

CAI supports HB 106. HB 106 will protect consumers by clarifying the procedures for the assessment and collection of a fine by a condominium association.

HB 106 notably prevents the assessment of attorneys' fees and costs until after a fine is deemed to be collectable. A fine is only collectable after the exhaustion of due process.

Due process includes fair notice of an alleged violation, an opportunity to appeal the fine to the board and final disposition of the validity and amount of a fine by the small claims court.

HB 106 clarifies, simplifies and better operationalizes provisions of Hawaii Revised Statutes §514B-146.

CAI supports HB 106, although it prefers SB 146 if it comes to this Committee later in the session.

CAI Legislative Action Committee, by



Its Chair

**HAWAII FIRST REALTY LLC**  
**4162 Kaimanahila Street**  
**Honolulu, HI 96816**  
**808-282-8051**  
[richard.hawaiifirstrealty@gmail.com](mailto:richard.hawaiifirstrealty@gmail.com)

January 29, 2025

Honorable Scot Z. Matayoshi  
Honorable Cory M. Chun  
Committee on Consumer Protection  
415 South Beretania Street  
Honolulu, HI 96813

**HB106 SUPPORT**

Dear Committee,

My name is Richard Emery and a thirty-year condominium industry veteran. I have participated in numerous disputes, mediations, and currently serve as an expert in numerous litigations for both Owners and separately Boards related to the standard of care of a Board of Directors.

The intent of HB106 is to simplify a resolution to disputes involving fines by requiring a written appeal procedure and absence of a mutual resolution, referral to the small claims court for a binding order. This Bill addresses the routine complaints that come before an association, avoids legal fees, and offers a prompt resolution.

Condominium disputes will never be totally eliminated. Current data reflects that most disputes involve unit alterations without approval such as the unauthorized removal of a load bearing wall, or installation of a second kitchen in violation of the building code. Courts have long ruled that the obligations between owners and associations are a contract. The Board has a duty to equitably enforce the contract. Rightfully this obligation may include attorneys and potentially legal fees.

I support HB106 as it takes the most simple of condominium disputes and provides a clear inexpensive process to resolve them.

Richard Emery, RB-17147  
Principal Broker

**HB-106**

Submitted on: 1/29/2025 1:17:11 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jon McKenna	Hawaiiiana Management Company, Ltd.	Support	Written Testimony Only

Comments:

Support consistent with testimony submitted by CAI Legislative Action Committee Chair Nerney.

**HB-106**

Submitted on: 1/29/2025 1:41:39 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mark McKellar	Law Offices of Mark K. McKellar, LLC	Oppose	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

**I OPPOSE H.B. No. 106 for the reasons set forth below.**

H.B. No. 106 adds a new provision on fines and appeals from fines. It establishes procedures to be followed by associations and time periods for action. While procedures and time periods serve a good purpose, this provision may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. A provision needs to be added addressing how those conflicts are to be resolved.

The new HRS Section 514B-\_\_\_\_(d) provides that a unit owner or tenant aggrieved by the decision of the board on an appeal from a fine may file an appeal in the small claims division of the district court in which the condominium is located. While the small claims court may decide legal issues related to fines, it is not a function of the small claims court to preside over appeals of fines.

This bill provides that if a fine is not enforceable or collectible, the association may not charge the owner or tenant for any attorneys' fees incurred by the association related to the fine. This is vague and ambiguous and may be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside for technical reasons. Furthermore, a board may be less inclined to waive fines upon appeal if doing so means

that it must also waive all attorneys' fees incurred by the association in connection with the violation.

The proposed changes to HRS Section 514B-146 are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification. For example, the new subsection (g) states that if any amount paid by a unit owner is found to be unsubstantiated, the unit owner shall be entitled to a refund. However, it is not clear who makes the determination that an amount paid is "unsubstantiated." Presumably, this determination should be made by a court of competent jurisdiction and if so, this should be stated. It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by the association because it is conceivable that the association will need to record a lien during that time period to preserve the priority of its lien.

