HAWAII LEGISLATIVE
ACTION COMMITTEE
community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

February 3, 2024

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

Re: **SB 2493 OPPOSE**

Dear Chair Keohokalole, Vice Chair Fukunaga and Committee Members:

CAI opposes SB 2493. There are several reasons for this, all of which relate to the severely prejudicial effect the bill would have on an association's ability to conduct legitimate and necessary enforcement action.

The proposed findings recited below demonstrate a misunderstanding of condominium governance:

> SECTION 1. The legislature finds that when boards of directors of condominium associations seek legal assistance to protect the collective interests of their associations, it is the board, not the individual unit owners, who are the clients of the attorneys. Accordingly, compensation for the legal services and costs should be paid in full entirely with the associations' funds and reserves, as the exclusive sources of payment, except in matters involving the collection of delinquent assessments for common expenses, as these are the responsibility of the unit owner. The legislature further finds that the absence of clearly defined legal fee responsibilities has resulted in inequitable fee payments by unit owners.
> The legislature also finds that fees for legal services paid by an association should be limited in proportion to the costs of the matter being resolved. The costs of an association are shared by all its unit owners. As such, excessive fees have a negative impact on all unit owners in an association.

First, the *association* is an attorney's client. The board is *not* the client.[1]

Second, even if the board were the client (which it is not), the board is the governing authority of the association. The directors owe a fiduciary duty to the association.

This means that the board is obligated to enforce compliance with the governing documents of the association. The legislature cannot reasonably hold directors to a fiduciary standard and disable their capacity to govern at the same time.

The underlying premise of the bill is contrary to the existing remedial scheme,[2] and would have the effect of disabling enforcement. Hawaii Revised Statutes §514B-112 reads as follows:

> **[§514B-112] Condominium community mutual obligations.** (a) All unit owners, tenants of owners, employees of owners and tenants, or any other persons that may in any manner use property or any part thereof submitted to this chapter are subject to this chapter and to the declaration and bylaws of the association adopted pursuant to this chapter.
> (b) All agreements, decisions, and determinations lawfully made by the association in accordance with the voting percentages established in this chapter, the declaration, or the bylaws are binding on all unit owners.
> (c) Each unit owner, tenants and employees of an owner, and other persons using the property shall comply strictly with the covenants, conditions, and restrictions set forth in the declaration, the bylaws, and the house rules adopted pursuant thereto. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the managing agent, resident manager, or board on behalf of the association or, in a proper case, by an aggrieved unit owner.

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[1] See, Final Report to the Legislature, Recodification of Chapter 514A, Real Estate Commission's comment, at page 38: "Some members may feel that because they are members of the association, and because the attorney represents the association, the attorney represents them too. The association attorney is, however, actually general corporate counsel whose client is the corporation/association, not the board of directors or any of the association's membership."

[2] "**§514B-10 Remedies to be liberally administered.** (a) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. Punitive damages may not be awarded, however, except as specifically provided in this chapter or by other rule of law.
(b) Any deed, declaration, bylaw, or condominium map shall be liberally construed to facilitate the operation of the condominium property regime.
(c) Any right or obligation declared by this chapter is enforceable by judicial proceeding."

SB 2493 would effectively render the premise of mutually enforceable obligations meaningless.

The following proposed finding completely fails to recognize that owners are responsible for the harm caused to fellow owners from violating the governing documents:

> Accordingly, compensation for the legal services and costs should be paid in full entirely with the associations' funds and reserves as the exclusive source of payment, unless the matter is for the collection of delinquent assessments against an owner's unit, for which that owner should be individually responsible.

That finding does recognize that an owner may be "responsible" but overlooks that such responsibility includes owner responsibility for misconduct.

SB 2493 also overlooks that owners are the consumers who pay 100% of the expenses of an association. Condominium associations are not commercial entities involving a profit component.

There are two choices when an owner improperly causes an expense to an association. Assign the expense to the defaulting owner or force innocent neighbors to bear the cost.

SB 2493 effectively licenses misconduct.

It does so not only by discounting the real need, and often difficult task, of bringing seriously bad actors into compliance, but also by creating an insuperable financial disincentive to doing so. Enforcement will largely cease if 75% of the cost of enforcement is imposed upon innocent consumers who lack responsibility for the misconduct at issue.

Moreover, the convoluted provisions of Section 2 of SB 2493 are not sensible and are ill-suited to real world circumstances.

One exemplar in Section 2 is the condition that attorney's fees may be assessed against an owner if:

> "(1) The association assesses, demands, or seeks reimbursement of the cost of attorneys' fees against all of the unit owners in accordance with the allocations under section 514B-41;"

The proper focus is the *recovery* of scarce common resources from defaulting owners, *not* the imposition of fees upon innocent consumers.

SB 2493 proceeds from the premise that associations are bad and must be hobbled. That premise is invalid and contrary to the premise stated in HRS §514B-10 that:

> (b) Any deed, declaration, bylaw, or condominium map shall be liberally construed to facilitate the operation of the condominium property regime.

SB 2493 does not facilitate the operation of the condominium property regime. It does the opposite.

SB 2493 seeks to regulate the practice of law. The practice of law is regulated by a separate branch of government. The judicial branch of government holds attorneys accountable for misconduct.

Also, the language requiring attorneys to comply with federal law is, at best, pointless and superfluous. Attorneys comply with federal law *because it is federal law*.

Finally, the Committee should defer SB 2493 because Act 189 (2023) created a Condominium Property Regime Task Force, whose mission includes to:

> Investigate whether additional duties and fiduciary responsibilities should be placed on members of the boards of directors of condominium property regimes[.]

The animating spirit of SB 2493 is that boards are bad and cannot responsibly discharge their fiduciary duties. The concerns reflected in SB 2493 have been heard by the Task Force, which unanimously voted in favor of an LRB study to obtain objective data to enable recommendations in a subsequent legislative session.

CAI Legislative Action Committee, by

Its Chair

SB-2493
Submitted on: 2/3/2024 12:13:57 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Idor Harris	Testifying for Honolulu Tower AOAO	Oppose	Written Testimony Only

Comments:

Honolulu Tower is a 396 unit condominium located at Beretania and Maunakea Streets on the edge of Chinatown. At our monthly board meeting on February 7, 2022, the board unanimously opposed SB2730, which contains many of the features of SB2493.

Owners agree to comply with the rules of the association when they purchase their unit. The Board believes the legislature should not be telling condominiums that they cannot go after infractions.

The Board urges you to defer SB2493.

Idor Harris

Resident Manager

SB-2493
Submitted on: 2/4/2024 10:02:09 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Teresa Ahsing	Testifying for Sky Tower Apartments	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 2493 for the reasons set forth below.

This measure will require all owners to bear the burden of paying attorneys' fees incurred by an association as the result of a single owner's actions.

This bill will add a new statutory section related to the collection of attorneys' fees that conflicts with HRS Section 514B-157. HRS Section 514B-157(a) provides, in relevant part, that all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of an association for enforcing any provision of the declaration, bylaws, or house rules against an owner shall be promptly paid on demand to the association by such person or persons. The new subsection (a) of the new statutory section states that all costs for attorneys' fees incurred by or on behalf of the association shall be paid from association funds or reserves. Not only is this in conflict with HRS Section 514B-157(a), but it is unfair as it will require all owners to pay the fees incurred as the result of a single owner's breach.

The new subsection (a)(1) provides that the association shall not assess, demand, or seek reimbursement of the costs for attorneys' fees against a unit owner, unless the association prevailed in the matter and assesses, demands, or seeks reimbursement of the costs of attorneys' fees against all the units in accordance with the allocations under HRS Section 514B-41. This new subsection (a)(1) not only conflicts with HRS Section 514B-157(a), but it also conflicts with the new subsection (a) which does not require that the association prevail in a matter. The adoption of a law that conflicts with an existing law and itself is ill-advised.

The new subsection (a)(1) is vague and ambiguous. It is not clear what the word "prevailed" is intended to mean. For example, if an owner violates a covenant and then cures the violation after receiving a demand from the association, will the association have prevailed? Or, does the association have to actually file a lawsuit against the owner and obtain a judgment in its favor?

This bill also leaves open the question of who pays for the association's fees if the association does not prevail. This will undoubtedly lead to litigation.

This bill also leaves open the question of how it is to be interpreted with regard to fees incurred in normal business operations. For example, associations often hire attorneys to render legal opinions, draft documents, and negotiate contracts with vendors. Those fees are generally assessed as a common expense, but the ambiguous language of the new subjection (a)(1) makes that unclear.

The new subsections (a) and (a)(1) are poorly drafted, short-sighted, and in direct conflict with HRS Section 514B-157(a) and for that reason should be rejected.

A twenty-five percent cap on attorneys' fees is not reasonable.

The new subsection (b) places an unreasonable cap on fees. The new subsection (b) states that an association shall not assess, demand, or seek reimbursement for its total and final legal fees in excess of twenty-five percent of the original debt amount sought by the association. This is unreasonable and problematic for a number of reasons.

First, the 25% cap on fees, without regard to the magnitude or importance of the issue or the impact that the cap will have on an association, is arbitrary. It is a random percentage rather than one based on a legitimate reason.

Second, although the new subsection (a)(2) allows the recovery of attorneys' fees incurred for the purpose of collecting delinquent assessments, the new subsection (b) would cap those fees at 25% of the original debt about sought. This has the effect of undermining the intent of subsection (a)(2), because it will substantially reduce the amount of fees to be paid by delinquent owners.

The new subsection (b) offers no definition of the "original debt amount" which leaves that term open to debate. Generally, associations send demand letters to owners the month after an owner fails to pay assessments. If this is considered the "original debt amount sought," then it would have the effect of capping the fees that an association may recover to 25% of a single month of maintenance fees even though the owner may be several years delinquent by the time a court judgment is obtained. This would have the effect of letting a delinquent owner off the hook for fees and requiring all other owners to foot the bill.

This measure would prohibit the association's attorney from communicating with others, which would effectively deprive associations of their right to effective legal counsel.

Without good reason, the new subsection (c) would prohibit condominium association attorneys from communicating with anyone other than the board of directors, except under limited circumstances. It provides that "attorneys retained by associations may communicate with unit owners for purposes of requests and responses for essential requirements of each matter; provided further that attorneys retained by the association shall not bill or demand payment of attorneys' fee directly from a unit owner." The words "for essential requirements of each matter" are vague and ambiguous and will leave everyone guessing at their meaning.

In effect, this measure would require that an association's attorney communicate only with the board of directors, even if a communication does not involve owners or a matter which is in dispute. For example, the association's attorney would be prohibited from communicating with the association's property manager, managing agent, resident manager, insurance agent, and CPA. The association's attorney would be prohibited from negotiating contracts on behalf of the association because the attorney would be prohibited from speaking with the other party to the contract. In cases where there is a serious threat of bodily injury or death to others, this measure would have the alarming effect of prohibiting an association's attorney from communicating with parties who could assist with safety concerns, such as the police department, fire department, security personnel, or safety contractors. This measure would even go so far as preventing an association's attorney from filing or defending lawsuits because the attorney would be prohibited from communicating with the adverse party and other attorneys in the case. The attorney would also be prohibited from filing legal briefs and making arguments in open court because those would be considered communications with the court.

