Testimony of the Hawai'i Real Estate Commission

Before the
Senate Committee on Judiciary
Friday, February 21, 2025
10:20 a.m.
Conference Room 016 and Videoconference

On the following measure:
S.B. 146 SD1, RELATING TO CONDOMINIUMS

Chair Rhoads and Members of the Committee:

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

The purpose of this bill is to amend the conditions and procedures of alternative dispute resolution methods for condominium-related disputes.

This bill establishes minimum qualifications of mediators, arbitrators, and evaluators who provide alternative dispute resolution supported by the Condominium Education Trust Fund (CETF). The Commission takes no position on these requirements specified under proposed section 514B-G, but notes that it does not contract with individual mediators; and instead, contracts with mediation providers to provide alternative dispute resolution supported by the CETF.

As proposed section 514B-F provides for the CETF to support disputes submitted to "early neutral evaluation," the Commission kindly requests a delayed effective date of July 1, 2026, to provide additional time to amend its existing contracts with mediation providers, or to draft and procure new contracts, as appropriate.

Thank you for the opportunity to testify on this bill.

HAWAII LEGISLATIVE
ACTION COMMITTEE
community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

February 19, 2025

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

Re: **SB 146 SD1 SUPPORT**

Dear Chair Rhoads, Vice Chair Gabbard and Committee Members:

CAI supports SB 146 SD1. SB 146 SD1 will protect consumers by improving alternative dispute resolution processes for condominium-related disputes.

In order to avoid undue repetition of testimony presented to the prior committee, it is here simply noted that SB 146 SD1 will clarify, better operationalize and innovate dispute resolution processes in the condominium context. With respect to points left unaddressed in SB 146 SD1, CAI respectfully requests that the Committee consider the following perspective:

1) **Section 3, HRS Section 514B-D(g)(2)**: The mediation subsidy should be $5,000.00.

First, the subsidy is paid by developers and condominium associations as part of biennial registration. Public funds are NOT used. Second, the Condominium Education Trust Fund is well-endowed. Third, some mediation sessions necessarily exceed the currently allotted subsidy.

2) **Section 3, HRS Section 514B-E(b)**: The binding arbitration subsidy should be $7,500.00.

This would provide a substantial incentive to choose binding arbitration and allow for fair determination of disputes.

3) **Section 3, HRS Section 514B-F(b)(1)**: It may be that "514B-D" should be referenced instead of "514B-C".

4) **Section 3, HRS Section 514B-F(i)**: The early neutral evaluation subsidy should be $7,500.00.

Early neutral evaluation should be the stage at which most condominium-related disputes that persist past mediation will achieve resolution. Substantial support for this process is in order.

5) **Section 3, HRS Section 514B-G(1)-(3)**: The cause of providing the means to economically, efficiently and fairly address condominium-related disputes will be best served by requiring mediators, neutral evaluators and arbitrators to have substantial subject matter expertise and experience in conflict resolution. Thus, in addition to five years of experience as a licensed attorney, the minimum number of years working with condominiums should be 10 years.

Please pass SB 146 SD1, with remaining blanks filled in with robust support for alternative dispute resolution.

CAI Legislative Action Committee, by

Philip Nerney

Its Chair

SB-146-SD-1
Submitted on: 2/19/2025 5:15:29 PM
Testimony for JDC on 2/21/2025 10:20:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Testifying for Hawaii First Realty	Support	Written Testimony Only

Comments:

This Bill improves dispute resolution as a neutral evaluation provides a written report from a neutral evalauator, not available in the mediation process.

SUPPORT.

S.B. 146
Testimony for JDC on 2/21/25 at 10:20 a.m.
Submitted by: Mark McKellar
Testifier Position: Oppose

Dear Senator Rhoades, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 for the reasons set forth below.

S.B. No. 146 SD1 ("S.B. No. 146") will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

A. S.B. No. 146 Will Delay Resolution of Violations and Impair Associations From Operating Their Projects.

S.B. No. 146 will make it very difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." Section (e) found on page 11 of the bill provides that a party to a dispute that has received a request for early neutral evaluation shall not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of the hearing described in subsection (f), except as reasonably required to preserve a claim or defense (in which case the action will be immediately stayed upon filing). This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by simply "requesting" early neutral evaluation. This bill will leave associations without legal recourse while owners continue to engage in covenant violations which may include damaging or destroying the common elements, making unauthorized alterations and additions, causing disturbances, or preventing the association's contractor from accessing their units to repair the common elements. These are just a few examples of the havoc S.B. No. 146 will create for condominium associations.

B. Attorneys' Fees and Costs Will No Longer Be Due on Demand; Lawsuits will be Required.

S.B. No. 146 will make it much more difficult for associations to recover attorneys' fees and costs from owners who violate the governing documents. S.B. No. 146 will replace Section 514B-157 with Section 514B-A. For decades, the condominium law has contained a clause

stating that reasonable attorneys' fees and costs incurred by an association "shall be promptly paid on demand to the association by such person or persons …." For no good reason, this clause is being omitted in S.B. No. 146 and replaced by a new provision that requires associations to file legal actions to collect attorneys' fees and costs.

Requiring associations to file legal actions to collect fees will cause the associations to incur thousands of dollars more in fees than is necessary because lawsuits require the filing of pleadings and motions, which take time and cost money. This will harm both associations and owners.

If associations are unable to seek reimbursement of legal fees from owners who fail to pay assessments or violate the governing documents without filing suit, many associations may simply decline to take action to collect assessments or enforce the covenants because the cost of suit is too high. If owners learn that they can fail to pay assessments or violate the covenants without threat of being required to pay legal fees (or at least not until the debt or violation reaches some threshold that warrants a legal action), they may be less inclined to pay on time or to abide by the covenants. These factors may lead associations into a downward spiral. Delinquencies and violations may rise and property values may decline. This bill has the potential to lead to disaster.

C. S.B. No. 146 Will Deprive Associations and Owners of Due Process.

S.B. No. 146 adds a new Section 514B-A(c) that will likely prove harmful to both associations and owners. An association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same, will hinge on the outcome of the evaluator's written evaluation of claims and defenses under §514B-F(g). Depending upon the evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court.

For example, if an association commences an early neutral evaluation of a condominium-related dispute with an owner, and the evaluator renders an evaluation that is unfavorable to the association, the association will be precluded from seeking reimbursement of its attorneys' fees from the unit owner, even if a circuit court judge disagrees with the evaluator and enters judgment in favor of the association. In this regard, Section 514B-A(c) may be unconstitutional as it deprives parties of their constitutional right to due process.

Furthermore, because early neutral evaluations may have a major effect on whether an association will be able to recover its attorneys' fees in enforcing its governing documents, which can exceed $100,000 in heavily litigated disputes, Section 514B-A(c) will require associations to

expend significant time and resources preparing for and presenting its position in early neutral evaluations. The early neutral evaluations will become as important and as costly as binding arbitrations.

D. S.B. No. 146 Will Make it Practically Impossible for Associations to Impose Fines.

Although no one wants to impose fines on owners, fines can help in the enforcement of governing documents and prevent future violations. S.B. No. 146 adds a new provision, Section 514B-B, on fines, giving owners a statutory right to appeal fines to the small claims court. For many associations with very limited resources, operating with minimal staff, it will no longer be practical to impose fines. The time it will take to attend hearings in small claims court will prevent staff or volunteers from addressing other critical functions of the associations. Many associations may find that it is not worth the effort to impose fines. The result may be an increase in violations.

E. S.B. No. 146 Will Prevent Associations From Charging Owners for Attorneys' Fees Until Fines Are Collectible.

The new Section 514B-B(b), found in SECTION 2 of S.B. No. 146, provides that no attorneys' fees with respect to a fine shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable" (also spelled as "collectible" in another part of the bill). This could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation.

If a board decides to pursue fines and retain an attorney to enforce the governing documents before a fine is deemed collectible, under the new §514B-B(4), the association may be precluded from seeking reimbursement of attorneys' fees and costs until the fine becomes "collectible." This may require associations to wait months after the covenants are violated before collecting attorneys' fees. In the meantime, the Association must pay the attorneys' fees as a common expense, which impacts all owners.

SECTION 8 of the bill amends the fine provision found in HRS Section 104(a)(11), but omits a change to HRS Section 104(b) which also relates to fines. This omission will create

inconsistencies in the law. If a new fine provision is to be added, HRS Section 514B-104(b) should be deleted to avoid conflict with the new provision.

Furthermore, while S.B. No. 146 establishes procedures to be followed by associations and time periods for action which may serve a good purpose, S.B. No. 146 may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

F. Comments on Section 11 of the Bill

The proposed changes to HRS Section 514B-146 found in SECTION 11 of the bill are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification.

The new Section 514B-146(f) allows a unit owner to request mediation within thirty days of the statement described in subsection (d). The statement referred to in subsection (d) is given only if an owner requests such a statement. The deadline to request mediation should not be tied to a date that is uncertain and may never arise.

The new subsection (f) states that an owner shall be entitled to a refund of any amounts paid that are determined by a neutral evaluator to have not been owed. This makes the neutral evaluator's decision binding without due process of law.

The new subsection (g) provides that the association may proceed to collect an unpaid assessment by any legal means, except where collection efforts are stayed pursuant to subsection (f). It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by an association because it is conceivable that an association will need to record a lien during that time period to preserve the priority of its lien.

For the foregoing reasons, I STRONGLY OPPOSE S.B. No. 146 SD1 and urge your Committee to defer this measure.

Respectfully submitted,

Mark McKellar

SB-146-SD-1
Submitted on: 2/19/2025 9:12:29 PM
Testimony for JDC on 2/21/2025 10:20:00 AM

Submitted By	Organization	Testifier Position	Testify
Primrose Leong-Nakamoto	Testifying for Nakamoto Realty, LLC	Oppose	Written Testimony Only

Comments:

Dear Senator Rhoades, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 for the reasons set forth below.

S.B. No. 146 SD1 ("S.B. No. 146") will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

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Primrose Leong-Nakamoto

S.B. 146
Testimony for JDC on 2/21/25 at 10:20 a.m.
Submitted by: Rachel Glanstein
Testifier Position: Oppose

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Respectfully submitted,

Rachel Glanstein

S.B. 146
Testimony for JDC on 2/21/25 at 10:20 a.m.
Submitted by: Laurence Chapman
Testifier Position: Oppose

LATE

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F. Comments on Section 11 of the Bill

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The new Section 514B-146(f) allows a unit owner to request mediation within thirty days of the statement described in subsection (d). The statement referred to in subsection (d) is given only if an owner requests such a statement. The deadline to request mediation should not be tied to a date that is uncertain and may never arise.

The new subsection (f) states that an owner shall be entitled to a refund of any amounts paid that are determined by a neutral evaluator to have not been owed. This makes the neutral evaluator's decision binding without due process of law.

The new subsection (g) provides that the association may proceed to collect an unpaid assessment by any legal means, except where collection efforts are stayed pursuant to subsection (f). It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by an association because it is conceivable that an association will need to record a lien during that time period to preserve the priority of its lien.

For the foregoing reasons, I STRONGLY OPPOSE S.B. No. 146 SD1 and urge your Committee to defer this measure.