Finally, HRS Section 514B-146 requires owners to pay common expense assessments before disputing those amounts, but allows owners to dispute all other assessments prior to payment. This can place significant financial burdens on associations where the amounts at issue have been paid by the Association to third parties, such as payment of submetered utilities. The right to dispute charges prior to payment should be limited to charges for which the association has not advance funds, such as fines, late fees, or interest.

**For the foregoing reasons, I respectfully OPPOSE H.B. No. 106 and urge your Committee to defer this measure. Alternatively, if it is to be passed by the Committee, I urge the Committee to amend the bill to address the issues discussed above.**

Respectfully submitted,

Mark McKellar

**HB-106**

Submitted on: 1/28/2025 4:47:35 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Ayson	Individual	Support	Written Testimony Only

Comments:

I support this bill.

Committee on Consumer Protection and Commerce

**HB 106: Regarding Violations**

**Thursday, January 30, 2025 @ 2:00 PM**

My name is Jeff Sadino, I am a condo owner in Makiki, and I **STRONGLY SUPPORT** this Bill.

This very important Bill is addressing a very important problem, is long overdue, and will significantly contribute to improving self-governance.

I request the following revisions be made to make it even better. These revisions all come out of my personal, first-hand experience of being on the receiving end of industry incompetence.

Revision 1:

Page 2: 514B-\_\_\_(b)(3): The notifications in this subsection shall be provided to the owner without costs or attorney fees incurred to the owner. (My association charged me attorney fees at \$400/hr to provide me this information.)

Revision 2:

Page 2: 514B-\_\_\_(b)(1)(C): The association shall provide to the Owner any and all evidence that the association is basing their violation on. (**We have a Constitutional right to see the evidence used against us.** Unfortunately, my Association did not provide me their evidence until 2 years after their allegations and thousands of dollars of incurred costs. The “evidence” had been grossly misrepresented to the Board by the Resident Manager.)

Revision 3:

Page 4: 514B-\_\_\_(h): No late fees or interest may be imposed or accrued to the owner during the dispute resolution processes described in this section. (I disputed the amounts Hawaiiiana was charging me and asked them for an official Verification of Debt. **It took me 13 requests and Hawaiiiana 77 days to tell me how much they claimed I owed them.** I later found out the reason for their delay was **they had errors in their calculations** and it took them this long to figure out where their errors were coming from. However, that entire time, they were posting gangster-level interest rates to my account.)

Revision 4:

Page 15: 514B-146(d)(2): The **due date** for any penalty, fine, late fee, etc. (I asked Hawaiiiana what the due date was for the claimed debit balance on my account. **They literally told me that they did not know when the due date was.**)

Revision 5:

Page 16: 514B-146(e)(4): Attorney fees shall not be charged to the owner for providing the information included in subsections (d) or (e). (**Hawaiiiana has posted thousands of dollars of erroneous charges to my account over many different separate incidences.** When I asked them to doublecheck their charges, they said that they could have their attorneys review my ledger for errors, but they would have to post their attorney charges (\$400/hr) to my account. It makes no sense for an owner to ask for a verification of debt if they are going to get charged \$400/hour for that.)

Making sure the Boards, Managing Agents, and condo attorneys actually follow the established Fines Enforcement Policy or this new Section is critical. In my experience, the biggest players in the industry completely violated the Fines Enforcement Policy in our Governing Documents and went straight to an attorney referral (see attached email). This ended up costing the association over \$50,000. If only the trade industry would have simply followed the rules and owner protections that already existed, the association could have instead spent that money on much needed deferred maintenance instead of enriching the condo attorneys.