It would also prevent association attorneys from demanding that owners reimburse the association for its attorneys' fees as allowed by law. This would effectively prevent lawyers from doing their job.

In essence, this bill will deprive associations of their right to effective legal representation, which is unwarranted, unreasonable, and likely unconstitutional. This bill offends the sense of reasonableness and fairness.

This measure also includes a wrong factual finding.

This measure states that the legislature finds that "it is the board, not the individual unit owners, who are the clients of the attorneys." Generally, attorneys who represent an association do not represent the "board" or "individual directors." Attorneys who represent an association generally represent the association, as an entity, which acts through its board. Association attorneys communicate with board members, because, in most instances, it is the board that is vested with decision making authority and the party to whom the attorney-client privilege runs.

Finally, it should be noted that this committee considered and deferred a very similar bill in 2022. See 2022 S.B. 2730. It should defer this bill for the same reasons.

In conclusion, this is an extremely bad bill. Not only is it poorly drafted, but it conflicts with existing law, contradicts itself, and serves no good purpose.

For the foregoing reasons, I respectfully OPPOSE S.B. 2493 and strongly urge the Committee to defer this measure.

Respectfully submitted,

Teresa Ahsing

TESTIMONY in OPPOSITION of S.B. 2493 February 4, 2024

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 2493 for the reasons set forth below.

This measure will require all owners to bear the burden of paying attorneys' fees incurred by an association as the result of a single owner's actions.

This bill will add a new statutory section related to the collection of attorneys' fees that conflicts with HRS Section 514B-157. HRS Section 514B-157(a) provides, in relevant part, that all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of an association for enforcing any provision of the declaration, bylaws, or house rules against an owner shall be promptly paid on demand to the association by such person or persons. The new subsection (a) of the new statutory section states that all costs for attorneys' fees incurred by or on behalf of the association shall be paid from association funds or reserves. Not only is this in conflict with HRS Section 514B-157(a), but it is unfair as it will require all owners to pay the fees incurred as the result of a single owner's breach.

The new subsection (a)(1) provides that the association shall not assess, demand, or seek reimbursement of the costs for attorneys' fees against a unit owner, unless the association prevailed in the matter and assesses, demands, or seeks reimbursement of the costs of attorneys' fees against all the units in accordance with the allocations under HRS Section 514B-41. This new subsection (a)(1) not only conflicts with HRS Section 514B-157(a), but it also conflicts with the new subsection (a) which does not require that the association prevail in a matter. The adoption of a law that conflicts with an existing law and itself is ill-advised.

The new subsection (a)(1) is vague and ambiguous. It is not clear what the word "prevailed" is intended to mean. For example, if an owner violates a covenant and then cures the violation after receiving a demand from the association, will the association have prevailed? Or, does the association have to actually file a lawsuit against the owner and obtain a judgment in its favor?

This bill also leaves open the question of who pays for the association's fees if the association does not prevail. This will undoubtedly lead to litigation.

This bill also leaves open the question of how it is to be interpreted with regard to fees incurred in normal business operations. For example, associations often hire attorneys to render legal opinions, draft documents, and negotiate contracts with vendors. Those fees are generally assessed as a common expense, but the ambiguous language of the new subjection (a)(1) makes that unclear.

The new subsections (a) and (a)(1) are poorly drafted, short-sighted, and in direct conflict with HRS Section 514B-157(a) and for that reason should be rejected.

A twenty-five percent cap on attorneys' fees is not reasonable.

The new subsection (b) places an unreasonable cap on fees. The new subsection (b) states that an association shall not assess, demand, or seek reimbursement for its total and final legal fees in excess of twenty-five percent of the original debt amount sought by the association. This is unreasonable and problematic for a number of reasons.

First, the 25% cap on fees, without regard to the magnitude or importance of the issue or the impact that the cap will have on an association, is arbitrary. It is a random percentage rather than one based on a legitimate reason.

Second, although the new subsection (a)(2) allows the recovery of attorneys' fees incurred for the purpose of collecting delinquent assessments, the new subsection (b) would cap those fees at 25% of the original debt about sought. This has the effect of undermining the intent of subsection (a)(2), because it will substantially reduce the amount of fees to be paid by delinquent owners.

The new subsection (b) offers no definition of the "original debt amount" which leaves that term open to debate. Generally, associations send demand letters to owners the month after an owner fails to pay assessments. If this is considered the "original debt amount sought," then it would

have the effect of capping the fees that an association may recover to 25% of a single month of maintenance fees even though the owner may be several years delinquent by the time a court judgment is obtained. This would have the effect of letting a delinquent owner off the hook for fees and requiring all other owners to foot the bill.

This measure would prohibit the association's attorney from communicating with others, which would effectively deprive associations of their right to effective legal counsel.

Without good reason, the new subsection (c) would prohibit condominium association attorneys from communicating with anyone other than the board of directors, except under limited circumstances. It provides that "attorneys retained by associations may communicate with unit owners for purposes of requests and responses for essential requirements of each matter; provided further that attorneys retained by the association shall not bill or demand payment of attorneys' fee directly from a unit owner." The words "for essential requirements of each matter" are vague and ambiguous and will leave everyone guessing at their meaning.

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It would also prevent association attorneys from demanding that owners reimburse the association for its attorneys' fees as allowed by law. This would effectively prevent lawyers from doing their job.

In essence, this bill will deprive associations of their right to effective legal representation, which is unwarranted, unreasonable, and likely unconstitutional. This bill offends the sense of reasonableness and fairness.

This measure also includes a wrong factual finding.

This measure states that the legislature finds that "it is the board, not the individual unit owners, who are the clients of the attorneys." Generally, attorneys who represent an association do not represent the "board" or "individual directors." Attorneys who represent an association generally represent the association, as an entity, which acts through its board. Association attorneys communicate with board members, because, in most instances, it is the board that is vested with decision making authority and the party to whom the attorney-client privilege runs.

Finally, it should be noted that this committee considered and deferred a very similar bill in 2022. See 2022 S.B. 2730. It should defer this bill for the same reasons.

In conclusion, this is an extremely bad bill. Not only is it poorly drafted, but it conflicts with existing law, contradicts itself, and serves no good purpose.

For the foregoing reasons, I respectfully OPPOSE S.B. 2493 and strongly urge the Committee to defer this measure.

Respectfully submitted,

Reyna C. Murakami

AOUO President of Mariner's Village 1

AOUO President of Waialae Place

AOUO Vice President of The Continental Apartments

SB-2493
Submitted on: 2/5/2024 8:58:05 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

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This measure will require all owners to bear the burden of paying attorneys' fees incurred by an association as the result of a single owner's actions.

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dispute. For example, the association's attorney would be prohibited from communicating with the association's property manager, managing agent, resident manager, insurance agent, and CPA. The association's attorney would be prohibited from negotiating contracts on behalf of the association because the attorney would be prohibited from speaking with the other party to the contract. In cases where there is a serious threat of bodily injury or death to others, this measure would have the alarming effect of prohibiting an association's attorney from communicating with parties who could assist with safety concerns, such as the police department, fire department, security personnel, or safety contractors. This measure would even go so far as preventing an association's attorney from filing or defending lawsuits because the attorney would be prohibited from communicating with the adverse party and other attorneys in the case. The attorney would also be prohibited from filing legal briefs and making arguments in open court because those would be considered communications with the court.

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Finally, it should be noted that this committee considered and deferred a very similar bill in 2022. See 2022 S.B. 2730. It should defer this bill for the same reasons.

In conclusion, this is an extremely bad bill. Not only is it poorly drafted, but it conflicts with existing law, contradicts itself, and serves no good purpose.

For the foregoing reasons, I respectfully OPPOSE S.B. 2493 and strongly urge the Committee to defer this measure.

Respectfully submitted,

Mark McKellar

SB-2493
Submitted on: 2/3/2024 9:41:16 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Dale Head	Individual	Support	In Person

Comments:

Regarding ***SB2493*** (Requires that the fees for attorneys retained by a condominium association be paid from an association's funds or reserves, unless the fees incurred result from attempts to collect delinquent assessments against an individual unit owner. Limits the total and final legal fees to 25 per cent of the original debt amount. Requires attorneys retained by a condominium association to confine their communications to the condominium board, except when the attorneys must request and require materials and responses directly from owners for each matter. Prohibits attorneys retained by a condominium association from billing unit owners directly.)

Aloha CPN Chair Jarrett Keohokalol and Vice Chair Carol Fukunaga:

1. I fully SUPPORT this Bill as it provides some real consumer protection to Home Onwers Associations (HOA) members. Too often they find themselves pounded for unfair 'Legal Fees' which is a form of 'Legal Extortion'.

2. In my decade plus of time on a Board of Directors, I saw how the fees quickly add up to where whatever the original debt was, it is quickly tripled or worse. So, please pass this Bill.

Respectfully, Dale Arthur Head. sunnymakaha@yahoo.com

SB-2493
Submitted on: 2/3/2024 1:15:15 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Sandie Wong	Individual	Oppose	In Person

Comments:

As a condo owner and resident, I oppose this bill because I don't think it is fair to make all owners (via the AOAO) pay for the legal fees that were incurred by an individual owner. Thank you.

Committee on Commerce & Consumer Protection

Tuesday, February 6, 2024 @ 9:30 AM

SB 2493: Attorney Fees

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

ARGUMENT IN SUPPORT

When we are trying to solve problems, we should strive to solve problems as early on in the process as possible. 100% reimbursement of attorney fees is the foundational problem that gives rise to so many of the other problems. I strongly believe that GETTING RID OF THIS ONE THING IS THE BEST THING YOU CAN POSSIBLY DO to redeem our condo governance.

We need to create more incentives for Board Members and Property Managers to engage in a dialogue with condo owners to solve their disagreements, instead of just simply and immediately referring every problem big and small to their attorneys.

How many times have we heard the trade industry oppose Board Member education, saying that Board Members are just volunteers and if we ask them to do anything more than what they are already doing, they will resign? Well, imagine one of these volunteer Board Members being asked to solve a dispute with an Owner…the easiest thing for this volunteer Board Member to do is to hire their paid-for attorneys to work on the problem so they don't have to, instead of engaging in a dialogue with the Owner.

For the Property Managers, it is an open secret that they are horribly incompetent, horribly under-trained, and with very high turnover. For a new Property Manager Representative who has no idea what they are doing, but can instead hire an association attorney to solve the disputes for them, of course they are going to refer the Owner over to the attorneys just so that they don't have to deal with the problem (that they themselves probably created in the first place).

For attorneys, they know Associations have a nearly unlimited ability to raise money and the individual Board Members themselves do not have to pay. This is the perfect gravy train for attorneys to **escalate** disputes so that they can collect as many attorney fees as possible.