Respectfully submitted,

Laurence Chapman

SB-146-SD-1
Submitted on: 2/18/2025 11:16:03 PM
Testimony for JDC on 2/21/2025 10:20:00 AM

Submitted By	Organization	Testifier Position	Testify
Margaret Murchie	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Jarrett Keohokalole, Vice-Chair Carol Fukunaga, and Members of the Committee,

Mahalo for the opportunity to provide comments regarding the intent of SB 146.

We desperately need to curb attorney's fees and fill a much needed “ombudsman,” as the current one said he is overloaded with complaints. The hope is that the proposed ADR methods would be viable alternatives to mediation, arbitration, and litigation because“there should be a robust and meaningful opportunity to come to terms before attorneys fees become a significant factor. However, SB 146 would not enable an “opportunity to come to terms". SB 146 creates another iteration of the existing mediation process, thus devaluating for condominium owners and residents the purpose of “early neutral evaluation.”. 80% of the mediation cases reported were initiated by owners against their association and/or board, and over 95% of disputes were about violations or interpretations of HRS 514B or the association’s governing documents (e.g., Declaration, By-Laws, House Rules, Resolutions). Only 36% of these cases were mediated to an agreement, leaving nearly two (2) out of every three (3) mediation cases unresolved or withdrawn, a metric that disputes unsubstantiated claims that “mediations are successful. Both of my sisters are professional mediators and one worked here in Hawaii for 6 years and was frustrated by our system, which employed most attorneys. Volunteers, mostly retirees, have good intentions but were not always understanding the complicated cases and our real estate rules. While SB 146 seeks to ensure that the evaluator is knowledgeable about the subject matter--an improvement over the requirements of mediators subsidized by the Condominium Education Trust Fund--a rigorous effort to distance the evaluator from conflicts of interest is lacking. This concern, if the evaluator or evaluation would truly be “neutral,” is significant and the mediator should not simply "split the baby" to get results. It's not fair and costs owners an undue loss of trust. An additional concern regarding neutrality is that SB 146 does not address the costs and damages incurred by the party injured by the lack of impartiality if that partiality is discovered after an evaluation is completed. Considering these concerns, I request that, as soon as possible, your Committee schedules and hears SB 1265 and SB 1498, regarding an ombudsman’s office for condominium associations and an ombudsman’s office for homeowners’ associations, respectively, which were initiated by concerned property owners of common interest communities. Thank you for your consideration and action establishing an additional ombudman. The public suffers from the lack of concern and attention to this most important matter.

SB-146-SD-1
Submitted on: 2/19/2025 8:37:45 AM
Testimony for JDC on 2/21/2025 10:20:00 AM

Submitted By	Organization	Testifier Position	Testify
christine morrison	Individual	Support	Written Testimony Only

Comments:

2024_Sen_ Hashimoto.pdf

S.B. 146
Testimony for JDC on 2/21/25 at 10:20 a.m.
Submitted by: Anne Anderson
Testifier Position: Oppose

Dear Senator Rhoades, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 for the reasons set forth below.

S.B. No. 146 SD1 ("S.B. No. 146") will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

A. S.B. No. 146 Will Delay Resolution of Violations and Impair Associations From Operating Their Projects.

S.B. No. 146 will make it very difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." Section (e) found on page 11 of the bill provides that a party to a dispute that has received a request for early neutral evaluation shall not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of the hearing described in subsection (f), except as reasonably required to preserve a claim or defense (in which case the action will be immediately stayed upon filing). This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by simply "requesting" early neutral evaluation. This bill will leave associations without legal recourse while owners continue to engage in covenant violations which may include damaging or destroying the common elements, making unauthorized alterations and additions, causing disturbances, or preventing the association's contractor from accessing their units to repair the common elements. These are just a few examples of the havoc S.B. No. 146 will create for condominium associations.

B. Attorneys' Fees and Costs Will No Longer Be Due on Demand; Lawsuits will be Required.

S.B. No. 146 will make it much more difficult for associations to recover attorneys' fees and costs from owners who violate the governing documents. S.B. No. 146 will replace Section 514B-157 with Section 514B-A. For decades, the condominium law has contained a clause

stating that reasonable attorneys' fees and costs incurred by an association "shall be promptly paid on demand to the association by such person or persons …." For no good reason, this clause is being omitted in S.B. No. 146 and replaced by a new provision that requires associations to file legal actions to collect attorneys' fees and costs.

Requiring associations to file legal actions to collect fees will cause the associations to incur thousands of dollars more in fees than is necessary because lawsuits require the filing of pleadings and motions, which take time and cost money. This will harm both associations and owners.

If associations are unable to seek reimbursement of legal fees from owners who fail to pay assessments or violate the governing documents without filing suit, many associations may simply decline to take action to collect assessments or enforce the covenants because the cost of suit is too high. If owners learn that they can fail to pay assessments or violate the covenants without threat of being required to pay legal fees (or at least not until the debt or violation reaches some threshold that warrants a legal action), they may be less inclined to pay on time or to abide by the covenants. These factors may lead associations into a downward spiral. Delinquencies and violations may rise and property values may decline. This bill has the potential to lead to disaster.

C. S.B. No. 146 Will Deprive Associations and Owners of Due Process.

S.B. No. 146 adds a new Section 514B-A(c) that will likely prove harmful to both associations and owners. An association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same, will hinge on the outcome of the evaluator's written evaluation of claims and defenses under §514B-F(g). Depending upon the evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court.

For example, if an association commences an early neutral evaluation of a condominium-related dispute with an owner, and the evaluator renders an evaluation that is unfavorable to the association, the association will be precluded from seeking reimbursement of its attorneys' fees from the unit owner, even if a circuit court judge disagrees with the evaluator and enters judgment in favor of the association. In this regard, Section 514B-A(c) may be unconstitutional as it deprives parties of their constitutional right to due process.

Furthermore, because early neutral evaluations may have a major effect on whether an association will be able to recover its attorneys' fees in enforcing its governing documents, which can exceed $100,000 in heavily litigated disputes, Section 514B-A(c) will require associations to

expend significant time and resources preparing for and presenting its position in early neutral evaluations. The early neutral evaluations will become as important and as costly as binding arbitrations.

D. S.B. No. 146 Will Make it Practically Impossible for Associations to Impose Fines.

Although no one wants to impose fines on owners, fines can help in the enforcement of governing documents and prevent future violations. S.B. No. 146 adds a new provision, Section 514B-B, on fines, giving owners a statutory right to appeal fines to the small claims court. For many associations with very limited resources, operating with minimal staff, it will no longer be practical to impose fines. The time it will take to attend hearings in small claims court will prevent staff or volunteers from addressing other critical functions of the associations. Many associations may find that it is not worth the effort to impose fines. The result may be an increase in violations.

E. S.B. No. 146 Will Prevent Associations From Charging Owners for Attorneys' Fees Until Fines Are Collectible.

The new Section 514B-B(b), found in SECTION 2 of S.B. No. 146, provides that no attorneys' fees with respect to a fine shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable" (also spelled as "collectible" in another part of the bill). This could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation.

If a board decides to pursue fines and retain an attorney to enforce the governing documents before a fine is deemed collectible, under the new §514B-B(4), the association may be precluded from seeking reimbursement of attorneys' fees and costs until the fine becomes "collectible." This may require associations to wait months after the covenants are violated before collecting attorneys' fees. In the meantime, the Association must pay the attorneys' fees as a common expense, which impacts all owners.

SECTION 8 of the bill amends the fine provision found in HRS Section 104(a)(11), but omits a change to HRS Section 104(b) which also relates to fines. This omission will create

inconsistencies in the law. If a new fine provision is to be added, HRS Section 514B-104(b) should be deleted to avoid conflict with the new provision.

Furthermore, while S.B. No. 146 establishes procedures to be followed by associations and time periods for action which may serve a good purpose, S.B. No. 146 may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

F. Comments on Section 11 of the Bill

The proposed changes to HRS Section 514B-146 found in SECTION 11 of the bill are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification.

The new Section 514B-146(f) allows a unit owner to request mediation within thirty days of the statement described in subsection (d). The statement referred to in subsection (d) is given only if an owner requests such a statement. The deadline to request mediation should not be tied to a date that is uncertain and may never arise.

The new subsection (f) states that an owner shall be entitled to a refund of any amounts paid that are determined by a neutral evaluator to have not been owed. This makes the neutral evaluator's decision binding without due process of law.

The new subsection (g) provides that the association may proceed to collect an unpaid assessment by any legal means, except where collection efforts are stayed pursuant to subsection (f). It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by an association because it is conceivable that an association will need to record a lien during that time period to preserve the priority of its lien.

For the foregoing reasons, I STRONGLY OPPOSE S.B. No. 146 SD1 and urge your Committee to defer this measure.

Respectfully submitted,

Anne Anderson

SB-146-SD-1
Submitted on: 2/19/2025 4:48:29 PM
Testimony for JDC on 2/21/2025 10:20:00 AM

Submitted By	Organization	Testifier Position	Testify
Mike Golojuch, Sr.	Individual	Support	Written Testimony Only

Comments:

I support SB146.

SB-146-SD-1
Submitted on: 2/19/2025 4:49:49 PM
Testimony for JDC on 2/21/2025 10:20:00 AM

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

Comments:

Dear Senator Rhoades, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 for the reasons below.

S.B. No. 146 SD1 ("S.B. No. 146") will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

A. S.B. No. 146 Will Delay Resolution of Violations and Impair Associations From Operating Their Projects.

S.B. No. 146 will make it very difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." Section (e) found on page 11 of the bill provides that a party to a dispute that has received a request for early neutral evaluation shall not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of the hearing described in subsection (f), except as reasonably required to preserve a claim or defense (in which case the action will be immediately stayed upon filing). This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by simply "requesting" early neutral evaluation. This bill will leave associations without legal recourse while owners continue to engage in covenant violations which may include damaging or destroying the common elements, making unauthorized alterations and additions, causing disturbances, or preventing the association's contractor from accessing their units to repair the common elements. These are just a few examples of the havoc S.B. No. 146 will create for condominium associations.

B. Attorneys' Fees and Costs Will No Longer Be Due on Demand; Lawsuits will be Required.

S.B. No. 146 will make it much more difficult for associations to recover attorneys' fees and costs from owners who violate the governing documents. S.B. No. 146 will replace Section 514B-157 with Section 514B-A. For decades, the condominium law has contained a clause stating that reasonable attorneys' fees and costs incurred by an association "shall be promptly paid on demand to the association by such person or persons …." For no good reason, this clause is being omitted in S.B. No. 146 and replaced by a new provision that requires associations to file legal actions to collect attorneys' fees and costs.

Requiring associations to file legal actions to collect fees will cause the associations to incur thousands of dollars more in fees than is necessary because lawsuits require the filing of pleadings and motions, which take time and cost money. This will harm both associations and owners.

If associations are unable to seek reimbursement of legal fees from owners who fail to pay assessments or violate the governing documents without filing suit, many associations may simply decline to take action to collect assessments or enforce the covenants because the cost of suit is too high. If owners learn that they can fail to pay assessments or violate the covenants without threat of being required to pay legal fees (or at least not until the debt or violation reaches some threshold that warrants a legal action), they may be less inclined to pay on time or to abide by the covenants. These factors may lead associations into a downward spiral. Delinquencies and violations may rise and property values may decline. This bill has the potential to lead to disaster.