Thank you for the opportunity to provide testimony,

Jeff Sadino

JSadino@gmail.com

(808) 371-2017



As the highlights in this email show:

- 1) Hawaiiana posted charges to my account related to attorney oversight for an **alleged** violation. (This in and of itself was a clear violation on their part of our Governing Documents.)
- 2) Our adopted Fines Enforcement Policy allows for me to dispute the violations, so I notified Hawaiiana that I wanted to have a conversation with the Board about this at our next Board meeting.
- 3) Hawaiiana's immediate response was to deny my request (in violation of our Governing Documents) and instead enter me into attorney status. Additionally, Ms. McGuire, **one of the Principals** at Porter McGuire, accepted the referral instead of advising my Association to follow the procedures laid out in our Governing Documents.

This resulted in a profit to the condo attorneys of over \$100,000.

The condo attorneys are significantly incentivized to escalate disputes instead of resolving them, even if it means violating the Governing Documents.

**jsadino.axa@hotmail.com**

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**From:** Jesi Anderson <jesia@hmcmtg.com>  
**Sent:** Monday, August 5, 2019 5:38 PM  
**To:** Sadino, Jeffrey  
**Subject:** [External]Ode Rancho re Invoice

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Jesi, DPR

Jeff,

I was just informed that any correspondence from this point forward must go to the attorney. I apologize, but the Board is seeking guidance on how to move forward with this situation.

Here is the attorney handling your case:

Mike Biechler  
[mbiechler@hawaiiilegal.com](mailto:mbiechler@hawaiiilegal.com)

Laree McGuire  
[lmcguire@hawaiiilegal.com](mailto:lmcguire@hawaiiilegal.com)

The phone number to reach them is 808-539-1100.

Mahalo,

**Jesi K. Anderson-Park | Management Executive, CMCA®**  
Hawaiiana Management Company, Limited  
Pacific Park Plaza, Suite 700  
711 Kapiolani Boulevard | Honolulu, HI 96813  
PH: 808.593.6319 Cell: 808.694.0782  
[www.hmcmtg.com](http://www.hmcmtg.com) | [jesia@hmcmtg.com](mailto:jesia@hmcmtg.com)

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**From:** Sadino, Jeffrey <Jeffrey.Sadino@axa-advisors.com>  
**Sent:** Monday, August 5, 2019 5:10 PM  
**To:** Jesi Anderson <jesia@hmcmtg.com>  
**Subject:** RE: [External]Ode Rancho re Invoice

Hi Jesi,

I would like to be able to speak with the Board about these charges, as laid out in B4 of our Governing Documents. I am OK with waiving the 30-day requirement for this specific issue and speaking with the Board at the next regular meeting scheduled for I assume the 2<sup>nd</sup> Tuesday in September, as long as the Board is willing to permanently waive any late fees that result from that extended timeframe.

Please let me know the next step. Thank you,  
Jeff

4. An alleged Violator/Owner shall be afforded the right to a hearing before a representative of the Association if the alleged Violator/Owner requests a hearing in writing no later than ten (10) days from the date of the violation notice. If the alleged Violator/Owner fails to request a hearing in writing within the time allowed, he or she shall be deemed to have waived the right to a hearing and if a fine was levied, it shall be paid by the Violator or responsible Owner within fifteen (15) days of the date of the written statement of the violation, unless the Violator/Owner has requested a hearing on the fine. In lieu of requesting a hearing an alleged Violator/Owner shall have the right to initiate a dispute resolution process as provided by Sections 514B-161, 514B-162, or by filing a request for an administrative hearing under a pilot program administered by the State Department of Commerce and Consumer Affairs.

Jeff Sadino  
Financial Consultant  
1003 Bishop St, Suite 1450  
Honolulu, HI 96813  
Direct: 808-441-5127  
Cell: 808-371-2017  
Fax: 808-538-1048  
[Jeffrey.Sadino@axa-advisors.com](mailto:Jeffrey.Sadino@axa-advisors.com)

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**From:** Jesi Anderson <[jesia@hmcmt.com](mailto:jesia@hmcmt.com)>  
**Sent:** Friday, July 26, 2019 10:52 AM  
**To:** Sadino, Jeffrey <[Jeffrey.Sadino@axa-advisors.com](mailto:Jeffrey.Sadino@axa-advisors.com)>  
**Subject:** [External]Ode Rancho re Invoice

Jeff,

I am sending you a copy of the invoice from the law firm. You will be receiving a note from me in the mail advising you that the balance on the invoice will be charged back to your account.