During my lawsuit, the only leverage that the Settlement Judge could come up with to urge me to settle was the financial expense that I would incur from litigation. Again, this was the only leverage the Judge could come up with. With 100% reimbursement of attorney fees for Associations, there is no reason for Board Members or Property Managers or attorneys to engage in dispute de-escalation with an Owner.

ATTORNEY FEES FOR DEBT COLLECTION

Most debt collection companies operate by keeping a portion of the debt that they are actually able to recover. This provides an incentive for the debt collectors to be efficient.

Condominium debt collectors instead are attorneys who charge $300 - $500/hr to attempt to collect a debt, even if they fail to do so. In my case, I was billed hundreds (and probably thousands) of dollars in attorney debt collection fees because of incompetence on the part of the attorneys themselves.

The current system of 100% attorney reimbursement actually provides more incentive for the attorneys to NOT successfully collect a debt. In practice, this is achieved by the attorneys constantly adding new charges onto an Owner's account so that they can continue charging $300+/hr for a service where most debt collectors would never dream of getting paid that much.

EDITS TO BILL

While I strongly agree with the intention of this Bill, I find most of it to be confusing. Subsection (b) makes perfect sense, but the rest of the text is confusing to me.

Thank you for the opportunity to testify,

Jeff Sadino

Attached to this testimony is a recent Civil Beat article where **Porter McGuire Kiakono ran up a $3,300 attorney bill to collect $300 in alleged fines**. PMKC then threatened to foreclose on her home. This poor retiree was about to lose her home over $300, all thanks to the people over at Porter McGuire!!!

But the septuagenarian retiree says it was overkill for her condo association to hire Honolulu lawyer Kapono Kiakona to run up a $3,300 legal bill to collect just over $300 in alleged fines. Tensions escalated in December, when Kapono upped the ante, notifying Sipirok-Siregar that her association intended to foreclose on her property to collect past due payments.

Struggling To Get By

It Started With A Messy Front Porch. Now This Elderly Woman's Condo Association May Take Her Home

Bills designed to protect Hawaii condo owners face a potential new life in the 2024 legislative session after stalling in 2023

139

By Stewart Yerton / January 16, 2024

Reading time: 7 minutes.

Rosita Sipirok-Siregar admits her Makakilo home could be neater.

But the septuagenarian retiree says it was overkill for her condo association to hire Honolulu lawyer Kapono Kiakona to run up a $3,300 legal bill to collect just over $300 in alleged fines. Tensions escalated in December, when Kapono upped the ante, notifying Sipirok-Siregar that her association intended to foreclose on her property to collect past due payments.

Sipiro-Siregar acknowledges that her front stoop has at times been cluttered. She also admits that her shoe rack doesn't meet association specifications,

which her next-door neighbor also doesn't follow. But Sipirok-Siregar says it's not justified for the Association of Apartment Owners of Westview at Makakilo Heights to force her to sell her home.

"They go after an old lady who's single and living alone," she says. "I'm a law-abiding citizen, and I'm cited for having fricking shoes on the front porch."

Rosita Sipirok-Siregar's dispute with her Makakilo condo association has led the association to levy more than $3,300 in legal fees against her to pursue $325 in fines for alleged violations and to tell her it intends to foreclose on her townhome to collect. (Stewart Yerton/Civil Beat/2024)

While Sipirok-Siregar plans to contest the fines and charges levied against her in mediation, legislators this session have the chance to look more broadly at the laws governing such disputes and condo associations in general. A handful of bills carried over from the last legislative session would change the way condo associations operate. One measure would provide an alternative to mediation for people like Sipiro-Siregar.

But whether such bills get any traction is another question.

Rep. Luke Evslin, chairman of the House Housing Committee, says he spent much of the summer working on other housing issues. He plans to introduce bills meant to allow more housing density in urban-zoned areas as a way to promote home building while preserving agriculture and conservation land.

Still, Evslin said, he saw what he believes were excessive power grabs by homeowner associations at the expense of residents when he was a Kauai council member. He said he helped pass county legislation limiting what the associations were doing. Evslin said he hasn't ruled out holding hearings on bills addressing condo associations on the state level this session.

Condominiums are generally private self-governing entities, run according to various bylaws and house rules. These governing documents are essentially contracts between condo owners and associations, administered by elected boards. The boards typically hire management companies to oversee operations, as well as lawyers, contractors, consultants and the like — all paid by owners.

Often likened to private governments, the associations have the power to raise money through fees and assessments, fine owners and in some cases foreclose on properties, forcing people to sell their homes to pay debts to the association. Owners often must pay the fees of the lawyers taking action against them on the associations' behalf.

Still, the associations are ultimately creatures of state law and must operate under the broad framework of the Hawaii condominium statute, which is administered by the Department of Commerce and Consumer Affairs' Real Estate Commission. The nine-member commission is made up entirely of real estate brokers and lawyers.

Rep. Luke Evslin, Chairman of the House Housing Committee, said he “wouldn’t write off” any bills aimed at amending Hawaii;’s condominium law this session. (David Croxford/Civil Beat/2023)

One bill would change the way condo elections are held so they more closely resemble elections for public office. Another amounts to an open records law for condo owners, giving them the power to inspect and copy a range of documents that the condo law requires associations to maintain.

A third bill would establish a condo ombudsman to serve as “a resource for members of condominium associations.” That includes helping ensure associations are complying with existing laws and association governing documents and helping resolve disputes without attorneys.

“I wouldn’t write off any of these bills,” Evslin said. “But I would admit to not knowing the details of many of those bills and not being able to comment too specifically.”

Bills To Change Hawaii’s Condo Law Face Hurdles

It's easy to write off the bills simply because they often go nowhere. Lawmakers didn't grant the open records and ombudsman bills a hearing last session, for instance. And bills that do manage to get hearings often face opposition from condo lawyers, associations, lobbyists and consultants that support the existing system.

The bill proposing change to condo board elections, for instance, faced opposition from the Hawaii Council of Community Associations, a lobbying group, and the Hawaii State Association of Parliamentarians, whose members are hired by associations to help run board meetings. Kapono Kiakona's law firm, Porter McGuire Kiakona, which is known for running up big tabs on behalf of associations against owners, also testified against the bill. In addition, several current association board members submitted identical testimony opposing the bill.

One of the few voices in support was Lila Mower, president of Kokua Council, an advocacy organization that has been pushing for legal changes designed to help individual owners.

In an interview, Mower said Sipirok-Siregar's situation – where she faces an alleged $1,133 in unpaid maintenance fees, fines and late fees and $3,366 in legal fees — is hardly an outlier.

"The situation where what she really owes is $1,000 but Kapono's fees are three times that – that's not unusual. Sometimes it's more than three times," said Mower, who was nominated by House Speaker Scott Saiki to a legislative working group established to study condo issues. "It's sadly not unusual."

It's important to make it easier to vote out board directors who bless such behavior, she said.

"It's excruciatingly difficult" to oust board members, she said.

Homeowner Admits Errors

Sipirok-Siregar acknowledges she has occasionally left items like a broom or mop on her front stoop, in violation of house rules. Her shoe rack also doesn't meet association specs, which call for a two-tier white or off-white rack. But on a recent morning her rack was hidden from street view by a pillar, as was a vacuum cleaner and trash can she had placed near the front door.

Sipirok-Siregar also admits she hasn't opened many of the numerous letters she has gotten from Kiakona. The association's lawyer said he couldn't comment on the pending matter without written authorization from Sipiro-Siregar, which she had not provided.

But one letter from Kiakona that Sipirok-Siregar did open shows what the association is demanding and potential paths forward for her.

Titled "NOTICE OF DEFAULT AND INTENTION TO FORECLOSE" and dated Dec. 14, 2023, the letter says Sipirok-Siregar owes $4,499.88 in delinquent "assessments, other charges and attorneys fees and costs unpaid to the association." Although the letter says Sipiro-Siregar must pay $4,938 to bring her account current, she can remove the lien on her property and notice of intention to foreclose by paying $438.49.

The letter also says she has the right to submit a payment plan and request mediation. It also suggests she hire an attorney to understand potential legal rights and defenses, although that would mean paying two lawyers: her own and Kiakona.

Sipirok-Siregar expresses confusion about the situation, including the sobering reality that the association can foreclose on her property to collect payment under Hawaii's condo law. At the same time, she denies she has ever fallen behind on paying maintenance fees, as Kiakona's letter alleges.

Regardless, she's hoping to sort things out in mediation.

Whether that results in an agreement remains to be seen. Mower has collected reports published by the Real Estate Commission dating back to

1991. Those indicate that mediation results in an agreement in less than one third of cases, she said.

Mower and other owner-advocates believe an ombudsman could be more effective in helping resolve disputes between owners and associations. Regardless of whether that's the best solution, Mower said the current system of associations turning lawyers loose on owners – at the owners' expense — benefits only the lawyers.

If the associations "want to be good neighbors, there are so many alternatives," she said. "Where's the reasonableness? Where's the rationality? Where's the humanity?"

About the Author

Stewart Yerton

Stewart Yerton is the senior business writer for Honolulu Civil Beat. You can reach him at syerton@civilbeat.org.

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SB-2493
Submitted on: 2/3/2024 11:52:26 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Marcia Kimura	Individual	Support	Remotely Via Zoom

Comments:

CPN Committee Members:

Thank you very much for extending this hearing for SB2493, which I support as a deterrent to retailation by boards against owners who face financial destruction after exercising their free speech rights to oppose board policies and actions.

Its main premise is that when condo boards hire attorneys who represent the interests of their associations, the board directors and their associations, not the individual owners, are clearly the clients of the attorneys, and thus the payment source for the legal services is association funds. This must supersede governing document mandates of associations.

If boards insist on reimbursement of legal fees from the contracting of attorneys against indiivuidual owners, including for retaliatory purposes, they must file complaints in court a**nd prevail in the actions**, **after initially paying for the attorneys' fees with association funds.**

I am grateful for the draft of SB2493, but of concern to me are:

1. On page 3, "Attorneys' fees; association funds or reserves," (a) (1), beginning on line 7, "The association prevailed...." should read "The association prevailed **as the result of judicial ruling on the matter**....." Otherwise, association boards will likely wrongfully determine themselves, that "prevails" means individual owners should pay or reimburse the board for legal fees of non delinquent debt matters at board discretion.

2. On page 3, (2) (b), "The association shall not assess, demand, or seek reimbursement for its total and final legal fees in excess of twenty-five per cent of the original **delinquent** debt amount....." **Without the word "delinquent," there is a contradiction to the central objective of this bill - to prevent any legal fees other than for delinquent common dues collection from being billed to individual owners when boards hire the attorneys.**

It behooves me to point out the following important points ommitted from the original proposal which also protect condo owners:

3. The entire section on collection attorneys' compliance with The Fair Debt Collection Practices Act was omitted, but is an essential mandate, since it has been determined that condo collection attorneys are collectors who must comply with the terms of the FDCPA.

4. The entire section on details in attorneys' bill statements was also omitted. I originally added this section in response to complaints from other owners that their statements were unclear as to itemization of separate tasks the attorney performed: detailed descriptions of each separate task, hourly rates for each task, how many hours were expended on each task, total bill amounts and a reasonable due date for payment of the bill.