C. S.B. No. 146 Will Deprive Associations and Owners of Due Process.

S.B. No. 146 adds a new Section 514B-A(c) that will likely prove harmful to both associations and owners. An association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same, will hinge on the outcome of the evaluator's written evaluation of claims and defenses under §514B-F(g). Depending upon the evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to

reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court.

For example, if an association commences an early neutral evaluation of a condominium-related dispute with an owner, and the evaluator renders an evaluation that is unfavorable to the association, the association will be precluded from seeking reimbursement of its attorneys' fees from the unit owner, even if a circuit court judge disagrees with the evaluator and enters judgment in favor of the association. In this regard, Section 514B-A(c) may be unconstitutional as it deprives parties of their constitutional right to due process.

Furthermore, because early neutral evaluations may have a major effect on whether an association will be able to recover its attorneys' fees in enforcing its governing documents, which can exceed $100,000 in heavily litigated disputes, Section 514B-A(c) will require associations to expend significant time and resources preparing for and presenting its position in early neutral evaluations. The early neutral evaluations will become as important and as costly as binding arbitrations.

D. S.B. No. 146 Will Make it Practically Impossible for Associations to Impose Fines.

Although no one wants to impose fines on owners, fines can help in the enforcement of governing documents and prevent future violations. S.B. No. 146 adds a new provision, Section 514B-B, on fines, giving owners a statutory right to appeal fines to the small claims court. For many associations with very limited resources, operating with minimal staff, it will no longer be practical to impose fines. The time it will take to attend hearings in small claims court will prevent staff or volunteers from addressing other critical functions of the associations. Many associations may find that it is not worth the effort to impose fines. The result may be an increase in violations.

E. S.B. No. 146 Will Prevent Associations From Charging Owners for Attorneys' Fees Until Fines Are Collectible.

The new Section 514B-B(b), found in SECTION 2 of S.B. No. 146, provides that no attorneys' fees with respect to a fine shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable" (also spelled as "collectible" in another

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

If a board decides to pursue fines and retain an attorney to enforce the governing documents before a fine is deemed collectible, under the new §514B-B(4), the association may be precluded from seeking reimbursement of attorneys' fees and costs until the fine becomes "collectible." This may require associations to wait months after the covenants are violated before collecting attorneys' fees. In the meantime, the Association must pay the attorneys' fees as a common expense, which impacts all owners.

SECTION 8 of the bill amends the fine provision found in HRS Section 104(a)(11), but omits a change to HRS Section 104(b) which also relates to fines. This omission will create inconsistencies in the law. If a new fine provision is to be added, HRS Section 514B-104(b) should be deleted to avoid conflict with the new provision.

Furthermore, while S.B. No. 146 establishes procedures to be followed by associations and time periods for action which may serve a good purpose, S.B. No. 146 may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

F. Comments on Section 11 of the Bill

The proposed changes to HRS Section 514B-146 found in SECTION 11 of the bill are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification.

The new Section 514B-146(f) allows a unit owner to request mediation within thirty days of the statement described in subsection (d). The statement referred to in subsection (d) is given only if an owner requests such a statement. The deadline to request mediation should not be tied to a date that is uncertain and may never arise.

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The new subsection (g) provides that the association may proceed to collect an unpaid assessment by any legal means, except where collection efforts are stayed pursuant to subsection (f). It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by an association because it is conceivable that an association will need to record a lien during that time period to preserve the priority of its lien.

For the foregoing reasons, I STRONGLY OPPOSE S.B. No. 146 SD1 and urge your Committee to defer this measure.

Respectfully submitted,

Mary Freeman

Ewa Beach

S.B. 146
Testimony for JDC on 2/21/25 at 10:20 a.m.
Submitted by: Paul A. Ireland Koftinow
Testifier Position: Oppose

Dear Senator Rhoades, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 for the reasons set forth below.

S.B. No. 146 SD1 ("S.B. No. 146") will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

A. S.B. No. 146 Will Delay Resolution of Violations and Impair Associations From Operating Their Projects.

S.B. No. 146 will make it very difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." Section (e) found on page 11 of the bill provides that a party to a dispute that has received a request for early neutral evaluation shall not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of the hearing described in subsection (f), except as reasonably required to preserve a claim or defense (in which case the action will be immediately stayed upon filing). This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by simply "requesting" early neutral evaluation. This bill will leave associations without legal recourse while owners continue to engage in covenant violations which may include damaging or destroying the common elements, making unauthorized alterations and additions, causing disturbances, or preventing the association's contractor from accessing their units to repair the common elements. These are just a few examples of the havoc S.B. No. 146 will create for condominium associations.

B. Attorneys' Fees and Costs Will No Longer Be Due on Demand; Lawsuits will be Required.

S.B. No. 146 will make it much more difficult for associations to recover attorneys' fees and costs from owners who violate the governing documents. S.B. No. 146 will replace Section 514B-157 with Section 514B-A. For decades, the condominium law has contained a clause

stating that reasonable attorneys' fees and costs incurred by an association "shall be promptly paid on demand to the association by such person or persons …." For no good reason, this clause is being omitted in S.B. No. 146 and replaced by a new provision that requires associations to file legal actions to collect attorneys' fees and costs.

Requiring associations to file legal actions to collect fees will cause the associations to incur thousands of dollars more in fees than is necessary because lawsuits require the filing of pleadings and motions, which take time and cost money. This will harm both associations and owners.

If associations are unable to seek reimbursement of legal fees from owners who fail to pay assessments or violate the governing documents without filing suit, many associations may simply decline to take action to collect assessments or enforce the covenants because the cost of suit is too high. If owners learn that they can fail to pay assessments or violate the covenants without threat of being required to pay legal fees (or at least not until the debt or violation reaches some threshold that warrants a legal action), they may be less inclined to pay on time or to abide by the covenants. These factors may lead associations into a downward spiral. Delinquencies and violations may rise and property values may decline. This bill has the potential to lead to disaster.

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For example, if an association commences an early neutral evaluation of a condominium-related dispute with an owner, and the evaluator renders an evaluation that is unfavorable to the association, the association will be precluded from seeking reimbursement of its attorneys' fees from the unit owner, even if a circuit court judge disagrees with the evaluator and enters judgment in favor of the association. In this regard, Section 514B-A(c) may be unconstitutional as it deprives parties of their constitutional right to due process.

Furthermore, because early neutral evaluations may have a major effect on whether an association will be able to recover its attorneys' fees in enforcing its governing documents, which can exceed $100,000 in heavily litigated disputes, Section 514B-A(c) will require associations to

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inconsistencies in the law. If a new fine provision is to be added, HRS Section 514B-104(b) should be deleted to avoid conflict with the new provision.

Furthermore, while S.B. No. 146 establishes procedures to be followed by associations and time periods for action which may serve a good purpose, S.B. No. 146 may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

F. Comments on Section 11 of the Bill

The proposed changes to HRS Section 514B-146 found in SECTION 11 of the bill are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification.

The new Section 514B-146(f) allows a unit owner to request mediation within thirty days of the statement described in subsection (d). The statement referred to in subsection (d) is given only if an owner requests such a statement. The deadline to request mediation should not be tied to a date that is uncertain and may never arise.

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For the foregoing reasons, I STRONGLY OPPOSE S.B. No. 146 SD1 and urge your Committee to defer this measure.

Respectfully submitted,

Paul A. Ireland Koftinow

S.B. 146
Testimony for JDC on 2/21/25 at 10:20 a.m.
Submitted by: Joe M Taylor
Testifier Position: Oppose

Dear Senator Rhoades, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 for the reasons set forth below.

S.B. No. 146 SD1 ("S.B. No. 146") will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

A. S.B. No. 146 Will Delay Resolution of Violations and Impair Associations From Operating Their Projects.

S.B. No. 146 will make it very difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." Section (e) found on page 11 of the bill provides that a party to a dispute that has received a request for early neutral evaluation shall not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of the hearing described in subsection (f), except as reasonably required to preserve a claim or defense (in which case the action will be immediately stayed upon filing). This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by simply "requesting" early neutral evaluation. This bill will leave associations without legal recourse while owners continue to engage in covenant violations which may include damaging or destroying the common elements, making unauthorized alterations and additions, causing disturbances, or preventing the association's contractor from accessing their units to repair the common elements. These are just a few examples of the havoc S.B. No. 146 will create for condominium associations.

B. Attorneys' Fees and Costs Will No Longer Be Due on Demand; Lawsuits will be Required.

S.B. No. 146 will make it much more difficult for associations to recover attorneys' fees and costs from owners who violate the governing documents. S.B. No. 146 will replace Section 514B-157 with Section 514B-A. For decades, the condominium law has contained a clause

stating that reasonable attorneys' fees and costs incurred by an association "shall be promptly paid on demand to the association by such person or persons …." For no good reason, this clause is being omitted in S.B. No. 146 and replaced by a new provision that requires associations to file legal actions to collect attorneys' fees and costs.

Requiring associations to file legal actions to collect fees will cause the associations to incur thousands of dollars more in fees than is necessary because lawsuits require the filing of pleadings and motions, which take time and cost money. This will harm both associations and owners.

If associations are unable to seek reimbursement of legal fees from owners who fail to pay assessments or violate the governing documents without filing suit, many associations may simply decline to take action to collect assessments or enforce the covenants because the cost of suit is too high. If owners learn that they can fail to pay assessments or violate the covenants without threat of being required to pay legal fees (or at least not until the debt or violation reaches some threshold that warrants a legal action), they may be less inclined to pay on time or to abide by the covenants. These factors may lead associations into a downward spiral. Delinquencies and violations may rise and property values may decline. This bill has the potential to lead to disaster.

C. S.B. No. 146 Will Deprive Associations and Owners of Due Process.

S.B. No. 146 adds a new Section 514B-A(c) that will likely prove harmful to both associations and owners. An association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same, will hinge on the outcome of the evaluator's written evaluation of claims and defenses under §514B-F(g). Depending upon the evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court.

For example, if an association commences an early neutral evaluation of a condominium-related dispute with an owner, and the evaluator renders an evaluation that is unfavorable to the association, the association will be precluded from seeking reimbursement of its attorneys' fees from the unit owner, even if a circuit court judge disagrees with the evaluator and enters judgment in favor of the association. In this regard, Section 514B-A(c) may be unconstitutional as it deprives parties of their constitutional right to due process.

Furthermore, because early neutral evaluations may have a major effect on whether an association will be able to recover its attorneys' fees in enforcing its governing documents, which can exceed $100,000 in heavily litigated disputes, Section 514B-A(c) will require associations to

expend significant time and resources preparing for and presenting its position in early neutral evaluations. The early neutral evaluations will become as important and as costly as binding arbitrations.

D. S.B. No. 146 Will Make it Practically Impossible for Associations to Impose Fines.

Although no one wants to impose fines on owners, fines can help in the enforcement of governing documents and prevent future violations. S.B. No. 146 adds a new provision, Section 514B-B, on fines, giving owners a statutory right to appeal fines to the small claims court. For many associations with very limited resources, operating with minimal staff, it will no longer be practical to impose fines. The time it will take to attend hearings in small claims court will prevent staff or volunteers from addressing other critical functions of the associations. Many associations may find that it is not worth the effort to impose fines. The result may be an increase in violations.