I will be following up with you on Monday as to the next step in the process and I hope to be able to inform you how this needs to be resolved to get you ready for your hearing in September.

I have asked the Board to consider having a special hearing with you within the next 30 days, but so far, the backup plan is the meeting.

Please let me know if you have any questions or concerns.

**Jesi K. Anderson-Park | Management Executive, CMCA®**

Hawaiiana Management Company, Limited

Pacific Park Plaza, Suite 700

711 Kapiolani Boulevard | Honolulu, HI 96813

PH: 808.593.6319 Cell: 808.694.0782

[www.hmcmgt.com](http://www.hmcmgt.com) | [jesia@hmcmgt.com](mailto:jesia@hmcmgt.com)

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**HB-106**

Submitted on: 1/29/2025 11:48:16 AM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Paul A. Ireland Koftinow	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

**I OPPOSE H.B. No. 106 for the reasons set forth below.**

H.B. No. 106 adds a new provision on fines and appeals from fines. It establishes procedures to be followed by associations and time periods for action. While procedures and time periods serve a good purpose, this provision may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. A provision needs to be added addressing how those conflicts are to be resolved.

The new HRS Section 514B-\_\_\_\_(d) provides that a unit owner or tenant aggrieved by the decision of the board on an appeal from a fine may file an appeal in the small claims division of the district court in which the condominium is located. While the small claims court may decide legal issues related to fines, it is not a function of the small claims court to preside over appeals of fines.

This bill provides that if a fine is not enforceable or collectible, the association may not charge the owner or tenant for any attorneys' fees incurred by the association related to the fine. This is vague and ambiguous and may be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside for technical reasons. Furthermore, a board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation.

The proposed changes to HRS Section 514B-146 are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification. For example, the new subsection (g) states that if any amount paid by a unit owner is found to be unsubstantiated, the unit owner shall be entitled to a refund. However, it is not clear who makes the determination that an amount paid is "unsubstantiated." Presumably, this determination should be made by a court of competent

jurisdiction and if so, this should be stated. It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by the association because it is conceivable that the association will need to record a lien during that time period to preserve the priority of its lien.

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**For the foregoing reasons, I respectfully OPPOSE H.B. No. 106 and urge your Committee to defer this measure. Alternatively, if it is to be passed by the Committee, I urge the Committee to amend the bill to address the issues discussed above.**

Respectfully submitted,

Paul A. Ireland Kofinow

**HB-106**

Submitted on: 1/29/2025 12:09:05 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Julie Wassel	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

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H.B. No. 106 adds a new provision on fines and appeals from fines. It establishes procedures to be followed by associations and time periods for action. While procedures and time periods serve a good purpose, this provision may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. A provision needs to be added addressing how those conflicts are to be resolved.

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**For the foregoing reasons, I respectfully OPPOSE H.B. No. 106 and urge your Committee to defer this measure. Alternatively, if it is to be passed by the Committee, I urge the Committee to amend the bill to address the issues discussed above.**

Respectfully submitted,

Julie Wassel



**HB-106**

Submitted on: 1/29/2025 12:10:33 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Anne Anderson	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

**I OPPOSE H.B. No. 106 for the reasons set forth below.**

H.B. No. 106 adds a new provision on fines and appeals from fines. It establishes procedures to be followed by associations and time periods for action. While procedures and time periods serve a good purpose, this provision may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. A provision needs to be added addressing how those conflicts are to be resolved.