I am unsure of why the above points were omitted from the final draft, but my view is that these provisions originally drafted to adequately protect owner rights, should be included in the final verson.

Going forward, I hope that the original mission of those who govern or serve condominium associations, to secure the best interests of owners will be restored, and that the detriment commonly wrought by self-serving parties for retaliation towards dissenting owners will end.

With sincere gratitude for your attention to SB2493, I am asking in earnest that you progress the measure to passage.

Marcia Kimura

Hawaii Condominium Unit Owner

RE: Testimony Submission for February 6, 2024
In support of SB 2493

Dear Committee on Consumer Protection & Commerce,

1. Thank you for your service. This is in support of SB 2493 and please support my initiated HI SB2128 | 2024 | Regular Session | LegiScan that would require condominium homeowner associations to include in their bylaws an option for a unit owner to opt-out of a condominium. Establishes a procedure for a unit owner of a condominium, planned community associations; cooperative housing corporation to **opt-out of their respective private community.**
2. Please protect condominium homeowners against HOA issues that may include financial statements where management has elected to omit substantially all of the disclosures required by the generally accepted principles as issued by the U.S. Financial Accounting Standards, misappropriation of funds, state law prohibiting wrongful foreclosure, unfair or deceptive acts or practices, violations of the federal fair debt collection practices act, inaccurate records, access to Association records, HRS 514B, and HRS 467-14 violations, proper receipts and invoice keeping, health and safety to avoid danger to life or property, common element and limited common element repairs, transparency issues with Board of Directors and owners, violation of governing documents, breach of contract on performance obligation, breach of fiduciary duty, proper calculation of reserves, proper compliance enforcement actions, and equal treatment.
3. I request an email response from the Committee on Consumer Protection & Commerce to provide documentation and referral to all appropriate agencies for HOA and its agent's investigation for retroactive remedies pursuant to federal, state, and statutory laws.

Respectfully submitted,

Ms. Morrison

Lourdes Scheibert
920 Ward Ave
Honolulu, Hawaii. 96814

February 4, 2024

To: CPN Committee Chair Jarrett Keohokalole, Vice Chair Carol Fukunaga and members of the committee

I am Lourdes Scheibert and I support,

SB2493:

Requires that the fees for attorneys retained by a condominium association be paid from an association's funds or reserves, unless the fees incurred result from attempts to collect delinquent assessments against an individual unit owner. Limits the total and final legal fees to 25 per cent of the original debt amount. Requires attorneys retained by a condominium association to confine their communications to the condominium board, except when the attorneys must request and require materials and responses directly from owners for each matter. Prohibits attorneys retained by a condominium association from billing unit owners directly.

My support is based on one example of the recent article by Civil Beat “It Started With A Messy Front Porch. Now This Elderly Women’s Condo Association May Take Her Home Away” is an example of matters worsening. Additionally, 514B allows for non-judicial foreclosure facing this elderly woman today over an allege amount of $300.00 fines and the attorney’s fee of $3,300.00. The attorney’s fee of $3,300.00 to collect the $300.00.

What happens to her equity in her condo should the Association buy or sell her unit for $3,600.00?

In my humble opinion, this is abuse of an elderly who desires to age in place and living peacefully in her condominium.

SB2493 & SB3205 & SB2404 should pass into HRS514B by this Legislative Session 2024. I am a participant with **Hui 'Oia 'i ‘o’,** a large group of condominium owners on all islands who have discussions to offer solutions to achieve harmonious condominium communities. We also support the Kokua Council efforts who advocates for seniors.

Thank-you,
Lourdes Scheibert
Condominium Owner

SB-2493
Submitted on: 2/4/2024 2:39:55 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Greg Misakian	Individual	Support	Remotely Via Zoom

Comments:

I Support SB2493.

Many association attorneys throughout Hawaii are negatively impacting the financial well-being of associations due to unwarranted and unnecessary work product billed to associations. Sadly, this work product is "encouraged" by bad Boards and bad actors, who are misusing the association attorney to improperly fine owners they don't like, or who raise concerns about bad Board actions and behavior.

Gregory Misakian

Kokua Council, 2nd Vice President

Waikiki Neighborhood Board, Sub-District 2 Vice Chair

February 6, 2024 Lila Mower

The Senate
The Thirty-Second Legislature
Committee on Commerce and Consumer Protection
Tuesday, February 6, 2024
9:30 a.m.

To: Senator Jarrett Keohokalole, Chair
Re: SB 2493, Relating to Condominium Associations

Aloha Chair Jarrett Keohokalole, Vice-Chair Carol Fukunaga, 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 and I serve on the board of the Hawaii Alliance for Retired Americans, with a local membership of over 20,000 retirees.

I also serve as the leader of a coalition of hundreds of property owners, mostly seniors, who own and/or reside in associations throughout Hawaii and I have served as an officer on three condominium associations' boards.

Mahalo for the opportunity to submit testimony in **support of SB 2493.**

With no checks and balances to limit condominium association boards, the obligations of associations to unit owners become inconsequential.

Associations do not have to be correct; their obstructive tactics using excessive legal fees are rewarded when owners are financially and emotionally drained and abandon their efforts for redress.

These owners are forced to recognize their powerlessness and capitulate because they cannot outgun their association board with its limitless ability to retain attorneys whose legal fees are often assigned to the affected owners. These owners and their neighbors who observe these abusive acts are silenced because they can also be saddled with unreasonable legal fees foisted upon them by their associations to stifle inquiry and dissent, and to intimidate those who are merely seeking to enforce their statutory rights and protections.

Owners should not have to pay premium rates (e.g., $500 per hour) for clerical tasks and attorneys should not receive full compensation at their standard hourly rates for services that should have been delegated to non-attorneys. Both the hourly rates and the number of hours charged by the attorney should be reasonable. And legal fees should be proportional to the amount in dispute.

SB 2493 defines the responsibility of legal fees and serves to diminish the abusive practice of saddling owners with excessive legal fees.

SB-2493
Submitted on: 2/3/2024 5:48:57 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 2493 for the reasons set forth below.

This measure will require all owners to bear the burden of paying attorneys' fees incurred by an association as the result of a single owner's actions.

This bill will add a new statutory section related to the collection of attorneys' fees that conflicts with HRS Section 514B-157. HRS Section 514B-157(a) provides, in relevant part, that all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of an association for enforcing any provision of the declaration, bylaws, or house rules against an owner shall be promptly paid on demand to the association by such person or persons. The new subsection (a) of the new statutory section states that all costs for attorneys' fees incurred by or on behalf of the association shall be paid from association funds or reserves. Not only is this in conflict with HRS Section 514B-157(a), but it is unfair as it will require all owners to pay the fees incurred as the result of a single owner's breach.

The new subsection (a)(1) provides that the association shall not assess, demand, or seek reimbursement of the costs for attorneys' fees against a unit owner, unless the association prevailed in the matter and assesses, demands, or seeks reimbursement of the costs of attorneys' fees against all the units in accordance with the allocations under HRS Section 514B-41. This new subsection (a)(1) not only conflicts with HRS Section 514B-157(a), but it also conflicts with the new subsection (a) which does not require that the association prevail in a matter. The adoption of a law that conflicts with an existing law and itself is ill-advised.

The new subsection (a)(1) is vague and ambiguous. It is not clear what the word "prevailed" is intended to mean. For example, if an owner violates a covenant and then cures the violation after receiving a demand from the association, will the association have prevailed? Or, does the association have to actually file a lawsuit against the owner and obtain a judgment in its favor?

This bill also leaves open the question of who pays for the association's fees if the association does not prevail. This will undoubtedly lead to litigation.

This bill also leaves open the question of how it is to be interpreted with regard to fees incurred in normal business operations. For example, associations often hire attorneys to render legal opinions, draft documents, and negotiate contracts with vendors. Those fees are generally assessed as a common expense, but the ambiguous language of the new subjection (a)(1) makes that unclear.

The new subsections (a) and (a)(1) are poorly drafted, short-sighted, and in direct conflict with HRS Section 514B-157(a) and for that reason should be rejected.

A twenty-five percent cap on attorneys' fees is not reasonable.

The new subsection (b) places an unreasonable cap on fees. The new subsection (b) states that an association shall not assess, demand, or seek reimbursement for its total and final legal fees in excess of twenty-five percent of the original debt amount sought by the association. This is unreasonable and problematic for a number of reasons.

First, the 25% cap on fees, without regard to the magnitude or importance of the issue or the impact that the cap will have on an association, is arbitrary. It is a random percentage rather than one based on a legitimate reason.

Second, although the new subsection (a)(2) allows the recovery of attorneys' fees incurred for the purpose of collecting delinquent assessments, the new subsection (b) would cap those fees at 25% of the original debt about sought. This has the effect of undermining the intent of

subsection (a)(2), because it will substantially reduce the amount of fees to be paid by delinquent owners.

The new subsection (b) offers no definition of the "original debt amount" which leaves that term open to debate. Generally, associations send demand letters to owners the month after an owner fails to pay assessments. If this is considered the "original debt amount sought," then it would have the effect of capping the fees that an association may recover to 25% of a single month of maintenance fees even though the owner may be several years delinquent by the time a court judgment is obtained. This would have the effect of letting a delinquent owner off the hook for fees and requiring all other owners to foot the bill.

This measure would prohibit the association's attorney from communicating with others, which would effectively deprive associations of their right to effective legal counsel.

Without good reason, the new subsection (c) would prohibit condominium association attorneys from communicating with anyone other than the board of directors, except under limited circumstances. It provides that "attorneys retained by associations may communicate with unit owners for purposes of requests and responses for essential requirements of each matter; provided further that attorneys retained by the association shall not bill or demand payment of attorneys' fee directly from a unit owner." The words "for essential requirements of each matter" are vague and ambiguous and will leave everyone guessing at their meaning.

In effect, this measure would require that an association's attorney communicate only with the board of directors, even if a communication does not involve owners or a matter which is in dispute. For example, the association's attorney would be prohibited from communicating with the association's property manager, managing agent, resident manager, insurance agent, and CPA. The association's attorney would be prohibited from negotiating contracts on behalf of the association because the attorney would be prohibited from speaking with the other party to the contract. In cases where there is a serious threat of bodily injury or death to others, this measure would have the alarming effect of prohibiting an association's attorney from communicating with parties who could assist with safety concerns, such as the police department, fire department, security personnel, or safety contractors. This measure would even go so far as preventing an association's attorney from filing or defending lawsuits because the attorney would be prohibited from communicating with the adverse party and other attorneys in the case. The attorney would also be prohibited from filing legal briefs and making arguments in open court because those would be considered communications with the court.

It would also prevent association attorneys from demanding that owners reimburse the association for its attorneys' fees as allowed by law. This would effectively prevent lawyers from doing their job.

In essence, this bill will deprive associations of their right to effective legal representation, which is unwarranted, unreasonable, and likely unconstitutional. This bill offends the sense of reasonableness and fairness.