E. S.B. No. 146 Will Prevent Associations From Charging Owners for Attorneys' Fees Until Fines Are Collectible.

The new Section 514B-B(b), found in SECTION 2 of S.B. No. 146, provides that no attorneys' fees with respect to a fine shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable" (also spelled as "collectible" in another part of the bill). This could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation.

If a board decides to pursue fines and retain an attorney to enforce the governing documents before a fine is deemed collectible, under the new §514B-B(4), the association may be precluded from seeking reimbursement of attorneys' fees and costs until the fine becomes "collectible." This may require associations to wait months after the covenants are violated before collecting attorneys' fees. In the meantime, the Association must pay the attorneys' fees as a common expense, which impacts all owners.

SECTION 8 of the bill amends the fine provision found in HRS Section 104(a)(11), but omits a change to HRS Section 104(b) which also relates to fines. This omission will create

inconsistencies in the law. If a new fine provision is to be added, HRS Section 514B-104(b) should be deleted to avoid conflict with the new provision.

Furthermore, while S.B. No. 146 establishes procedures to be followed by associations and time periods for action which may serve a good purpose, S.B. No. 146 may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

F. Comments on Section 11 of the Bill

The proposed changes to HRS Section 514B-146 found in SECTION 11 of the bill are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification.

The new Section 514B-146(f) allows a unit owner to request mediation within thirty days of the statement described in subsection (d). The statement referred to in subsection (d) is given only if an owner requests such a statement. The deadline to request mediation should not be tied to a date that is uncertain and may never arise.

The new subsection (f) states that an owner shall be entitled to a refund of any amounts paid that are determined by a neutral evaluator to have not been owed. This makes the neutral evaluator's decision binding without due process of law.

The new subsection (g) provides that the association may proceed to collect an unpaid assessment by any legal means, except where collection efforts are stayed pursuant to subsection (f). It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by an association because it is conceivable that an association will need to record a lien during that time period to preserve the priority of its lien.

For the foregoing reasons, I STRONGLY OPPOSE S.B. No. 146 SD1 and urge your Committee to defer this measure.

Respectfully submitted,

Joe M Taylor

SB-146-SD-1
Submitted on: 2/19/2025 4:56:51 PM
Testimony for JDC on 2/21/2025 10:20:00 AM

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

Comments:

TESTIMONY:

Dear Senator Rhoades, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 for the reasons set forth below.

S.B. No. 146 SD1 ("S.B. No. 146") will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

1. **S.B. No. 146 Will Delay Resolution of Violations and Impair Associations From Operating Their Projects.**

S.B. No. 146 will make it very difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." Section (e) found on page 11 of the bill provides that a party to a dispute that has received a request for early neutral evaluation shall not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of the hearing described in subsection (f), except as reasonably

required to preserve a claim or defense (in which case the action will be immediately stayed upon filing). This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by simply "requesting" early neutral evaluation. This bill will leave associations without legal recourse while owners continue to engage in covenant violations which may include damaging or destroying the common elements, making unauthorized alterations and additions, causing disturbances, or preventing the association's contractor from accessing their units to repair the common elements. These are just a few examples of the havoc S.B. No. 146 will create for condominium associations.

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S.B. No. 146 will make it much more difficult for associations to recover attorneys' fees and costs from owners who violate the governing documents. S.B. No. 146 will replace Section 514B-157 with Section 514B-A. For decades, the condominium law has contained a clause stating that reasonable attorneys' fees and costs incurred by an association "shall be promptly paid on demand to the association by such person or persons …." For no good reason, this clause is being omitted in S.B. No. 146 and replaced by a new provision that requires associations to file legal actions to collect attorneys' fees and costs.

1. associations to file legal actions to collect fees will cause the associations to incur thousands of dollars more in fees than is necessary because lawsuits require the filing of pleadings and motions, which take time and cost money. This will harm both associations and owners.

If associations are unable to seek reimbursement of legal fees from owners who fail to pay assessments or violate the governing documents without filing suit, many associations may simply decline to take action to collect assessments or enforce the covenants because the cost of suit is too high. If owners learn that they can fail to pay assessments or violate the covenants without threat of being required to pay legal fees (or at least not until the debt or violation reaches some threshold that warrants a legal action), they may be less inclined to pay on time or to abide by the covenants. These factors may lead associations into a downward spiral. Delinquencies and violations may rise and property values may decline. This bill has the potential to lead to disaster.

1. **S.B. No. 146 Will Deprive Associations and Owners of Due Process.**

S.B. No. 146 adds a new Section 514B-A(c) that will likely prove harmful to both associations and owners. An association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same, will hinge on the outcome of the evaluator's written evaluation of claims and defenses under §514B-F(g). Depending upon the evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court.

For example, if an association commences an early neutral evaluation of a condominium-related dispute with an owner, and the evaluator renders an evaluation that is unfavorable to the association, the association will be precluded from seeking reimbursement of its attorneys' fees from the unit owner, even if a circuit court judge disagrees with the evaluator and enters judgment in favor of the association. In this regard, Section 514B-A(c) may be unconstitutional as it deprives parties of their constitutional right to due process.

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Respectfully submitted

Michael Targgart

S.B. 146
Testimony for JDC on 2/21/25 at 10:20 a.m.
Submitted by: Laura Bearden
Testifier Position: Oppose

Dear Senator Rhoades, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 for the reasons set forth below.

S.B. No. 146 SD1 ("S.B. No. 146") will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

A. S.B. No. 146 Will Delay Resolution of Violations and Impair Associations From Operating Their Projects.

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S.B. No. 146 will make it much more difficult for associations to recover attorneys' fees and costs from owners who violate the governing documents. S.B. No. 146 will replace Section 514B-157 with Section 514B-A. For decades, the condominium law has contained a clause

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F. Comments on Section 11 of the Bill

The proposed changes to HRS Section 514B-146 found in SECTION 11 of the bill are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification.

The new Section 514B-146(f) allows a unit owner to request mediation within thirty days of the statement described in subsection (d). The statement referred to in subsection (d) is given only if an owner requests such a statement. The deadline to request mediation should not be tied to a date that is uncertain and may never arise.

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For the foregoing reasons, I STRONGLY OPPOSE S.B. No. 146 SD1 and urge your Committee to defer this measure.

Respectfully submitted,

Laura Bearden

S.B. 146
Testimony for JDC on 2/21/25 at 10:20 a.m.
Submitted by: John Toalson
Testifier Position: Oppose

Dear Senator Rhoades, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 for the reasons set forth below.

S.B. No. 146 SD1 ("S.B. No. 146") will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

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For the foregoing reasons, I STRONGLY OPPOSE S.B. No. 146 SD1 and urge your Committee to defer this measure.

Respectfully submitted,

John Toalson

Committee on Judiciary

SB 146_SD1 Regarding Dispute Resolution

Friday, February 21, 2025 @ 10:20AM

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

Sue Savio has said multiple times that Hawaii has the worst condo governance in the country[1]. This also significantly increases our insurance premiums. Clearly, dispute resolution is badly needed.

There are many considerations to this lengthy Bill both for and against it. While I am not qualified to comment on every one of them, I believe this Bill is a step in the right direction. As a whole, I support this Bill.

I ask for the following revisions, all of which address problems based on my personal experiences but which I believe are representative to the systemic problem of Hawai'i's status as having the worst-in-the-nation self-governance:

None of these should be controversial or difficult to implement.

Revision 1:

Page 3: 514B-B(a)(2)(D) (regarding information included with violation notices) (**We have a Constitutional right to see the evidence used against us**.):

(2) Notice of imposition of the fine shall include:

(A) A general description of the act or omission for which the fine is imposed;

[1] "Director's and Officers, one company left Hawaii. We're done. We don't like Hawaii anymore. You folks have more claims than anybody else. We're outta here. You're a small state, with just a few dollars that you give us and you have more claims than New York, and we pay out more here, and you have more claims and we pay out more than we do in Florida. We're done. And California. We beat them all. As small of a state as we are with our little 1700 condos, they are paying out more Director's and Officers claims, so this one company has left. This other company sent us a list and said we are going to have a rate increase in Hawaii. I wasn't surprised. I knew this was coming. Anywhere from 25 to 65%."

(B) Reference to one or more provisions of the declaration, the bylaws, or the house rules, violated by act or omission; and

(C) Notice of an appeal procedure that may be initiated within thirty days after imposition of the fine and that provides an aggrieved person with a reasonable opportunity to challenge the fine and be heard by the board regarding the challenge;

(D) Any evidence that the alleged violation is based on shall be provided to the owner. Hearsay shall not be used as the basis for a violation notice. The due date of the fine shall be clearly stated.

Revision 2:

Page 3: 514B-B(a)(3)(A) (regarding small claims) (Even though this is standard procedure in small claims court, it would be helpful to be explicit that this standard procedure extends to condominium disputes.):

(3) Subject to its jurisdictional limits, the small claims division of the district court in the circuit where the condominium is located may finally determine the validity and the amount of a fine if the person first timely appeals imposition of a fine to the board and initiates an action within thirty days after receipt of notice of disposition of the appeal;

(A) Attorney fees related to attorney time spent preparing for or participating in the small claim suit shall not be charged to the losing party.

Revision 3:

Page 15: 514B-H(f) (regarding failure of Mediators to disclose conflicts of interest): I believe that if a Mediator fails to disclose a conflict of interest, the other Party should be able to recover some financial damages. It seems likely that this failure to disclose will occur much more often by the Association and trade industry; then the Owner just wasted a bunch of their time and money attending a Mediation that was poisoned from the start.

Revision 4:

Page 25: 514B-106(a) (regarding boards not following ADR procedures): This may be included someplace else, but the reasoning that a violation of fiduciary duty may have occurred when a board member does not follow ADR should be preserved and not removed like it is here.

(a) Except as provided in the declaration, the bylaws, subsection (b), or other provisions of this chapter, the board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of

a corporation organized under chapter 414D. [[Any violation by a board or its officers or members of the mandatory provisions of ~~section 514B-161 or 514B-162~~ the Dispute Resolution methods outlined by this Bill may constitute a violation of the fiduciary duty owed pursuant to this subsection; provided that a board member may avoid liability under this subsection by indicating in writing the board member's disagreement with such board action or rescinding or withdrawing the violating conduct within forty-five days of the occurrence of the initial violation.]]

Thank you for the opportunity to provide testimony,

Jeff Sadino

JSadino@gmail.com

(808) 370-2017

The Senate
The Thirty-Third Legislature
Committee on Commerce and Consumer Protection
Friday, February 21, 2025
10:20 a.m.

To: Senator Karl Rhoads, Chair
Re: SB 146 SD 1, Relating to Condominiums

Aloha Chair Karl Rhoads, Vice-Chair Mike Gabbard, and Members of the Committee,

Mahalo for the opportunity to testify in support of the *intent* of SB 146 SD 1 to clarify and improve the alternative dispute resolution process for condominium-related disputes and offer consumer protections.

Today, I testify as the nexus of many grassroots coalitions of property owners who own and/or reside in common-interest homeowners' associations throughout Hawaii.