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Respectfully submitted,

Anne Anderson

**HB-106**

Submitted on: 1/29/2025 12:29:24 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Elaine Panlilio	Individual	Support	Written Testimony Only

Comments:

I support HB106 because it will protect condo unit owners by clarifying the procedures for the assessment and collection of a fine from the condo association.

**HB-106**

Submitted on: 1/29/2025 12:31:32 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lance S. Fujisaki	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

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**For the foregoing reasons, I respectfully OPPOSE H.B. No. 106 and urge your Committee to defer this measure. Alternatively, if it is to be passed by the Committee, I urge the Committee to amend the bill to address the issues discussed above.**

Respectfully submitted,

Lance S. Fujisaki

**House of Representatives  
The Thirty-Third Legislature  
Committee on Consumer Protection & Commerce  
Thursday, January 30, 2025  
2:00 p.m.**

To: Representative Scot Z. Matayoshi, Chair  
Re: HB 106, Relating to Condominiums

Aloha Chair Scot Z. Matayoshi, Vice-Chair Cory M. Chun, and Members of the Committee,

Mahalo for the opportunity to testify in support of HB 106 with suggested amendments.

Today, I testify as the nexus of many grassroots coalitions of property owners who own and/or reside in associations throughout Hawaii and have served as an officer on three condominium associations' boards. You may know me as president emerita of Kokua Council, one of Hawaii's oldest advocacy groups which has continuously served our State since 1972 and former director of the board of the Hawaii Alliance for Retired Americans, with a local membership of over 20,000 retirees.

Former House Speaker Scott Saiki nominated me, and I was selected to participate in the Condominium Property Regime Task Force established by Act 189, Session Laws of Hawaii 2023. It was my hope that the Task Force's work would be impactful because the State's focus on affordable housing to attract and retain skilled workers who are essential to the health of our community, magnifies the importance of improving condominium association governance.

Without necessary improvements, the development of additional condominium housing will be flawed because prospective purchasers, including those whom the government hopes to retain or attract, will be unable to afford escalating costs caused by the mismanagement and misgovernance of existing condominium associations.

The unchecked power of association boards and the vulnerability of association owners to abusive practices is substantiated by reports from the insurance industry that nationally, Hawaii has the most Directors-and-Officers-Insurance-claims (D&O claims) and among the highest-insurance-settlements<sup>1,2</sup> despite Hawaii having only a small fraction of homeowners' associations of more populous states like Florida, California, and New York.

One of the most egregious complaints made by owners regarding actions by their association is that they were not provided with proper notification of alleged violations. Many of those who

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<sup>1</sup> ThinkTech "Condo Insider" program, "How Condo Disputes Can Increase Your Maintenance Fees," September 19, 2019

<sup>2</sup> <https://www.youtube.com/watch?v=8wOM10cgYS0&t=353s>

lost their homes due to nonjudicial foreclosures made this accusation, rendering it too common to dismiss.

Thus, the following addition to the proposed new section, “514B-\_\_\_\_ Fines; imposition; appeals; collection” is suggested:

*Before taking any action under this section, the board shall give to the unit owner and/or tenant written notice of its intent to collect the assessment owed. The notice shall be sent both by first-class and certified mail, return request requested, with adequate postage to the recipient’s address as shown by the records of the association or to an address designated by the owner for the purpose of notification, or, if neither of these is available, to the owner’s last known address.*

Additionally, the underscored phrase as an addition to the proposed amendment to 514B-146(g) is suggested:

*If any amount paid by a unit owner is found to be unsubstantiated, the unit owner shall be entitled to a refund of all costs including legal fees incurred by the unit owner in defense.*

Mahalo for the opportunity to submit these comments in support of HB 106.

Malama pono.