This measure also includes a wrong factual finding.

This measure states that the legislature finds that "it is the board, not the individual unit owners, who are the clients of the attorneys." Generally, attorneys who represent an association do not represent the "board" or "individual directors." Attorneys who represent an association generally represent the association, as an entity, which acts through its board. Association attorneys communicate with board members, because, in most instances, it is the board that is vested with decision making authority and the party to whom the attorney-client privilege runs.

Finally, it should be noted that this committee considered and deferred a very similar bill in 2022. See 2022 S.B. 2730. It should defer this bill for the same reasons.

In conclusion, this is an extremely bad bill. Not only is it poorly drafted, but it conflicts with existing law, contradicts itself, and serves no good purpose.

For the foregoing reasons, I respectfully OPPOSE S.B. 2493 and strongly urge the Committee to defer this measure.

Respectfully submitted

Julie Wassel

SB-2493
Submitted on: 2/3/2024 9:52:40 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Oppose	Written Testimony Only

Comments:

I have owned a condo in Honolulu since 1987 and also serve on its board. I STRONGLY OPPOSE S.B. 2493 for the following reasons.

This measure will require all owners to bear the burden of paying attorneys' fees incurred by an association as the result of a single owner's actions.

This bill will add a new statutory section related to the collection of attorneys' fees that conflicts with HRS Section 514B-157. HRS Section 514B-157(a) provides, in relevant part, that all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of an association for enforcing any provision of the declaration, bylaws, or house rules against an owner shall be promptly paid on demand to the association by such person or persons. The new subsection (a) of the new statutory section states that all costs for attorneys' fees incurred by or on behalf of the association shall be paid from association funds or reserves. Not only is this in conflict with HRS Section 514B-157(a), but it is unfair as it will require all owners to pay the fees incurred as the result of a single owner's breach. Also, reserve funds are allocated for specific projects.

The new subsection (a)(1) provides that the association shall not assess, demand, or seek reimbursement of the costs for attorneys' fees against a unit owner, unless the association prevailed in the matter and assesses, demands, or seeks reimbursement of the costs of attorneys' fees against all the units in accordance with the allocations under HRS Section 514B-41. This new subsection (a)(1) not only conflicts with HRS Section 514B-157(a), but it also conflicts with the new subsection (a) which does not require that the association prevail in a matter. The adoption of a law that conflicts with an existing law and itself is ill-advised.

The new subsection (a)(1) is vague and ambiguous. It is not clear what the word "prevailed" is intended to mean. For example, if an owner violates a covenant and then cures the violation

after receiving a demand from the association, will the association have prevailed? Or, does the association have to actually file a lawsuit against the owner and obtain a judgment in its favor?

This bill also leaves open the question of who pays for the association's fees if the association does not prevail. This will undoubtedly lead to litigation.

This bill also leaves open the question of how it is to be interpreted with regard to fees incurred in normal business operations. For example, associations often hire attorneys to render legal opinions, draft documents, and negotiate contracts with vendors. Those fees are generally assessed as a common expense, but the ambiguous language of the new subjection (a)(1) makes that unclear.

The new subsections (a) and (a)(1) are poorly drafted, short-sighted, and in direct conflict with HRS Section 514B-157(a) and for that reason should be rejected.

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In effect, this measure would require that an association's attorney communicate only with the board of directors, even if a communication does not involve owners or a matter which is in dispute. For example, the association's attorney would be prohibited from communicating with the association's property manager, managing agent, resident manager, insurance agent, and CPA. These are normal occurrences. Prohibiting these actions adversely affects the association's performance. The association's attorney would be prohibited from negotiating contracts on behalf of the association because the attorney would be prohibited from speaking with the other party to the contract. Ths is a common occurrence. In cases where there is a serious threat of bodily injury or death to others, this measure would have the alarming effect of prohibiting an association's attorney from communicating with parties who could assist with safety concerns, such as the police department, fire department, security personnel, or safety contractors. This measure would even go so far as preventing an association's attorney from filing or defending lawsuits because the attorney would be prohibited from communicating with the adverse party and other attorneys in the case. The attorney would also be prohibited from filing legal briefs and making arguments in open court because those would be considered communications with the court.

It would also prevent association attorneys from demanding that owners reimburse the association for its attorneys' fees as allowed by law. This would effectively prevent lawyers from doing their job.

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Finally, it should be noted that this committee considered and deferred a very similar bill in 2022. See 2022 S.B. 2730. It should defer this bill for the same reasons.

In conclusion, this is an extremely bad bill. Not only is it poorly drafted, but it conflicts with existing law, contradicts itself, and serves no good purpose.

For the foregoing reasons, I respectfully OPPOSE S.B. 2493 and strongly urge the Committee to defer this measure.

SB-2493
Submitted on: 2/4/2024 10:11:37 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
mary freeman	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 2493 for the reasons set forth below.

This measure will require all owners to bear the burden of paying attorneys' fees incurred by an association as the result of a single owner's actions.

This bill will add a new statutory section related to the collection of attorneys' fees that conflicts with HRS Section 514B-157. HRS Section 514B-157(a) provides, in relevant part, that all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of an association for enforcing any provision of the declaration, bylaws, or house rules against an owner shall be promptly paid on demand to the association by such person or persons. The new subsection (a) of the new statutory section states that all costs for attorneys' fees incurred by or on behalf of the association shall be paid from association funds or reserves. Not only is this in conflict with HRS Section 514B-157(a), but it is unfair as it will require all owners to pay the fees incurred as the result of a single owner's breach.

The new subsection (a)(1) provides that the association shall not assess, demand, or seek reimbursement of the costs for attorneys' fees against a unit owner, unless the association prevailed in the matter and assesses, demands, or seeks reimbursement of the costs of attorneys' fees against all the units in accordance with the allocations under HRS Section 514B-41. This new subsection (a)(1) not only conflicts with HRS Section 514B-157(a), but it also conflicts with the new subsection (a) which does not require that the association prevail in a matter. The adoption of a law that conflicts with an existing law and itself is ill-advised.

The new subsection (a)(1) is vague and ambiguous. It is not clear what the word "prevailed" is intended to mean. For example, if an owner violates a covenant and then cures the violation after receiving a demand from the association, will the association have prevailed? Or, does the association have to actually file a lawsuit against the owner and obtain a judgment in its favor?

This bill also leaves open the question of who pays for the association's fees if the association does not prevail. This will undoubtedly lead to litigation.

This bill also leaves open the question of how it is to be interpreted with regard to fees incurred in normal business operations. For example, associations often hire attorneys to render legal opinions, draft documents, and negotiate contracts with vendors. Those fees are generally assessed as a common expense, but the ambiguous language of the new subjection (a)(1) makes that unclear.

The new subsections (a) and (a)(1) are poorly drafted, short-sighted, and in direct conflict with HRS Section 514B-157(a) and for that reason should be rejected.

A twenty-five percent cap on attorneys' fees is not reasonable.

The new subsection (b) places an unreasonable cap on fees. The new subsection (b) states that an association shall not assess, demand, or seek reimbursement for its total and final legal fees in excess of twenty-five percent of the original debt amount sought by the association. This is unreasonable and problematic for a number of reasons.

First, the 25% cap on fees, without regard to the magnitude or importance of the issue or the impact that the cap will have on an association, is arbitrary. It is a random percentage rather than one based on a legitimate reason.

Second, although the new subsection (a)(2) allows the recovery of attorneys' fees incurred for the purpose of collecting delinquent assessments, the new subsection (b) would cap those fees at 25% of the original debt about sought. This has the effect of undermining the intent of

subsection (a)(2), because it will substantially reduce the amount of fees to be paid by delinquent owners.

The new subsection (b) offers no definition of the "original debt amount" which leaves that term open to debate. Generally, associations send demand letters to owners the month after an owner fails to pay assessments. If this is considered the "original debt amount sought," then it would have the effect of capping the fees that an association may recover to 25% of a single month of maintenance fees even though the owner may be several years delinquent by the time a court judgment is obtained. This would have the effect of letting a delinquent owner off the hook for fees and requiring all other owners to foot the bill.

This measure would prohibit the association's attorney from communicating with others, which would effectively deprive associations of their right to effective legal counsel.

Without good reason, the new subsection (c) would prohibit condominium association attorneys from communicating with anyone other than the board of directors, except under limited circumstances. It provides that "attorneys retained by associations may communicate with unit owners for purposes of requests and responses for essential requirements of each matter; provided further that attorneys retained by the association shall not bill or demand payment of attorneys' fee directly from a unit owner." The words "for essential requirements of each matter" are vague and ambiguous and will leave everyone guessing at their meaning.

In effect, this measure would require that an association's attorney communicate only with the board of directors, even if a communication does not involve owners or a matter which is in dispute. For example, the association's attorney would be prohibited from communicating with the association's property manager, managing agent, resident manager, insurance agent, and CPA. The association's attorney would be prohibited from negotiating contracts on behalf of the association because the attorney would be prohibited from speaking with the other party to the contract. In cases where there is a serious threat of bodily injury or death to others, this measure would have the alarming effect of prohibiting an association's attorney from communicating with parties who could assist with safety concerns, such as the police department, fire department, security personnel, or safety contractors. This measure would even go so far as preventing an association's attorney from filing or defending lawsuits because the attorney would be prohibited from communicating with the adverse party and other attorneys in the case. The attorney would also be prohibited from filing legal briefs and making arguments in open court because those would be considered communications with the court.

It would also prevent association attorneys from demanding that owners reimburse the association for its attorneys' fees as allowed by law. This would effectively prevent lawyers from doing their job.

In essence, this bill will deprive associations of their right to effective legal representation, which is unwarranted, unreasonable, and likely unconstitutional. This bill offends the sense of reasonableness and fairness.

This measure also includes a wrong factual finding.

This measure states that the legislature finds that "it is the board, not the individual unit owners, who are the clients of the attorneys." Generally, attorneys who represent an association do not represent the "board" or "individual directors." Attorneys who represent an association generally represent the association, as an entity, which acts through its board. Association attorneys communicate with board members, because, in most instances, it is the board that is vested with decision making authority and the party to whom the attorney-client privilege runs.

Finally, it should be noted that this committee considered and deferred a very similar bill in 2022. See 2022 S.B. 2730. It should defer this bill for the same reasons.

In conclusion, this is an extremely bad bill. Not only is it poorly drafted, but it conflicts with existing law, contradicts itself, and serves no good purpose.

For the foregoing reasons, I respectfully OPPOSE S.B. 2493 and strongly urge the Committee to defer this measure.

Respectfully submitted,

Mary S Freeman

Ewa Beach

SB-2493
Submitted on: 2/4/2024 1:38:05 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard S. Ekimoto	Individual	Oppose	Written Testimony Only

Comments:

I oppose SB2493. The law currently allows an award of attorneys fees in a condominium association dispute. If the Association prevails, the Association is entitled to its legal fees from the owner who violated the governing documents, house rule or condominium statute. Similarly, if the owner prevails, the owner is entitled to reimbursement of legal fees. If an owner violates the governing documents, it's not fair to all the other owners to pay for that owners violation. Effectively, SB2493 would make it more likely that owners will violate the governing documents making it more difficult for all owners.