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

However, as of this date, minutes[1] of the DCCA Real Estate Commission (REC) reveal that it has yet to fund its portion of the funds needed for the Legislative Reference Bureau as stipulated by Act 43, Session Laws of Hawaii 2024, having put the release of those funds "under advisement." Those funds came from mandatory contributions by registered condominium association owners into the Condominium Education Trust Fund.

Frankly, it is surprising that an unelected body, the Real Estate Commission, can disregard the decisions made for the public good by the Legislature. The REC's decision also causes distrust in that Commission when it will not openly discuss its reasons for withholding those funds.

On November 2, 2023, Dathan Choy, Condominium Specialist with DCCA, provided the Real Estate Branch's estimate of the number of condominium units and associations in Hawaii,[2] which, when compared to the latest US Census data, revealed that a significant portion, more than 40%, of Hawaii's housing stock are condominium units. It is important to note that Mr. Choy's estimate differs markedly from what is found in the 2024 Annual Report of the Real Estate Commission.[3]

[1] https://cca.hawaii.gov/reb/files/2024/05/rec_240426.pdf
[2] Exhibit A
[3] https://www.capitol.hawaii.gov/sessions/session2025/bills/DC153_.PDF

For over a decade I have advocated for and supported alternative dispute resolution methods for condominium owners with the hope that the proposed alternative dispute resolution (ADR) methods would be viable alternatives because "***there should be a robust and meaningful opportunity to come to terms before attorneys fees become a significant factor***."[4]

However, SB 146 SD 1 does not provide that opportunity. Additionally, it keeps mediation foremost in the sequence of available ADR.

For many years, legislators on the Consumer Protection Committees and the DCCA were provided updated matrices of tallied data from reports found in the Real Estate Commission (REC) publication, the *Hawaii Condominium Bulletin.*[5,6,7] Please refer to Exhibit B for the most recently produced matrix and copies of recent issues of "Mediation Case Summaries" from the *Hawaii Condominium Bulletin,* provided to represent the tally's data source.

From the hundreds of mediation cases reported since September 2015, it was found that 80% of the mediation cases reported were initiated by owners against their association and/or board, and over 95% of disputes were about violations or interpretations of HRS 514B or the association's governing documents (e.g., Declaration, By-Laws, House Rules, Resolutions).

Only 36% of these cases were mediated to an agreement, leaving nearly two (2) out of every three (3) mediation cases unresolved or withdrawn, a metric that disputes unsubstantiated claims that "*mediations are successful*."

These testimonies to the Legislature and the DCCA have upset many, especially those who participate in mediations as mediators or as legal counsel. However, rather than denouncing these assertions or denigrating the condo-owner-participants of mediation, the standards of the mediation process should be improved, and that improvement starts with the instruction of mediators who are supposed to be *neutral* parties.

While SB 146 SD 1 seeks to ensure that the evaluator is knowledgeable about the subject matter, a rigorous effort to distance the evaluator from conflicts of interest is lacking. This concern, if the evaluator or evaluation would truly be "neutral," is significant because it was revealed last year that mediators were imbued with disparaging misinformation about condominium owners during a mediators' class. Please refer to Exhibit C.

An additional concern regarding neutrality is that SB 146 SD 1 does not address the costs and damages incurred by the party injured by the lack of impartiality if that partiality is discovered *after* an evaluation is completed.

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[1] Nerney, Philip S. "Professional Mediation of Condominium-Related Disputes," *Hawaii Bar Journal*, July 2015.
[5] https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2011-2015/
[6] https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2016-2020/
[7] https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2021-2025/

I have these additional comments regarding SB 146 SD 1:

One of the most egregious complaints made by owners regarding actions by their association is that they were not provided with proper notification of alleged violations. Many of those who lost their homes due to nonjudicial foreclosures made this accusation, rendering it too common to dismiss. Thus, the following addition is suggested:

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

Additionally, the following excerpts from Florida's 2024 Statutes[8] are suggested for consideration:

- *An association may levy reasonable fines for violations of the declaration, association bylaws, or reasonable rules of the association. A fine may not exceed $100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed $1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than $1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.*

- *A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' written notice of the parcel owner's right to a hearing to the parcel owner at his or her designated mailing or e-mail address in the association's official records and, if applicable, to any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended. Such hearing must be held within 90 days after issuance of the notice before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The committee may hold the hearing by telephone or other electronic means. The notice must include a description of the alleged violation; the specific action required to cure such violation, if applicable; and the hearing date, location, and access information if held by telephone or other*

[8] http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0718/0718.html

electronic means. A parcel owner has the right to attend a hearing by telephone or other electronic means.

- *If the committee, by majority vote, does not approve a proposed fine or suspension, the proposed fine or suspension may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board.*

- *If a violation has been cured before the hearing or in the manner specified in the written notice…a fine or suspension may not be imposed.*

Mahalo for the opportunity to submit these comments regarding SB 146 SD 1.

Lila Mower

EXHIBIT A

number of registered condo units

Kyle-Lee N. Ladao <kladao@dcca.hawaii.gov> Fri, Nov 3, 2023 at 8:36 AM
To: Lila Mower <lila.mower@gmail.com>

Hello Ms. Mower,

I apologize for not forwarding this to you sooner. Here is Dathan's (DCCA) response. Please let me know if you have any other questions. Thank you!

Mahalo,

Kyle Ladao

From: Dathan L Choy <dchoy@dcca.hawaii.gov>
Sent: Thursday, November 2, 2023 3:21 PM
To: Kyle-Lee N. Ladao <kladao@dcca.hawaii.gov>; Kedin C. Kleinhans <kkleinha@dcca.hawaii.gov>
Subject: RE: [EXTERNAL] number of registered condo units

Hi Kyle,

Per our records as of today, there are 230,729 units in 3,411 condominium registrations with six units or more which would *generally* be required to register their AOUO. These are rough numbers as some of the five or fewer may have merged their AOUOs and would register that AOUO and some condominium registrations have not triggered the 365 day requirement after first sale or held their first association meeting that would then require them to register their AOUO. Also, some developers register in phases and then merge all of the phases into a single AOUO. For example, the Honua Kai project was developed in 15 phases representing 1,401 units and the Hu'elani project was developed in 20 phases (some with five or fewer) representing a total of 101 units. Both merged their units into their respective AOUOs. So again, rough numbers in that condominium registrations will not match up to AOUO registrations.

There are 13,154 units in 5,512 condominium registrations where each condominium registrations is five or fewer units and individually, are exempted from AOUO registration. However, as stated before, some of these will have merged associations and registered their AOUO.

We also have no formal data on unregistered projects that never came into our office for a Developer's Public Report to engage in legal sales much less an AOUO registration. We do get questions time to time on those, so we know they exist, but they're largely a black hole in terms of numbers.

Hopefully this assists Lila on her data collection.

- Dathan

EXHIBIT B

HI Condo Bulletin	AOAO/BOD V	OWNER V	OWNER V	OWNER V	TOTAL	mediated	mediated	assn did not	owner did not	elevated	other
ISSUE MONTH	OWNER	AOAO/BOD	OWNER	CAM	CASES	to agreemnt	w/o agreemnt	mediate*	mediate**	to arbitration	***
Dec-24	3	19			22	8	7	3	3	1	
Sep-24	5	11			16	9.5	6				0.5
Jun-24	0	11			11	4	5	1			1
March-24	0	12			12	2	6	2	1	1	
December-23	5	13			18	8	6		1	1	2
September-23	0	8			8	3	4			1	
June-23	4	10			14	4	5	0	2		3
March-23	3	15			18	1	14		2		1
December-22	3	8			11	1	7	0	2		1
September-22	2	4			6	3	1	0	0		2
June-22	5	14			19	5.5	10.5				3
March-22	2	15			17	8	4			1	4
December-21	1	8			9	3	4				2
September-21	3	13			16	8	5				3
June-21	5	12			17	8	5	2			2
March-21	1	9			10	4	3		2		1
December-20	5	15			20	7	12		1		
September-20	2	4			6	2	3				1
June-20	1	2			3	3	0		.		
March-20	3	13			16	5	9		1		1
December-19	2	13		1	16	5	6		2		3
September-19	3	8			11	6	4				1
June-19	0	10			10	5	3		1		1
March-19	2	13			15	7	4	1	1		2
December-18	1	2			3	0	3				
September-18	3	7			10	4	2	1	1		2
June-18	1	4.5	0.5		6	2	3	1			
March-18	5	5	1		11	3	3		2		3
December-17	3	13			16	5	6	3	2		
September-17	1	10			11	3	5	2	1		
June-17	0	6			6	3	3				
March-17	2	4			6	4	2				
December-16	2	6			8	2	4	2			
September-16	2	8			10	2	5	1	2		
June-16	1	3	1		5	3	0	0	1		1
March-16	2	10			12	3	2	1	4		2
December-15	2	7			9	3	2	3	1		
September-15	0	2	1		3	1	1	1			
total cases	85	347.5	3.5	1	437	158	174.5	24	33	5	42.5
total by percent	19.451%	79.519%	0.801%	0.229%	100.000%	36.156%	39.931%	5.492%	7.551%	1.144%	9.725%

*association declined, refused, nonresponsive, or withdrew **owner declined, refused, nonresponsive, or withdrew ***based on interpretation of comments including lack of clarity, incomplete, unable to schedule

December 2024

Mediation Case Summaries

From September of 2024 through November of 2024, the following condominium mediations or arbitrations were conducted pursuant to Hawai`i Revised Statutes §§ 514B-161 and 514B-162.5 and subsidized by the Real Estate Commission ("Commission") for registered condominium associations. The Mediation Center of the Pacific conducted additional condominium mediations through the District Courts while mediation providers conducted community outreach in their respective communities.

Mediation exists not only to facilitate conflict resolution, but to also educate the parties involved as to the intricacies of the condominium law, their association's governing documents, and the strengths and weaknesses of their respective arguments. While the Commission strives for every mediation to resolve the conflicts, not every mediation will come to an agreement. That does not necessarily mean mediation has failed, as it also serves to reduce costly litigation.

The Commission subsidizes up to $3,000 for qualified evaluative mediations and up to $600 for facilitative mediations for qualified associations. Should a mediation not come to an agreement once that subsidy money is exhausted, no agreement is noted in Commission records. However, the Commission is aware that parties often come to agreements through continued unsubsidized mediation.

Dispute Prevention and Resolution, Inc.