Lila Mower

**HB-106**

Submitted on: 1/29/2025 12:51:44 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Joe M Taylor	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

**I OPPOSE H.B. No. 106 for the reasons set forth below.**

H.B. No. 106 adds a new provision on fines and appeals from fines. It establishes procedures to be followed by associations and time periods for action. While procedures and time periods serve a good purpose, this provision may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. A provision needs to be added addressing how those conflicts are to be resolved.

The new HRS Section 514B-\_\_\_\_(d) provides that a unit owner or tenant aggrieved by the decision of the board on an appeal from a fine may file an appeal in the small claims division of the district court in which the condominium is located. While the small claims court may decide legal issues related to fines, it is not a function of the small claims court to preside over appeals of fines.

This bill provides that if a fine is not enforceable or collectible, the association may not charge the owner or tenant for any attorneys' fees incurred by the association related to the fine. This is vague and ambiguous and may be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside for technical reasons. Furthermore, a board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation.

The proposed changes to HRS Section 514B-146 are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification. For example, the new subsection (g) states that if any amount paid by a unit owner is found to be unsubstantiated, the unit owner shall be



entitled to a refund. However, it is not clear who makes the determination that an amount paid is “unsubstantiated.” Presumably, this determination should be made by a court of competent jurisdiction and if so, this should be stated. It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by the association because it is conceivable that the association will need to record a lien during that time period to preserve the priority of its lien.

Finally, HRS Section 514B-146 requires owners to pay common expense assessments before disputing those amounts, but allows owners to dispute all other assessments prior to payment. This can place significant financial burdens on associations where the amounts at issue have been paid by the Association to third parties, such as payment of submetered utilities. The right to dispute charges prior to payment should be limited to charges for which the association has not advance funds, such as fines, late fees, or interest.

**For the foregoing reasons, I respectfully OPPOSE H.B. No. 106 and urge your Committee to defer this measure. Alternatively, if it is to be passed by the Committee, I urge the Committee to amend the bill to address the issues discussed above.**

Respectfully submitted,

Joe Taylor

<b>TESTIMONY IN SUPPORT OF HB106</b>
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For: The Committee on Consumer Protection & Commerce (CPC)

DATE: Thursday, January 30, 2025

TIME: 2:00 PM

PLACE: VIA VIDEOCONFERENCE

Conference Room 329

State Capitol

415 South Beretania Street

From: Gregory Misakian, as an individual.

Aloha Chair Matayoshi, Vice Chair Chun, and members of the Committee,

My name is Gregory Misakian and I have been advocating for the rights of condominium owners in Hawaii since 2021, when I realized how much misconduct and corruption there is within many condominium associations throughout Hawaii, in addition to misconduct and corruption within numerous large management companies that manage and oversee condominium associations.

As many as 1/3 of the population of Hawaii lives in condominiums, including many legislators and their friends and families. It has been shown with evidence to support, including many news stories and a great deal of testimony, that condominium owners are being subjected to abusive and predatory practices, often at the direction of the condominium association's President and Board, with management company agents and association attorneys being willful participants.

At my condominium association, a dispute for less than \$5,000 for a valid concern regarding water damage from the unit above through the common area, has resulted in a kupuna being taken to court at the direction of the Board President. Numerous attorneys were involved, and attorney's fees charged back to the owner of over \$40,000. The same Board President is now working for our former

association law firm who brought the legal action against the kupuna. It should also be noted that he was working for them when they were still our association legal counsel and the board was not informed. This is not only a conflict of interest and violation of fiduciary duty, but quid pro quo (seen often in Hawaii).

It's time for Directors on association boards to stop feeling enabled to treat others badly when they raise concerns, oppose their decisions, or just because they don't like them. Abuse of power should never be something used against anyone to subvert them with financial threats, or the potential to lose their home to foreclosure. Those most vulnerable are also our kupuna and those that don't understand how to fight back. They need their elected officials to help, including the committee members who will decide and vote for or against HB106.