SB-2493
Submitted on: 2/4/2024 1:52:19 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

I oppose this bill.

SB-2493
Submitted on: 2/4/2024 6:11:48 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 2493 for the reasons set forth below.

This measure will require all owners to bear the burden of paying attorneys' fees incurred by an association as the result of a single owner's actions.

This bill will add a new statutory section related to the collection of attorneys' fees that conflicts with HRS Section 514B-157. HRS Section 514B-157(a) provides, in relevant part, that all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of an association for enforcing any provision of the declaration, bylaws, or house rules against an owner shall be promptly paid on demand to the association by such person or persons. The new subsection (a) of the new statutory section states that all costs for attorneys' fees incurred by or on behalf of the association shall be paid from association funds or reserves. Not only is this in conflict with HRS Section 514B-157(a), but it is unfair as it will require all owners to pay the fees incurred as the result of a single owner's breach.

The new subsection (a)(1) provides that the association shall not assess, demand, or seek reimbursement of the costs for attorneys' fees against a unit owner, unless the association prevailed in the matter and assesses, demands, or seeks reimbursement of the costs of attorneys' fees against all the units in accordance with the allocations under HRS Section 514B-41. This new subsection (a)(1) not only conflicts with HRS Section 514B-157(a), but it also conflicts with the new subsection (a) which does not require that the association prevail in a matter. The adoption of a law that conflicts with an existing law and itself is ill-advised.

The new subsection (a)(1) is vague and ambiguous. It is not clear what the word "prevailed" is intended to mean. For example, if an owner violates a covenant and then cures the violation after receiving a demand from the association, will the association have prevailed? Or, does the association have to actually file a lawsuit against the owner and obtain a judgment in its favor?

This bill also leaves open the question of who pays for the association's fees if the association does not prevail. This will undoubtedly lead to litigation.

This bill also leaves open the question of how it is to be interpreted with regard to fees incurred in normal business operations. For example, associations often hire attorneys to render legal opinions, draft documents, and negotiate contracts with vendors. Those fees are generally assessed as a common expense, but the ambiguous language of the new subjection (a)(1) makes that unclear.

The new subsections (a) and (a)(1) are poorly drafted, short-sighted, and in direct conflict with HRS Section 514B-157(a) and for that reason should be rejected.

A twenty-five percent cap on attorneys' fees is not reasonable.

The new subsection (b) places an unreasonable cap on fees. The new subsection (b) states that an association shall not assess, demand, or seek reimbursement for its total and final legal fees in excess of twenty-five percent of the original debt amount sought by the association. This is unreasonable and problematic for a number of reasons.

First, the 25% cap on fees, without regard to the magnitude or importance of the issue or the impact that the cap will have on an association, is arbitrary. It is a random percentage rather than one based on a legitimate reason.

Second, although the new subsection (a)(2) allows the recovery of attorneys' fees incurred for the purpose of collecting delinquent assessments, the new subsection (b) would cap those fees at 25% of the original debt about sought. This has the effect of undermining the intent of subsection (a)(2), because it will substantially reduce the amount of fees to be paid by delinquent owners.

The new subsection (b) offers no definition of the "original debt amount" which leaves that term open to debate. Generally, associations send demand letters to owners the month after an owner fails to pay assessments. If this is considered the "original debt amount sought," then it would have the effect of capping the fees that an association may recover to 25% of a single month of maintenance fees even though the owner may be several years delinquent by the time a court judgment is obtained. This would have the effect of letting a delinquent owner off the hook for fees and requiring all other owners to foot the bill.

This measure would prohibit the association's attorney from communicating with others, which would effectively deprive associations of their right to effective legal counsel.

Without good reason, the new subsection (c) would prohibit condominium association attorneys from communicating with anyone other than the board of directors, except under limited circumstances. It provides that "attorneys retained by associations may communicate with unit owners for purposes of requests and responses for essential requirements of each matter; provided further that attorneys retained by the association shall not bill or demand payment of attorneys' fee directly from a unit owner." The words "for essential requirements of each matter" are vague and ambiguous and will leave everyone guessing at their meaning.

In effect, this measure would require that an association's attorney communicate only with the board of directors, even if a communication does not involve owners or a matter which is in

dispute. For example, the association's attorney would be prohibited from communicating with the association's property manager, managing agent, resident manager, insurance agent, and CPA. The association's attorney would be prohibited from negotiating contracts on behalf of the association because the attorney would be prohibited from speaking with the other party to the contract. In cases where there is a serious threat of bodily injury or death to others, this measure would have the alarming effect of prohibiting an association's attorney from communicating with parties who could assist with safety concerns, such as the police department, fire department, security personnel, or safety contractors. This measure would even go so far as preventing an association's attorney from filing or defending lawsuits because the attorney would be prohibited from communicating with the adverse party and other attorneys in the case. The attorney would also be prohibited from filing legal briefs and making arguments in open court because those would be considered communications with the court.

It would also prevent association attorneys from demanding that owners reimburse the association for its attorneys' fees as allowed by law. This would effectively prevent lawyers from doing their job.

In essence, this bill will deprive associations of their right to effective legal representation, which is unwarranted, unreasonable, and likely unconstitutional. This bill offends the sense of reasonableness and fairness.

This measure also includes a wrong factual finding.

This measure states that the legislature finds that "it is the board, not the individual unit owners, who are the clients of the attorneys." Generally, attorneys who represent an association do not represent the "board" or "individual directors." Attorneys who represent an association generally represent the association, as an entity, which acts through its board. Association attorneys communicate with board members, because, in most instances, it is the board that is vested with decision making authority and the party to whom the attorney-client privilege runs.

Finally, it should be noted that this committee considered and deferred a very similar bill in 2022. See 2022 S.B. 2730. It should defer this bill for the same reasons.

In conclusion, this is an extremely bad bill. Not only is it poorly drafted, but it conflicts with existing law, contradicts itself, and serves no good purpose.

For the foregoing reasons, I respectfully OPPOSE S.B. 2493 and strongly urge the Committee to defer this measure.

Respectfully submitted,

M. Anne Anderson

SB-2493
Submitted on: 2/4/2024 7:08:32 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Sharon Heritage	Individual	Oppose	Written Testimony Only

Comments:

This Bill severely affects an Association's ability to conduct proper enforcement of its governing documents. This Bill implies that Boards and their members do not know that their responsibility is to act in the best interests of the community, to put their personal preferences aside. and to maintain and enhance the Association's residents' quality of life.

SB-2493
Submitted on: 2/4/2024 7:19:30 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Carol Walker	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 2493 for the reasons set forth below.

This measure will require all owners to bear the burden of paying attorneys' fees incurred by an association as the result of a single owner's actions.

1. bill will add a new statutory section related to the collection of attorneys' fees that conflicts with HRS Section 514B-157. HRS Section 514B-157(a) provides, in relevant part, that all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of an association for enforcing any provision of the declaration, bylaws, or house rules against an owner shall be promptly paid on demand to the association by such person or persons. The new subsection (a) of the new statutory section states that all costs for attorneys' fees incurred by or on behalf of the association shall be paid from association funds or reserves. Not only is this in conflict with HRS Section 514B-157(a), but it is unfair as it will require all owners to pay the fees incurred as the result of a single owner's breach.

The new subsection (a)(1) provides that the association shall not assess, demand, or seek reimbursement of the costs for attorneys' fees against a unit owner, unless the association prevailed in the matter and assesses, demands, or seeks reimbursement of the costs of attorneys' fees against all the units in accordance with the allocations under HRS Section 514B-41. This new subsection (a)(1) not only conflicts with HRS Section 514B-157(a), but it also conflicts with the new subsection (a) which does not require that the association prevail in a matter. The adoption of a law that conflicts with an existing law and itself is ill-advised.

The new subsection (a)(1) is vague and ambiguous. It is not clear what the word “prevailed” is intended to mean. For example, if an owner violates a covenant and then cures the violation after receiving a demand from the association, will the association have prevailed? Or, does the association have to actually file a lawsuit against the owner and obtain a judgment in its favor?

This bill also leaves open the question of who pays for the association’s fees if the association does not prevail. This will undoubtedly lead to litigation.

1. bill also leaves open the question of how it is to be interpreted with regard to fees incurred in normal business operations. For example, associations often hire attorneys to render legal opinions, draft documents, and negotiate contracts with vendors. Those fees are generally assessed as a common expense, but the ambiguous language of the new subjection (a)(1) makes that unclear.

The new subsections (a) and (a)(1) are poorly drafted, short-sighted, and in direct conflict with HRS Section 514B-157(a) and for that reason should be rejected.

I strongly OPPOSE SB2493.

Respectfully Submitted,

Carol Walker

SB-2493
Submitted on: 2/4/2024 7:52:24 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Aaron Cavagnolo	Individual	Support	Written Testimony Only

Comments:

Subject: Testimony in Support of Bill SB2493

Dear Representatives,

I am writing to express my strong support for Bill SB2493, which proposes significant changes to the handling of legal fees incurred by condominium associations. As a concerned unit owner and advocate for fair and transparent governance within condominium associations, I believe that the provisions outlined in SB2493 are crucial in addressing the challenges faced by homeowners like myself.

In my recent experience with the AOAO Diamond Head Surf Condominium, I have encountered substantial difficulties in communication with the board and the attorney retained by the association. The lack of responsiveness and timely action by the board has left my family in an untenable situation, with serious structural issues, health hazards, and retaliatory acts that have impacted our daily lives and financial well-being.

Bill SB2493's proposal to require that the fees for attorneys retained by a condominium association be paid from the association's funds or reserves is particularly pertinent to my situation. The current ability for associations to charge owners for legal expenses resulting from board decisions, especially when communication has broken down, places an undue burden on homeowners. The bill's limitation of total and final legal fees to 25 per cent of the original debt amount adds a necessary safeguard against excessive legal costs.

Moreover, the bill's requirement for attorneys retained by a condominium association to confine their communications to the condominium board, except in specific circumstances, addresses the need for a more transparent and controlled channel of communication. In my case, the AOAO lawyers' direct communication added to the already challenging situation, creating further confusion and anxiety.

I also appreciate the provision in SB2493 that prohibits attorneys retained by a condominium association from billing unit owners directly. This helps prevent unnecessary financial strain on individual homeowners who may already be facing hardships due to unresolved issues within the association.

The hardships in my recent correspondence with the AOAO Diamond Head Surf Condominium, including structural concerns, mold issues, and retaliatory acts, underscore the importance of enacting legislation that ensures fair and equitable treatment for all unit owners. Bill SB2493 aligns with the principles of accountability, transparency, and homeowner protection that are essential for the well-being of condominium communities.

I urge you to support and champion the passage of Bill SB2493 to bring about positive change in the governance of condominium associations and to protect the rights and interests of homeowners. Your advocacy for this bill will contribute to fostering healthier and more responsive condominium communities across the state.