Owner vs AOUO	Dispute over interpretation of the house rules and retaliation	Mediated to agreement
AOUO vs Owner	Dispute over interpretation of the declaration, bylaws, and house rules regarding tenants	Mediated to agreement
Owner vs AOUO	Dispute over interpretation of the declarations and bylaws over repairs	Mediated to agreement
Owner vs AOUO	Dispute over interpretation of the declarations and bylaws	No agreement
Owner vs AOUO	Dispute over interpretation of the house rules and retaliation	No agreement
Owner vs AOUO	Dispute over interpretation of the bylaws, house rules, and selective enforcement	No agreement, private mediation continues
Owner vs AOUO	Dispute over the governing documents and retaliation	No agreement
Owner vs AOUO	Dispute over the governing documents and related attorney fees	Mediated to agreement
Owner vs AOUO	Dispute over interpretation of the declaration and bylaws in use of parking ramp	Arbitration in favor of the owner
AOUO vs Owner	Dispute over interpretation of the declaration and bylaws over use of common element for EV charging	No agreement
Owner vs AOUO	Dispute over the governing documents and related attorney fees and fines	Mediated to agreement
Owner vs AOUO	Dispute over parking, harassment, and board duties	No agreement
Owner vs AOUO	Dispute over noise, recreational area usage, and fire code violations	No agreement
Owner vs AOUO	Dispute over interpretation of the declarations and bylaws in repairs	Mediated to agreement

cont. page 8

Mediation Case Summaries

Kauai Economic Opportunity

Owner vs AOUO	Dispute over damage	No mediation, AOUO failed to respond
Owner vs AOUO	Dispute over damage	No mediation, AOUO failed to respond
Owner vs AOUO	Dispute over leaks and insurance coverage	No agreement, owner withdrew

Lou Chang

AOUO vs Owner	Dispute over the governing documents regarding access to perform repairs and maintenance	Mediated to agreement

Mediation Center of the Pacific

Owner vs AOUO	Dispute over interpretation of the declarations and bylaws over fines, late fees, and attorney fees	Mediated to agreement
Owner vs AOUO	Dispute over interpretation of the declaration and bylaws over fees for documents	No mediation, requesting owner withdrew
Owner vs AOUO	Dispute over interpretation of the declaration, bylaws, house rules over fees and fines, building management	No mediation, AOUO declined mediation
Owner vs AOUO	Dispute over interpretation of the declaration, bylaws, house rules over fees and fines, meeting participation, and maintenance	No mediation, requesting owner refused contact

To consult with any of our subsidized private mediation services, contact one of the following providers:

Oahu
Mediation Center of the Pacific, Inc.
1301 Young Street, 2nd Floor
Honolulu, HI 96814
Tel: (808) 521-6767
Fax: (808) 538-1454
Email: mcp@mediatehawaii.org

Maui
Mediation Services of Maui, Inc.
95 Mahalani Street, Suite 25
Wailuku, HI 96793
Tel: (808) 244-5744
Fax: (808) 249-0905
Email: info@mauimediation.org

West Hawaii
West Hawaii Mediation Center
65-1291 Kawaihae Road, #103B
Kamuela, HI 96743
Tel: (808) 885-5525 (Kamuela)
Tel: (808) 326-2666 (Kona)
Fax: (808) 887-0525
Email: info@whmediation.org

East Hawaii
Ku'ikahi Mediation Center
101 Aupuni St. Ste. 1014 B-2
Hilo, HI 96720
Tel: (808) 935-7844
Fax: (808) 961-9727
Email: info@hawaiimediation.org

Kauai
Kauai Economic Opportunity, Inc.
2804 Wehe Road
Lihue, HI 96766
Tel: (808) 245-4077 Ext. 229 or 237
Fax: (808) 245-7476
Email: keo@keoinc.org

Lou Chang, A Law Corporation
Mediator, Arbitrator, Attorney
Member, National Academy of Arbitrators
P.O. Box 61188, Honolulu, Hawaii 96839
Tel: (808) 384-2468
Email: louchang@hula.net
Website: www.louchang.com

Charles W. Crumpton
Crumpton Collaborative Solutions LLLC
Tel: (808) 439-8600
Email: crumpton@chjustice.com
Websites: www.acctm.org; www.nadn.org; www.accord3.com; and www.mediate.com

Dispute Prevention and Resolution
1003 Bishop Street, Suite 1155
Honolulu, HI 96813
Tel: 523-1234
Website: http://www.dprhawaii.com/

September 2024

Mediation Case Summaries

From June of 2024 through August of 2024, the following condominium mediations or arbitrations were conducted pursuant to Hawai'i Revised Statutes §§ 514B-161 and 514B-162.5 and subsidized by the Real Estate Commission for registered condominium associations. The Mediation Center of the Pacific conducted additional condominium mediations through the District Courts while mediation providers conducted community outreach in their respective communities.

Dispute Prevention and Resolution, Inc.

AOUO vs Owner	Dispute over the interpretation of the declaration, bylaws and house rules	Mediated to an agreement
Owner vs AOUO	Dispute over the maintenance fees and legal fees	Mediated to an agreement
Owner vs AOUO	Dispute over retaliation, interpretation of the bylaws and house rules	Mediated to an agreement
Owner vs AOUO	Dispute over the bylaws and declaration, common elements	No Agreement
Owner vs AOUO	Dispute over the bylaws and declaration, insurance	No Agreement
Owner vs AOUO	Dispute over the bylaws covering flooring	No Agreement
Owner vs AOUO	Dispute over the bylaws and declaration over fines	Mediated to an agreement
AOUO vs Owner	Dispute over the bylaws and declaration over repairs	No Agreement
Owner vs AOUO	Dispute over the bylaws and declaration over repairs	Mediated to an agreement
Owner vs AOUO	Dispute over the bylaws and declaration over repairs and budget	Mediated to an agreement
AOUO vs Owner	Dispute over the bylaws and declaration over improvements	No Agreement
AOUO vs Owner	Dispute over the bylaws and declaration over smoking	Mediated to an agreement
Owner vs AOUO	Dispute over the bylaws and declaration over insurance	No Agreement
AOUO vs Owner	Dispute over the bylaws and declaration over attorney fees	Mediated to an agreement

Lou Chang

Owner vs AOUO	Dispute over House Rules, noise, common area maintenance and harassment	Mediated to an interim agreement, future private mediation
Owner vs AOUO	Dispute over interpretation of the bylaws, declaration, owner participation and common elements	Mediated to an agreement

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Oahu
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Fax: (808) 538-1454
Email: mcp@mediatehawaii.org

Maui
Mediation Services of Maui, Inc.
95 Mahalani Street, Suite 25
Wailuku, HI 96793
Tel: (808) 244-5744
Fax: (808) 249-0905
Email: info@mauimediation.org

West Hawaii
West Hawaii Mediation Center
65-1291 Kawaihae Road, #103B
Kamuela, HI 96743
Tel: (808) 885-5525 (Kamuela)
Tel: (808) 326-2666 (Kona)
Fax: (808) 887-0525
Email: info@whmediation.org

East Hawaii
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101 Aupuni St. Ste. 1014 B-2
Hilo, HI 96720
Tel: (808) 935-7844
Fax: (808) 961-9727
Email: info@hawaiimediation.org

Kauai
Kauai Economic Opportunity, Inc.
2804 Wehe Road
Lihue, HI 96766
Tel: (808) 245-4077 Ext. 229 or 237
Fax: (808) 245-7476
Email: keo@keoinc.org

Lou Chang, A Law Corporation
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Tel: (808) 384-2468
Email: louchang@hula.net
Website: www.louchang.com

Charles W. Crumpton
Crumpton Collaborative Solutions LLLC
Tel: (808) 439-8600
Email: crumpton@chjustice.com
Websites: www.acctm.org; www.nadn.org; www.accord3.com; and www.mediate.com

Dispute Prevention and Resolution
1003 Bishop Street, Suite 1155
Honolulu, HI 96813
Tel: 523-1234
Website: http://www.dprhawaii.com/

June 2024

Mediation Case Summaries

From March of 2024 through May of 2024, the following condominium mediations or arbitrations were conducted pursuant to Hawai`i Revised Statutes §§ 514B-161 and 514B-162.5 and subsidized by the Real Estate Commission for registered condominium associations. The Mediation Center of the Pacific conducted additional condominium mediations through the District Courts while mediation providers conducted community outreach in their respective communities.

Dispute Prevention and Resolution, Inc.

Owner vs AOUO	Dispute over the interpretation and violation of bylaws and house rules involving treatment of employees	Mediated, no agreement
Owner vs AOUO	Dispute over the interpretation and violation of declaration and bylaws regarding building repairs and maintenance	Mediated to an agreement
Owner vs AOUO	Dispute over the interpretation and violation of declaration and bylaws regarding disability access, repairs, discrimination, and notice	Mediation, no agreement
Owner vs AOUO	Dispute over the interpretation and violation of bylaws and house rules, alleged retaliation	Mediation, no agreement
Owner vs AOUO	Dispute over special assessment	Mediation in progress
Owner vs AOUO	Dispute over the interpretation and violation of bylaws regarding proxies	Mediation, no agreement
Owner vs AOUO	Dispute over the interpretation and violation of declaration and bylaws regarding common elements, retaliation	Mediation, no agreement
Owner vs AOUO	Dispute over the modification of a unit, retaliation	Mediated to an agreement

Mediation Center of the Pacific

Owner vs AOUO	Dispute over the interpretation and violation of house rules in relation to parking stalls and loading zone	AOUO declined Mediation
Owner vs AOUO	Dispute over the interpretation and violation of bylaws and declaration in relation to renovations and lack of communication	Mediated to an agreement

Big Island Mediation Center

Owner vs AOUO	Dispute over the enforcement of association rules	Mediated to an agreement

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Mediation Center of the Pacific, Inc.
1301 Young Street, 2nd Floor
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Fax: (808) 538-1454
Email: mcp@mediatehawaii.org

Maui
Mediation Services of Maui, Inc.
95 Mahalani Street, Suite 25
Wailuku, HI 96793
Tel: (808) 244-5744
Fax: (808) 249-0905
Email: info@mauimediation.org

West Hawaii
West Hawaii Mediation Center
65-1291 Kawaihae Road, #103B
Kamuela, HI 96743
Tel: (808) 885-5525 (Kamuela)
Tel: (808) 326-2666 (Kona)
Fax: (808) 887-0525
Email: info@whmediation.org

East Hawaii
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101 Aupuni St. Ste. 1014 B-2
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Fax: (808) 961-9727
Email: info@hawaiimediation.org

Kauai
Kauai Economic Opportunity, Inc.
2804 Wehe Road
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Tel: (808) 245-4077 Ext. 229 or 237
Fax: (808) 245-7476
Email: keo@keoinc.org

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Dispute Prevention and Resolution
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March, 2024

Mediation Case Summaries

From December of 2023 through February of 2024, the following condominium mediations or arbitrations were conducted pursuant to Hawai'i Revised Statutes §§ 514B-161 and 514B-162.5 and subsidized by the Real Estate Commission for registered condominium associations. The Mediation Center of the Pacific conducted additional condominium mediations through the District Courts while mediation providers conducted community outreach in their respective communities.

Dispute Prevention and Resolution, Inc.