I respectfully request that HB106 be amended to also include a section that reads as follows, or similarly:

*Shall any Director on a condominium associations Board of Directors, or any Managing Agent, be found to have charged any fines, assessments, interest, and/or legal expenses to an owner who raised valid concerns that were not properly addressed via the governing documents and any hearing procedure established, or for a frivolous and/or unsubstantiated fine or assessment, that the individual Directors who voted for the fines, assessments, interest, or legal expenses shall be subject to pay the fine(s), assessment(s), interest, and/or legal expenses charged to the owner. Any restitution for improper fine levying shall be made by all directors and/or managing agents found liable and split evenly between them. The association shall compensate the owner back, and those involved in the improper levying of fines, assessments, interest and/or legal fees shall reimburse the association.*

Additionally, the sections that pertain to mediation, where after 60 days further action can be taken, also need to also be amended. Just trying to schedule a mediation can take longer than 60 days (which I know first-hand). This should be amended from 60 days to 180 days.

For those who don't know me, I currently serve as the 1<sup>st</sup> Vice President of the Kokua Council and was President for most of 2024. The Kokua Council advocates for our kupuna and lesser advantaged. I also serve on the Waikiki Neighborhood Board, where we have advocated for better consumer protections for condominium owners in a resolution adopted in 2023 (also adopted by other Neighborhood Boards).

The people of Hawaii are counting on you to protect them from predatory and abusive practices, and I respectfully ask all on the committee to please support HB106 with the suggested amendments.

Mahalo,

Gregory Misakian

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

**I OPPOSE H.B. No. 106 for the reasons set forth below.**

H.B. No. 106 adds a new provision on fines and appeals from fines. It establishes procedures to be followed by associations and time periods for action. While procedures and time periods serve a good purpose, this provision may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. A provision needs to be added addressing how those conflicts are to be resolved.

This bill provides that if a fine is not enforceable or collectible, the association may not charge the owner or tenant for any attorneys' fees incurred by the association related to the fine. This is vague and ambiguous and may be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside for technical reasons. Furthermore, a board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation.

The proposed changes to HRS Section 514B-146 are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification. For example, the new subsection (g) states that if any amount paid by a unit owner is found to be unsubstantiated, the unit owner shall be entitled to a refund. However, it is not clear who makes the determination that an amount paid is "unsubstantiated." Presumably, this determination should be made by a court of competent jurisdiction and if so, this should be stated. It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by the association because it is conceivable that the association will need to record a lien during that time period to preserve the priority of its lien.

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**For the foregoing reasons, I respectfully OPPOSE H.B. No. 106 and urge your Committee to defer this measure. Alternatively, if it is to be passed by the Committee, I urge the Committee to amend the bill to address the issues discussed above.**

Respectfully submitted,

Pamela J. Schell

**HB-106**

Submitted on: 1/29/2025 1:09:57 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Targgart	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

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1. bill provides that if a fine is not enforceable or collectible, the association may not charge the owner or tenant for any attorneys' fees incurred by the association related to the fine. This is vague and ambiguous and may be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside for technical reasons. Furthermore, a board may be less

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Respectfully submitted,

Michael Targgart



**HB-106**

Submitted on: 1/29/2025 1:19:52 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Primrose K. Leong-Nakamoto	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

**I OPPOSE H.B. No. 106 for the reasons set forth below.**

H.B. No. 106 adds a new provision on fines and appeals from fines. It establishes procedures to be followed by associations and time periods for action. While procedures and time periods serve a good purpose, this provision may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. A provision needs to be added addressing how those conflicts are to be resolved.

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**For the foregoing reasons, I respectfully OPPOSE H.B. No. 106 and urge your Committee to defer this measure. Alternatively, if it is to be passed by the Committee, I urge the Committee to amend the bill to address the issues discussed above.**

Respectfully submitted,

**HB-106**

Submitted on: 1/29/2025 1:20:17 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Edward Hsu	Individual	Support	Written Testimony Only

Comments:

To whom it may concern,

My name is Edward Hsu. I am a veterinarian and the owner of The Honolulu Pet Clinic. I am also the unfortunate victim of a HOA that feels free to assess fines without regards to Aloha or common sense and I have been forced to spend thousands in legal fees with no end in sight attempting to defend myself. I support HB106. There has to be a clear path to solutions with neutral parties making final decisions in a timely manner based on reason and the law.