Thank you for your attention to this matter, and I trust that you will consider the significant impact that SB2493 can have on improving the lives of homeowners like myself.

Sincerely,

Aaron Cavagnolo

SB-2493
Submitted on: 2/4/2024 10:52:40 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 2493 for several reasons set forth below.

Historically, this is a similar bill to bills presented in 2022 and either deferred or not heard.

- 2022 HB1857 which was deferred by CPC on February 3, 2022.
- SB2730 SD1 which passed the Senate and was not heard in the House CPC or FIN committee.

This measure will require all owners to bear the burden of paying attorneys' fees incurred by an association as the result of a single owner's actions.

This bill will add a new statutory section related to the collection of attorneys' fees that conflicts with HRS §514B-157. HRS §514B-157(a) provides, in relevant part, that all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of an association for enforcing any provision of the declaration, bylaws, or house rules against an owner shall be promptly paid on demand to the association by such person or persons. The new subsection (a) of the new statutory section states that all costs for attorneys' fees incurred by or on behalf of the association shall be paid from association funds or reserves. Not only is this in conflict with HRS Section 514B-157(a), but it is unfair as it will require all owners to pay the fees incurred as the result of a single owner's breach.

The new subsection (a)(1) provides that the association shall not assess, demand, or seek reimbursement of the costs for attorneys' fees against a unit owner, unless the association prevailed in the matter and assesses, demands, or seeks reimbursement of the costs of attorneys' fees against all the units in accordance with the allocations under HRS Section 514B-41. This new subsection (a)(1) not only conflicts with HRS §514B-157(a), but it also conflicts with the new subsection (a) which does not require that the association prevail in a matter. The adoption of a law that conflicts with an existing law and itself is ill-advised.

The new subsection (a)(1) is vague and ambiguous. It is not clear what the word "prevailed" is intended to mean. For example, if an owner violates a covenant and then cures the violation after

receiving a demand from the association, will the association have prevailed? Or, does the association have to actually file a lawsuit against the owner and obtain a judgment in its favor?

This bill also leaves open the question of who pays for the association's fees if the association does not prevail. This will undoubtedly lead to litigation.

This bill also leaves open the question of how it is to be interpreted with regard to fees incurred in normal business operations. For example, associations often hire attorneys to render legal opinions, draft documents, and negotiate contracts with vendors. Those fees are generally assessed as a common expense, but the ambiguous language of the new subjection (a)(1) makes that unclear.

The new subsections (a) and (a)(1) are poorly drafted, short-sighted, and in direct conflict with HRS Section 514B-157(a) and for that reason should be rejected.

A twenty-five percent cap on attorneys' fees is not reasonable.

The new subsection (b) places an unreasonable cap on fees. The new subsection (b) states that an association shall not assess, demand, or seek reimbursement for its total and final legal fees in excess of twenty-five percent of the original debt amount sought by the association. This is unreasonable and problematic for a number of reasons.

First, the 25% cap on fees, without regard to the magnitude or importance of the issue or the impact that the cap will have on an association, is arbitrary. It is a random percentage rather than one based on a legitimate reason.

Second, although the new subsection (a)(2) allows the recovery of attorneys' fees incurred for the purpose of collecting delinquent assessments, the new subsection (b) would cap those fees at 25% of the original debt about sought. This has the effect of undermining the intent of subsection (a)(2), because it will substantially reduce the amount of fees to be paid by delinquent owners.

The new subsection (b) offers no definition of the "original debt amount" which leaves that term open to debate. Generally, associations send demand letters to owners the month after an owner fails to pay assessments. If this is considered the "original debt amount sought," then it would have the effect of capping the fees that an association may recover to 25% of a single month of maintenance fees even though the owner may be several years delinquent by the time a court judgment is obtained. This would have the effect of letting a delinquent owner off the hook for fees and requiring all other owners to foot the bill.

This measure would prohibit the association's attorney from communicating with others, which would effectively deprive associations of their right to effective legal counsel.

Without good reason, the new subsection (c) would prohibit condominium association attorneys from communicating with anyone other than the board of directors, except under limited circumstances. It provides that "attorneys retained by associations may communicate with unit owners for purposes of requests and responses for essential requirements of each matter;

provided further that attorneys retained by the association shall not bill or demand payment of attorneys' fee directly from a unit owner." The words "for essential requirements of each matter" are vague and ambiguous and will leave everyone guessing at their meaning.

In effect, this measure would require that an association's attorney communicate only with the board of directors, even if a communication does not involve owners or a matter which is in dispute. **For example, the association's attorney would be prohibited from communicating with the association's property manager, managing agent, resident manager, insurance agent, and CPA.** The association's attorney would be prohibited from negotiating contracts on behalf of the association because the attorney would be prohibited from speaking with the other party to the contract. In cases where there is a serious threat of bodily injury or death to others, this measure would have the alarming effect of prohibiting an association's attorney from communicating with parties who could assist with safety concerns, such as the police department, fire department, security personnel, or safety contractors. This measure would even go so far as preventing an association's attorney from filing or defending lawsuits because the attorney would be prohibited from communicating with the adverse party and other attorneys in the case. The attorney would also be prohibited from filing legal briefs and making arguments in open court because those would be considered communications with the court.

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In essence, this bill will deprive associations of their right to effective legal representation, which is unwarranted, unreasonable, and likely unconstitutional. This bill offends the sense of reasonableness and fairness.

This measure also includes a wrong factual finding.

This measure states that the legislature finds that "it is the board, not the individual unit owners, who are the clients of the attorneys." Generally, attorneys who represent an association do not represent the "board" or "individual directors." Attorneys who represent an association generally represent the association, as an entity, which acts through its board. Association attorneys communicate with board members, because, in most instances, it is the board that is vested with decision making authority and the party to whom the attorney-client privilege runs.

Finally, it should be noted that this committee considered and deferred a very similar bill in 2022.

In conclusion, this is an extremely bad bill. Not only is it poorly drafted, but it conflicts with existing law, contradicts itself, and serves no good purpose.

For the foregoing reasons, I respectfully OPPOSE S.B. 2493 and strongly urge the Committee to defer this measure.

SB-2493
Submitted on: 2/5/2024 6:45:48 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 2493 for the reasons set forth below.

This measure will require all owners to bear the burden of paying attorneys' fees incurred by an association as the result of a single owner's actions.

This bill will add a new statutory section related to the collection of attorneys' fees that conflicts with HRS Section 514B-157. HRS Section 514B-157(a) provides, in relevant part, that all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of an association for enforcing any provision of the declaration, bylaws, or house rules against an owner shall be promptly paid on demand to the association by such person or persons. The new subsection (a) of the new statutory section states that all costs for attorneys' fees incurred by or on behalf of the association shall be paid from association funds or reserves. Not only is this in conflict with HRS Section 514B-157(a), but it is unfair as it will require all owners to pay the fees incurred as the result of a single owner's breach.

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The new subsection (a)(1) is vague and ambiguous. It is not clear what the word "prevailed" is intended to mean. For example, if an owner violates a covenant and then cures the violation after receiving a demand from the association, will the association have prevailed? Or, does the association have to actually file a lawsuit against the owner and obtain a judgment in its favor?

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This bill also leaves open the question of how it is to be interpreted with regard to fees incurred in normal business operations. For example, associations often hire attorneys to render legal opinions, draft documents, and negotiate contracts with vendors. Those fees are generally assessed as a common expense, but the ambiguous language of the new subjection (a)(1) makes that unclear.

The new subsections (a) and (a)(1) are poorly drafted, short-sighted, and in direct conflict with HRS Section 514B-157(a) and for that reason should be rejected.

A twenty-five percent cap on attorneys' fees is not reasonable.

The new subsection (b) places an unreasonable cap on fees. The new subsection (b) states that an association shall not assess, demand, or seek reimbursement for its total and final legal fees in excess of twenty-five percent of the original debt amount sought by the association. This is unreasonable and problematic for a number of reasons.

First, the 25% cap on fees, without regard to the magnitude or importance of the issue or the impact that the cap will have on an association, is arbitrary. It is a random percentage rather than one based on a legitimate reason.

Second, although the new subsection (a)(2) allows the recovery of attorneys' fees incurred for the purpose of collecting delinquent assessments, the new subsection (b) would cap those fees at 25% of the original debt sought. This has the effect of undermining the intent of subsection (a)(2), because it will substantially reduce the amount of fees to be paid by delinquent owners.

The new subsection (b) offers no definition of the "original debt amount" which leaves that term open to debate. Generally, associations send demand letters to owners the month after an owner fails to pay assessments. If this is considered the "original debt amount sought," then it would have the effect of capping the fees that an association may recover to 25% of a single month of maintenance fees even though the owner may be several years delinquent by the time a court judgment is obtained. This would have the effect of letting a delinquent owner off the hook for fees and requiring all other owners to foot the bill.

This measure would prohibit the association's attorney from communicating with others, which would effectively deprive associations of their right to effective legal counsel.

Without good reason, the new subsection (c) would prohibit condominium association attorneys from communicating with anyone other than the board of directors, except under limited circumstances. It provides that "attorneys retained by associations may communicate with unit owners for purposes of requests and responses for essential requirements of each matter; provided further that attorneys retained by the association shall not bill or demand payment of attorneys' fee directly from a unit owner." The words "for essential requirements of each matter" are vague and ambiguous and will leave everyone guessing at their meaning.

In effect, this measure would require that an association's attorney communicate only with the board of directors, even if a communication does not involve owners or a matter which is in dispute. For example, the association's attorney would be prohibited from communicating with the association's property manager, managing agent, resident manager, insurance agent, and CPA. The association's attorney would be prohibited from negotiating contracts on behalf of the association because the attorney would be prohibited from speaking with the other party to the contract. In cases where there is a serious threat of bodily injury or death to others, this measure would have the alarming effect of prohibiting an association's attorney from communicating with parties who could assist with safety concerns, such as the police department, fire department, security personnel, or safety contractors. This measure would even go so far as preventing an association's attorney from filing or defending lawsuits because the attorney would be prohibited from communicating with the adverse party and other attorneys in the case. The attorney would also be prohibited from filing legal briefs and making arguments in open court because those would be considered communications with the court.

It would also prevent association attorneys from demanding that owners reimburse the association for its attorneys' fees as allowed by law. This would effectively prevent lawyers from doing their job.

In essence, this bill will deprive associations of their right to effective legal representation, which is unwarranted, unreasonable, and likely unconstitutional. This bill offends the sense of reasonableness and fairness.

This measure also includes a wrong factual finding.

This measure states that the legislature finds that "it is the board, not the individual unit owners, who are the clients of the attorneys." Generally, attorneys who represent an association do not represent the "board" or "individual directors." Attorneys who represent an association generally represent the association, as an entity, which acts through its board. Association attorneys communicate with board members, because, in most instances, it is the board that is vested with decision making authority and the party to whom the attorney-client privilege runs.

Finally, it should be noted that this committee considered and deferred a very similar bill in 2022. See 2022 S.B. 2730. It should defer this bill for the same reasons.