Owner vs AOUO	Dispute over the interpretation of governing documents and existing rules	Mediated, no agreement
Owner vs AOUO	Dispute over common elements	Arbitration with an agreement of all parties reached
Owner vs AOUO	Dispute over common elements and repairs	Mediated, no agreement
Owner vs AOUO	Dispute over board resolutions, declaration and bylaws regarding guest fees	Mediated, no agreement
Owner vs AOUO	Dispute over the governing documents and board obligations	Mediated, no agreement
Owner vs AOUO	Dispute over common elements and repairs	Mediated to an agreement
Owner vs AOUO	Dispute over lanai common element expense	Mediated to an agreement
Owner vs AOUO	Dispute over the interpretation of declaration and bylaws regarding water damage	Mediated, no agreement

Mediation Center of the Pacific

Owner vs AOUO	Dispute over the interpretation and violation of the declaration and bylaws	No mediation, AOUO attorney failed to schedule
Owner vs AOUO	Dispute over the interpretation and violation of bylaws and house rule	Mediated, no agreement
Owner vs AOUO	Dispute over the interpretation of house rules related to pets	No mediation, AOUO declined
Owner vs AOUO	Dispute over the interpretation of bylaws related to alternative living arrangements	No mediation, owner failed to schedule

To consult with any of our subsidized private mediation services, contact one of the following providers:

Oahu
Mediation Center of the Pacific, Inc.
1301 Young Street, 2nd Floor
Honolulu, HI 96814
Tel: (808) 521-6767
Fax: (808) 538-1454
Email: mcp@mediatehawaii.org

Maui
Mediation Services of Maui, Inc.
95 Mahalani Street, Suite 25
Wailuku, HI 96793
Tel: (808) 244-5744
Fax: (808) 249-0905
Email: info@mauimediation.org

West Hawaii
West Hawaii Mediation Center
65-1291 Kawaihae Road, #103B
Kamuela, HI 96743
Tel: (808) 885-5525 (Kamuela)
Tel: (808) 326-2666 (Kona)
Fax: (808) 887-0525
Email: info@whmediation.org

East Hawaii
Ku'ikahi Mediation Center
101 Aupuni St. Ste. 1014 B-2
Hilo, HI 96720
Tel: (808) 935-7844
Fax: (808) 961-9727
Email: info@hawaiimediation.org

Kauai
Kauai Economic Opportunity, Inc.
2804 Wehe Road
Lihue, HI 96766
Tel: (808) 245-4077 Ext. 229 or 237
Fax: (808) 245-7476
Email: keo@keoinc.org

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EXHIBIT C

Lila Mower

August 29, 2024

State of Hawaii
Department of Commerce and Consumer Affairs, Real Estate Branch
335 Merchant Street, Room 333
Honolulu, Hawaii 96813
Attention: Neil K. Fujitani, Supervising Executive Officer

Regarding: **MEDIATION BIAS**

Aloha Mr. Fujitani,

It has been a while since we last spoke and I hope this message finds you well.

After a recent instruction session for mediators produced by a center that provides Condominium Education Trust Fund (CETF) subsidized mediations, a few of those mediators reported--independently of each other--that an instructor spoke disparagingly of condo owners.

I received the first call in June. A participant in that mediation class, an acquaintance, unexpectedly called to assure that, despite what the instructor said, the participant would be fair, having previously heard from condo owners about their concerns.

A second call, also in June, came from another acquaintance whose contact attended a class for mediators and made a similar allusion about the instructor's regard for condo owners.

I did not piece together the significance of those two calls until a third person contacted me this month.

She provided more specificity, additionally alleging that the mediators' class instructor claimed that there was a "fight" about who would be the Chair of the Condominium Property Regime (CPR) Task Force. The instructor she spoke of was elected the Chair, and I was elected as Vice-Chair. However, there was no such dispute and there are publicly available recordings of the CPR Task Force meetings that witness the Task Force's proceedings and refute the instructor's mistruth.

Perhaps the mediators' class was also recorded and may be available for review by your office. Apparently, there were many mediators in that Zoom class which suggests a wide disbursement of misinformation.

Apparently, during this instructional class for mediators, the instructor sought to inculcate a prejudice against condo-owners that should not exist for any just or fair dispute resolution process.

For many years, I have testified to the Legislature that "mediations do not work," and supported that claim with copies of the mediation cases summarized in each quarterly Hawaii Condominium Bulletin. Legislators and their aides have had years, and the CPR Task Force and the DCCA has now had nearly a year, to verify, refute, or otherwise challenge my findings.

In no event do I want alternative dispute resolution processes to fail. But condo owners have repeatedly alleged that their mediations were not as successful as lawmakers had envisioned and as we condo owners had hoped.

The mediation case summaries in the Hawaii Condominium Bulletins appear to support these condo owners' allegations. (See addenda for copies for the last reported year.)

Tallies of the hundreds of mediation cases reported in the Hawaii Condominium Bulletin reveal that the vast majority of mediation cases were initiated by condo owners against their association (or the associations' boards), and that most mediation cases were **not** successfully "settled to agreement." Since 1991, from when copies of the Hawaii Condominium Bulletins can be found online, only about one in every four reported cases were "settled to agreement." More recently, since 2015 when evaluative mediations were first subsidized by the CETF, only about one of every three reported mediation cases were "settled to agreement."

One of every three or four cases that "settled to agreement" is not assurance of a successful process.

Testimonies that "mediations do not work" have inadvertently upset many people, especially those who participate in mediations as mediators or legal counsel. Rather than denouncing these assertions or the owner-participants of mediation, **the standards of the mediation process should be improved so that greater success can be garnered.**

And that improvement starts with the instruction of mediators who are supposed to be **neutral** parties:

> *"A mediator is a neutral third party that leads a mediation between parties as a form of alternative dispute resolution. A mediator's goal is to encourage collaboration between the parties and guide them to a settlement through the mediation process."* (source, https://www.law.cornell.edu/wex/mediator)

Because the Condominium Education Trust Fund is funded by condo owners' mandatory contributions, the DCCA Real Estate Commission and Real Estate Branch (REC REB) should be aware of these biases that nullify their and lawmakers' claims that the mediation process offers a "neutral" means of dispute resolution.

Additionally, mediators should be aware of how the CETF subsidies are implemented as it may affect the fairness of the process and the success of their mediation.

Although the DCCA REC REB has invoices that detail the transactional aspect of mediation, those in the mediators' class were unsure of how the CETF subsidy works. One mediation center purportedly charges $375 per participating *person* while another mediation center charges $375 per *party*. If this is correct, then that cost differential alone could affect the mediation process and outcome, preventing some owners from pursuing, participating in, and resolving disputes through mediation.

Ideally, because of owners' contributions to CETF, the summaries provided by the mediation centers should report an important element of mediation—its costs--that condo owners have had to expend to

protect their rights, often compelled to equip themselves with legal assistance for some semblance of fairness when opposed by attorneys who represent their associations and, in some cases, their associations' insurers.

The legal fees expended by associations and their insurers, too, should be valuable data to the DCCA REC REB and condo owners, as the legal costs of dispute resolution is a major factor which influence the cost and availability of association and HO6 insurances, a catastrophe that the Governor has now determined is an emergency.

Further, the failure of mediators to disclose their prior relationships or conflicts of interest has created distrust in the mediation process. A participant in the mediator class suggested that attorneys who practiced in condo or association law should **not** serve as mediators as it was this mediator's observation that the condo or association attorneys were "always in favor of the condo [association or board]" and were not mediating based on "the issue at hand." Condo owners who participated in mediation have made similar allegations.

Contrary to what reportedly occurred in that instructional class for mediators, mediation provider centers should emphasize that biases and prejudices have no place in just and fair dispute resolution.

The DCCA REC REB must act to ensure that mediations subsidized by condo owners' mandatory contributions to the Condominium Education Trust Fund are used properly, as intended, and not to harm those very owners. Biases in the mediation process are unacceptable.

Mahalo to your attention to this very disconcerting matter.

Aloha,

/s/

Lila Mower

Cc: Mediation Center of the Pacific
Dispute Prevention and Resolution
Senate Committee on Commerce and Consumer Protection
House Committee on Consumer Protection and Commerce
DCCA, Office of Consumer Protection
DCCA, Regulated Industries Complaints Office
Hawaii State Judiciary
Various condominium owners' and consumer advocacy groups

SB-146-SD-1
Submitted on: 2/19/2025 10:11:56 PM
Testimony for JDC on 2/21/2025 10:20:00 AM

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

Comments:

I am owner occupant of a high rise condo. This is a bad bill. It will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

SB146 will make it very difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by simply "requesting" early neutral evaluation. This bill will leave associations without legal recourse while owners continue to engage in covenant violations which may include damaging or destroying the common elements, making unauthorized alterations and additions, causing disturbances, or preventing the association's contractor from accessing their units to repair the common elements.

We don't need this. We have enough problems with insurance fees, major maintenance, spalling, window replacement, pipe replacement, leaks, explaining to owners on fixed income why their costs are going up, and now you want to stick this to us.

This bill, if enacted, will increase lawsuits. More lawsuits and our insurance costs go up. Or worse, policies are canceled. Early neutral evaluations may have a major effect on whether an association will be able to recover its attorneys' fees in enforcing its governing documents, which can exceed $100,000 in heavily litigated disputes, Section 514B-A(c) will require associations to expend significant time and resources preparing for and presenting its position in early neutral evaluations. The early neutral evaluations will become as important and as costly as binding arbitrations. Some insurance companies will not pay binding settlement costs unless they agreed in advance to the binding arbitration.

The association may be precluded from seeking reimbursement of attorneys' fees and costs until the fine becomes "collectible." This may require associations to wait months after the covenants are violated before collecting attorneys' fees. In the meantime, the Association must pay the attorneys' fees as a common expense, which impacts all owners. Important projects to maintain the building will be pit on hold because the funds aren't there.

The bill does not give compelling reasons for the changes. I believe the drafters do not understand how condos operate in real life. Please defer this bill.

SB-146-SD-1
Submitted on: 2/20/2025 8:28:50 AM
Testimony for JDC on 2/21/2025 10:20:00 AM

Submitted By	Organization	Testifier Position	Testify
Jessica Herzog	Individual	Support	Written Testimony Only

Comments:

Aloha Honorable Chairs and Members of the Committee on Finance,

My name is Jessica Herzog, I am a former Planning Commissioner with seven years of public service on Catalina Island, California, and a current condominium owner and board member in Waianae. I appreciate the complexity of your task and I urge you to consider the plight of hundreds of thousands of Hawaii residents suffering under unchecked condominium management fees and rampant, often undisclosed, corruption.

Background: I won't burden you with all the gritty details today, but I am open to discussing the severe corruption within the condo industry and its personal impact upon request. My distressing ordeal involved over $333,000 embezzled from our association funds due to gross mismanagement within a system shaped to fail condo owners. My efforts to seek accountability led to severe personal and public retaliation, including being wrongfully stripped of my role as Treasurer and restricted from accessing our association's legal counsel, precisely when I attempted to challenge the conflicts of interest present within our board and management company.

Failing Management Structures: The prevailing model grants management companies autocratic control over association finances, lacking any meaningful oversight. This model not only facilitated the embezzlement I documented but also left our property in disrepair. The individuals responsible for oversight turned a blind eye, emboldened by a system that fails to enforce accountability.

Proposed Amendments:

1. **Establish a State HOA Office**: SB146 must be amended to create an HOA Office under the Consumer Protection Division of the Attorney General's Office, not merely an Ombudsman's office. This new office should have the authority to enforce regulations, impose fines, and remove nefarious board members or management agents.
2. **Enhanced Legal Interventions**: We urgently require statutory measures that enable condo owners, who challenge mismanagement or corruption, to receive direct intervention from the HOA Office instead of being dismissed to navigate 'civil' disputes on their own. This office should have the authority to act on behalf of aggrieved owners, providing them with the means to address grievances without the burden of prohibitive legal costs.

3. **Separation of Financial Duties**: It is imperative that financial management be separated from property management. Association funds should be managed only by licensed accountants, not by realtors or others who stand to benefit from the mismanagement of these funds.