In my case, someone following a guest of mine accidentally caused damage to the property on entry into the community. I would happily honor my obligations if as per the covenants, the damage was caused by me, myself, my guest, my contractor or agent, etc. The person following my guest is not any of those. I don't know them and I certainly never invited them directly. The board says that anyone with any association to me is my responsibility. I simply asked for clarification re limits. For example, if I see a fire and I call the fire department, according to the covenants, the fire department is my agent and I am responsible for any damage they might cause. You can see how that's already ridiculous and hopefully clearly an exception to the covenants right? If they further summon police or other agencies that cause damage, I am also responsible? How about the mailman delivering my mail? Absolutely they are my agent since they are delivering to my home at my direction, but seriously, if the mailman crashes into a house, I am responsible? How about if I order a pizza and the pizza delivery person invites his friend unbeknownst to me and that friend causes damage? How can it be reasonable that a simple act of ordering take out opens me up to limitless liability at the whims of a HOA board /management company? That being said, in my case the person following my actual guest was very embarrassed and agreed to pay for the damages. And yet somehow the HOA's decision was to simply place a fine on my account and attempt to bully me into being responsible for the actions of someone I am absolutely not associated with. It's not right. They have this person's information. This person agreed to pay and yet I am the one being fined? There was also an additional penalty assessed that stated that the initial gate damage allowed for potential further damage to the community so that it triggered another covenant that allowed for additional fines. It took a year and a half to get an answer as to what the potential additional damage was. As it turn out they are saying that the broken swing arm meant that the community was left open to unrestricted incursions by any number of unscreened evil doers. On face, I see their point and as petty as I think it was for them to assess that penalty, I might be forced to agree. Except for the fact that there is a giant metal gate that completely blocks the road into the community that was undamaged and fully functional even if the swing arm was not working. There is absolutely no

risk of potential further damage to the community as a result of the damaged swing arm so that fine was just added insult.

I appealed within the covenant limits and never received an answer or the benefit of discussion. I was actively discouraged from going directly to a board meeting to state my case. I have not received one single phone call to discuss a solution. I have received only letters demanding payment with threats of ever increasing fines. I have demanded my day in court or even a mediator prior and received nothing in return other than more threatening letters. There was even a threat of criminal prosecution in their demand letter that made absolutely no sense as I was out of town and not in any way directly associated with the incident.

Despite our disagreements, I have faithfully paid my monthly dues, but based on accounting trickery of the association that applied my dues payments to the fine first, according to their records, I have actually already paid the fine I am disputing, but am in arrears on the all important association dues and monthly fines are only accruing. At some point a lien will be placed and my home stolen from me?

HOA boards and their like are out of control. There needs to be consumer protections. What is happening to me is happening to you, your family and friends. It's absolutely not right. There is no Aloha and I am hoping you will help correct this injustice. I support HB106.

Edward Hsu VMD

**HB-106**

Submitted on: 1/29/2025 1:20:19 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Laurie Sokach	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

**I OPPOSE H.B. No. 106 for the reasons set forth below.**

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**For the foregoing reasons, I respectfully OPPOSE H.B. No. 106 and urge your Committee to defer this measure. Alternatively, if it is to be passed by the Committee, I urge the Committee to amend the bill to address the issues discussed above.**

Respectfully submitted,

Laurie Sokach AMS, PCAM

Professional Community Association Manager, 27 years.

**LATE**

**HB-106**

Submitted on: 1/29/2025 9:58:04 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dallas Walker	Individual	Support	Written Testimony Only

Comments:

I support this bill.