In conclusion, this is an extremely bad bill. Not only is it poorly drafted, but it conflicts with existing law, contradicts itself, and serves no good purpose.

For the foregoing reasons, I respectfully OPPOSE S.B. 2493 and strongly urge the Committee to defer this measure.

Respectfully submitted,

Paul A. Ireland Koftinow

SB-2493
Submitted on: 2/5/2024 7:10:29 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 2493 for the reasons set forth below.

This measure will require all owners to bear the burden of paying attorneys' fees incurred by an association as the result of a single owner's actions.

This bill will add a new statutory section related to the collection of attorneys' fees that conflicts with HRS Section 514B-157. HRS Section 514B-157(a) provides, in relevant part, that all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of an association for enforcing any provision of the declaration, bylaws, or house rules against an owner shall be promptly paid on demand to the association by such person or persons. The new subsection (a) of the new statutory section states that all costs for attorneys' fees incurred by or on behalf of the association shall be paid from association funds or reserves. Not only is this in conflict with HRS Section 514B-157(a), but it is unfair as it will require all owners to pay the fees incurred as the result of a single owner's breach.

The new subsection (a)(1) provides that the association shall not assess, demand, or seek reimbursement of the costs for attorneys' fees against a unit owner, unless the association prevailed in the matter and assesses, demands, or seeks reimbursement of the costs of attorneys' fees against all the units in accordance with the allocations under HRS Section 514B-41. This new subsection (a)(1) not only conflicts with HRS Section 514B-157(a), but it also conflicts with the new subsection (a) which does not require that the association prevail in a matter. The adoption of a law that conflicts with an existing law and itself is ill-advised.

The new subsection (a)(1) is vague and ambiguous. It is not clear what the word "prevailed" is intended to mean. For example, if an owner violates a covenant and then cures the violation after receiving a demand from the association, will the association have prevailed? Or, does the association have to actually file a lawsuit against the owner and obtain a judgment in its favor?

This bill also leaves open the question of who pays for the association's fees if the association does not prevail. This will undoubtedly lead to litigation.

This bill also leaves open the question of how it is to be interpreted with regard to fees incurred in normal business operations. For example, associations often hire attorneys to render legal opinions, draft documents, and negotiate contracts with vendors. Those fees are generally assessed as a common expense, but the ambiguous language of the new subjection (a)(1) makes that unclear.

The new subsections (a) and (a)(1) are poorly drafted, short-sighted, and in direct conflict with HRS Section 514B-157(a) and for that reason should be rejected.

A twenty-five percent cap on attorneys' fees is not reasonable.

The new subsection (b) places an unreasonable cap on fees. The new subsection (b) states that an association shall not assess, demand, or seek reimbursement for its total and final legal fees in excess of twenty-five percent of the original debt amount sought by the association. This is unreasonable and problematic for a number of reasons.

First, the 25% cap on fees, without regard to the magnitude or importance of the issue or the impact that the cap will have on an association, is arbitrary. It is a random percentage rather than one based on a legitimate reason.

Second, although the new subsection (a)(2) allows the recovery of attorneys' fees incurred for the purpose of collecting delinquent assessments, the new subsection (b) would cap those fees at 25% of the original debt about sought. This has the effect of undermining the intent of subsection (a)(2), because it will substantially reduce the amount of fees to be paid by delinquent owners.

The new subsection (b) offers no definition of the "original debt amount" which leaves that term open to debate. Generally, associations send demand letters to owners the month after an owner fails to pay assessments. If this is considered the "original debt amount sought," then it would have the effect of capping the fees that an association may recover to 25% of a single month of maintenance fees even though the owner may be several years delinquent by the time a court judgment is obtained. This would have the effect of letting a delinquent owner off the hook for fees and requiring all other owners to foot the bill.

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Without good reason, the new subsection (c) would prohibit condominium association attorneys from communicating with anyone other than the board of directors, except under limited circumstances. It provides that "attorneys retained by associations may communicate with unit owners for purposes of requests and responses for essential requirements of each matter; provided further that attorneys retained by the association shall not bill or demand payment of attorneys' fee directly from a unit owner." The words "for essential requirements of each matter" are vague and ambiguous and will leave everyone guessing at their meaning.

In effect, this measure would require that an association's attorney communicate only with the board of directors, even if a communication does not involve owners or a matter which is in dispute. For example, the association's attorney would be prohibited from communicating with the association's property manager, managing agent, resident manager, insurance agent, and CPA. The association's attorney would be prohibited from negotiating contracts on behalf of the association because the attorney would be prohibited from speaking with the other party to the contract. In cases where there is a serious threat of bodily injury or death to others, this measure would have the alarming effect of prohibiting an association's attorney from communicating with parties who could assist with safety concerns, such as the police department, fire department, security personnel, or safety contractors. This measure would even go so far as preventing an association's attorney from filing or defending lawsuits because the attorney would be prohibited from communicating with the adverse party and other attorneys in the case. The attorney would also be prohibited from filing legal briefs and making arguments in open court because those would be considered communications with the court.

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This measure also includes a wrong factual finding.

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Finally, it should be noted that this committee considered and deferred a very similar bill in 2022. See 2022 S.B. 2730. It should defer this bill for the same reasons.

In conclusion, this is an extremely bad bill. Not only is it poorly drafted, but it conflicts with existing law, contradicts itself, and serves no good purpose.

For the foregoing reasons, I respectfully OPPOSE S.B. 2493 and strongly urge the Committee to defer this measure.

Respectfully submitted,

Lance Fujisaki

SB-2493
Submitted on: 2/5/2024 8:24:08 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Laura Bearden	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 2493 for the reasons set forth below.

This measure will require all owners to bear the burden of paying attorneys' fees incurred by an association as the result of a single owner's actions.

1. bill will add a new statutory section related to the collection of attorneys' fees that conflicts with HRS Section 514B-157. HRS Section 514B-157(a) provides, in relevant part, that all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of an association for enforcing any provision of the declaration, bylaws, or house rules against an owner shall be promptly paid on demand to the association by such person or persons. The new subsection (a) of the new statutory section states that all costs for attorneys' fees incurred by or on behalf of the association shall be paid from association funds or reserves. Not only is this in conflict with HRS Section 514B-157(a), but it is unfair as it will require all owners to pay the fees incurred as the result of a single owner's breach.

The new subsection (a)(1) provides that the association shall not assess, demand, or seek reimbursement of the costs for attorneys' fees against a unit owner, unless the association prevailed in the matter and assesses, demands, or seeks reimbursement of the costs of attorneys' fees against all the units in accordance with the allocations under HRS Section 514B-41. This new subsection (a)(1) not only conflicts with HRS Section 514B-157(a), but it also conflicts with the new subsection (a) which does not require that the association prevail in a matter. The adoption of a law that conflicts with an existing law and itself is ill-advised.

The new subsection (a)(1) is vague and ambiguous. It is not clear what the word "prevailed" is intended to mean. For example, if an owner violates a covenant and then cures the violation after receiving a demand from the association, will the association have prevailed? Or, does the association have to actually file a lawsuit against the owner and obtain a judgment in its favor?

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Without good reason, the new subsection (c) would prohibit condominium association attorneys from communicating with anyone other than the board of directors, except under limited circumstances. It provides that "attorneys retained by associations may communicate with unit owners for purposes of requests and responses for essential requirements of each matter; provided further that attorneys retained by the association shall not bill or demand payment of attorneys' fee directly from a unit owner." The words "for essential requirements of each matter" are vague and ambiguous and will leave everyone guessing at their meaning.

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Finally, it should be noted that this committee considered and deferred a very similar bill in 2022. See 2022 S.B. 2730. It should defer this bill for the same reasons.

In conclusion, this is an extremely bad bill. Not only is it poorly drafted, but it conflicts with existing law, contradicts itself, and serves no good purpose.

For the foregoing reasons, I respectfully OPPOSE S.B. 2493 and strongly urge the Committee to defer this measure.

Respectfully submitted,

Laura Bearden

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 2493.

This measure will require all owners to bear the burden of paying attorneys' fees incurred by an association as the result of a single owner's actions.

This bill will add a new statutory section related to the collection of attorneys' fees that conflicts with HRS Section 514B-157. HRS Section 514B-157(a) provides, in relevant part, that all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of an association for enforcing any provision of the declaration, bylaws, or house rules against an owner shall be promptly paid on demand to the association by such person or persons. The new subsection (a) of the new statutory section states that all costs for attorneys' fees incurred by or on behalf of the association shall be paid from association funds or reserves. Not only is this in conflict with HRS Section 514B-157(a), but it is unfair as it will require all owners to pay the fees incurred as the result of a single owner's breach.

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Finally, it should be noted that this committee considered and deferred a very similar bill in 2022. See 2022 S.B. 2730. It should defer this bill for the same reasons.

In conclusion, this is an extremely bad bill. Not only is it poorly drafted, but it conflicts with existing law and punishes all owners

For the foregoing reasons, I respectfully OPPOSE S.B. 2493 and strongly urge the Committee to defer this measure.

Respectfully submitted,

Pamela J. Schell

LATE

SB-2493
Submitted on: 2/5/2024 9:37:36 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Ben Robinson	Individual	Support	Written Testimony Only

Comments:

SUPPORT

LATE LATE

SB-2493
Submitted on: 2/5/2024 5:27:39 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Primrose	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 2493 for the reasons set forth below.

This measure will require all owners to bear the burden of paying attorneys' fees incurred by an association as the result of a single owner's actions.

1. bill will add a new statutory section related to the collection of attorneys' fees that conflicts with HRS Section 514B-157. HRS Section 514B-157(a) provides, in relevant part, that all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of an association for enforcing any provision of the declaration, bylaws, or house rules against an owner shall be promptly paid on demand to the association by such person or persons. The new subsection (a) of the new statutory section states that all costs for attorneys' fees incurred by or on behalf of the association shall be paid from association funds or reserves. Not only is this in conflict with HRS Section 514B-157(a), but it is unfair as it will require all owners to pay the fees incurred as the result of a single owner's breach.

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In conclusion, this is an extremely bad bill. Not only is it poorly drafted, but it conflicts with existing law, contradicts itself, and serves no good purpose.

For the foregoing reasons, I respectfully OPPOSE S.B. 2493 and strongly urge the Committee to defer this measure.

Respectfully submitted,

Primrose K. Leong-Nakamoto (S)

SB-2493
Submitted on: 2/5/2024 6:09:38 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

LATE

LATE

Submitted By	Organization	Testifier Position	Testify
Allison Pettersson	Individual	Support	Written Testimony Only

Comments:

Aloha,

My testimony is in STRONG SUPPORT of

SB2493 (Re: Condo Attorneyss Fees)

Please endorse this bill so it can continue it's legislative path for future hearings and, hopefully, passage by this year's legislatire.

Much Mahalo

LATE

LATE

SB-2493
Submitted on: 2/5/2024 8:21:06 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Miri Yi	Individual	Support	Written Testimony Only

Comments:

I am in strong support of this bill and the intent to provide much needed protections for condominum owners.

Thank you very much.