I am advocating fiercely for these changes not just for my association but for the well-being of all condominium owners across the state who currently have limited recourse against the powerful condo management industry and the laws they have shaped to their advantage. The amendments I propose are critical to ensuring that condominium management in Hawaii is conducted with the highest standards of integrity and accountability.

We need more than a mediator; we require an empowered authority to protect us from systemic abuses that currently favor industry interests over homeowner welfare. I advocate today not just for myself but in the hope that we can catalyze real and meaningful reform in condominium governance in Hawaii.

Thank you for considering my testimony. Please note, I am speaking solely as an individual condominium owner and not on behalf of my association or its board. Additionally, a group of over 30 owners has come forward to urge all legislators to keep our concerns in mind as they evaluate the bills of this legislative session. Our collective message and further details can be found at www.leewardrepair.com/condo. I remain dedicated to supporting efforts that enhance transparency and accountability within our condominium communities.

Respectfully,

Jessica Herzog
Condo Owner, Notary Public
mssc403@gmail.com
707.340.5786
www.leewardrepair.com/condo

S.B. 146

Testimony for JDC on 2/21/25 at 10:20 a.m.

Submitted by:

Testifier Position: Oppose

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 for the reasons set forth below.

In my opinion, S.B. No. 146 SD1 ("**S.B. No. 146**") is a very complex bill that will have major adverse effects on the operations of associations. I have provided below examples of how S.B. No. 146 will prevent associations from addressing common, everyday issues that arise at many projects. Because of its complexity, I believe S.B. No. 146 will have other adverse effects that cannot be easily anticipated. Ultimately, S.B. No. 146 will make it more expensive to operate associations and expose owners to greater risks.

Among the adverse effects S.B. No. 146 will cause are: (1) it will impose an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) it will severely limit the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) it will deprive associations and owners of their due process rights.

A. S.B. No. 146 Will Delay Resolution of Violations and Impair Associations From Operating Their Projects.

S.B. No. 146 will make it very difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." Section (e) found on page 11 of the bill provides that a party to a dispute that has received a request for early neutral evaluation shall not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of the hearing described in subsection (f), except as reasonably required to preserve a claim or defense (in which case the action will be immediately stayed upon filing). This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by simply "requesting" early neutral evaluation. This bill will leave associations without legal recourse while owners continue to engage in covenant violations which may include damaging or destroying the common elements, making unauthorized alterations and additions, causing disturbances, or preventing the association's contractor from accessing their units to repair the common elements. These are just a few examples of the havoc S.B. No. 146 will create for condominium associations.

This is illustrated by the following example. A typical association commences a multi-million dollar drain, waste and vent pipe ("**DWV**") replacement project. Owners must cooperate by providing access to their units to allow the plumbing contractor to replace the common element DWV pipes. The contractor is on a tight schedule, working from the top floor unit to the bottom floor unit in the same stack, replacing pipes from the top floor down. Timing is critical and the work must be completed in the proper sequence, one floor at a time, from the top floor to the ground floor.

An owner of a mid-level unit objects to the project and refuses to permit access to his unit. The association demands entry into the unit. The owner refuses. The association is forced to file an injunctive relief action against the owner and seek a preliminary injunction compelling entry into the unit. Under the existing provisions of HRS Chapter 514B, the process is time consuming but can be completed within 7 to 10 business days, assuming no complications in serving court documents on the owner. Although under the current scheme, the owner may demand mediation under HRS §514B-161, the request for mediation does not impose an automatic stay on any judicial proceedings. The owner could make a timely request to stay an action or proceeding under HRS §514B-161(h), however, the stay is not automatic or mandatory.

Although HRS §514B-161(b) provides exceptions to the mediation provisions for, among other things, threatened property damage or the health or safety of unit owners, many serious violations of association governing documents do not clearly fall within the exceptions.

If S.B. No. 146 were adopted, given the same facts, it may take up to 6 months before the association may file the injunctive relief action. This is what could occur:

1. The owner could demand early neutral evaluation ("**ENE**") under §514B-F(a). The dispute would be subject to ENE because the dispute would otherwise be subject to mandatory mediation under §514B-D. The dispute would not fall within any exception in §514B-D(c). Under §514B-F(a), the association would be mandated to participate in ENE.

2. If the association refuses to participate in ENE, the owner could seek an order compelling ENE and seek an award of all reasonable attorneys' fees and costs.

3. Under §514B-F(e), upon receipt of the request for ENE, the association will be subject to an automatic stay that will remain in place until "nine-one days after completion of the hearing." This means that the association will be precluded from filing a preliminary injunction action to compel entry into the unit.

4. As with mediations, the process of commencing the ENE may be time-consuming. Currently, there are no organizations equipped to handle ENE's, but since ENE's are similar to arbitrations, we can look to the arbitration process as an analogy. Before an evaluator is selected, the administrator of the ENE will circulate a list of evaluators. The parties will have time to review the list and select their evaluator of choice. Disputes may arise over the selection of the evaluator and it may take days or weeks to select an evaluator. The evaluator will mandated to disclose information in accordance with §514B-H.

5. Once the evaluator is selected, the parties will have to agree on a hearing date. Using mediations as an analogy, it is not unusual for mediations conducted by attorneys or judges with significant experience in condominium disputes to be scheduled two months in advance. If S.B. No. 146 is adopted, the supply of suitable evaluators for ENEs may be in short supply, delaying the ENE process.

6. Because the outcome of ENEs will determine whether associations can recover legal fees and costs from owners for violations of the governing documents, the amount of time required to prepare for ENEs will be significantly higher than mediations. Associations will be required to put on a mini-trial for the evaluator. ENE hearings may be time consuming and span more than

one day. The legal fees and costs to prepare and present an association's case for an ENE hearing may be relatively high.

7. The evaluator's written evaluation of the claims and defenses will be due 90 days after the completion of the hearing. After the hearing is completed, the automatic stay will remain in place for 91 days. §514B-F(e).

8. Only after the 90 days have passed will the association be entitled to file an injunctive relief action. The entire process from step 1 through step 8 may consume six months. A six month delay in the project may cause the contractor on the DWV project to terminate its contract. There are a limited number of plumbing contractors capable of performing DWV projects and these contractors have a long backload of projects. If a contractor terminates a DWV project, it could take more than a year to restart work.

One can think of many other situations in which S.B. No. 146 could create havoc in the operation of condominium projects.

B. Attorneys' Fees and Costs Will No Longer Be Due on Demand; Lawsuits will be Required.

S.B. No. 146 will make it much more difficult for associations to recover attorneys' fees and costs from owners who violate the governing documents. S.B. No. 146 will replace Section 514B-157 with Section 514B-A. For decades, the condominium law has contained a clause stating that reasonable attorneys' fees and costs incurred by an association "shall be promptly paid on demand to the association by such person or persons ...." For no good reason, this clause is being omitted in S.B. No. 146 and replaced by a new provision that requires associations to file legal actions to collect attorneys' fees and costs.

Requiring associations to file legal actions to collect fees will cause the associations to incur thousands of dollars more in fees than is necessary because lawsuits require the filing of pleadings and motions, which take time and cost money. This will harm both associations and owners.

If associations are unable to seek reimbursement of legal fees from owners who fail to pay assessments or violate the governing documents without filing suit, many associations may simply decline to take action to collect assessments or enforce the covenants because the cost of suit is too high. If owners learn that they can fail to pay assessments or violate the covenants without threat of being required to pay legal fees (or at least not until the debt or violation reaches some threshold that warrants a legal action), they may be less inclined to pay on time or to abide by the covenants. These factors may lead associations into a downward spiral. Delinquencies and violations may rise and property values may decline. This bill has the potential to lead to disaster.

C. S.B. No. 146 Will Deprive Associations and Owners of Due Process.

S.B. No. 146 adds a new Section 514B-A(c) that will likely prove harmful to both associations and owners. An association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same, will hinge on the outcome of the evaluator's written evaluation of claims and defenses under §514B-F(g). Depending upon the

evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court.

For example, if an association commences an early neutral evaluation of a condominium-related dispute with an owner, and the evaluator renders an evaluation that is unfavorable to the association, the association will be precluded from seeking reimbursement of its attorneys' fees from the unit owner, even if a circuit court judge disagrees with the evaluator and enters judgment in favor of the association. In this regard, Section 514B-A(c) may be unconstitutional as it deprives parties of their constitutional right to due process.

Furthermore, because early neutral evaluations may have a major effect on whether an association will be able to recover its attorneys' fees in enforcing its governing documents, which can exceed $100,000 in heavily litigated disputes, Section 514B-A(c) will require associations to expend significant time and resources preparing for and presenting its position in early neutral evaluations. The early neutral evaluations will become as important and as costly as binding arbitrations.

D. S.B. No. 146 Will Make it Practically Impossible for Associations to Impose Fines.

Although no one wants to impose fines on owners, fines can help in the enforcement of governing documents and prevent future violations. S.B. No. 146 adds a new provision, Section 514B-B, on fines, giving owners a statutory right to appeal fines to the small claims court. For many associations with very limited resources, operating with minimal staff, it will no longer be practical to impose fines. The time it will take to attend hearings in small claims court will prevent staff or volunteers from addressing other critical functions of the associations. Many associations may find that it is not worth the effort to impose fines. The result may be an increase in violations.

E. S.B. No. 146 Will Prevent Associations From Charging Owners for Attorneys' Fees Until Fines Are Collectible.

The new Section 514B-B(b), found in SECTION 2 of S.B. No. 146, provides that no attorneys' fees with respect to a fine shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable" (also spelled as "collectible" in another part of the bill). This could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation.

If a board decides to pursue fines and retain an attorney to enforce the governing documents before a fine is deemed collectible, under the new §514B-B(4), the association may be precluded

from seeking reimbursement of attorneys' fees and costs until the fine becomes "collectible." This may require associations to wait months after the covenants are violated before collecting attorneys' fees. In the meantime, the Association must pay the attorneys' fees as a common expense, which impacts all owners.

Here is an example of what may happen. An owner violates the house rules by speeding in the parking garage. The association imposes a fine. The owner continues to speed every day. The owner has 30 days to appeal the fine. The appeal is received on the day after the board meeting and the board is not scheduled to meet again in 60 days. Assuming that the owner is able to attend the next board meeting, 60 days later, the owner has his opportunity to be heard. The board renders a decision against the owner at the board meeting. The owner will have another 30 days to appeal to the small claims court. The fine will not become collectable for an additional 90 days from the initiation of the small claims court action. In this scenario, it may take 6 months for a fine to become collectible.

In the interim, the owner continues speed in the parking garage. If the association retains an attorney to send a demand letter to the owner or take any other action, the association may be barred from seeking reimbursement of its attorneys' fees and costs until after the fines become collectible.

SECTION 8 of the bill amends the fine provision found in HRS Section 104(a)(11), but omits a change to HRS Section 104(b) which also relates to fines. This omission will create inconsistencies in the law. If a new fine provision is to be added, HRS Section 514B-104(b) should be deleted to avoid conflict with the new provision.

Furthermore, while S.B. No. 146 establishes procedures to be followed by associations and time periods for action which may serve a good purpose, S.B. No. 146 may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

F. Comments on Section 11 of the Bill

The proposed changes to HRS Section 514B-146 found in SECTION 11 of the bill are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification.

The new Section 514B-146(f) allows a unit owner to request mediation within thirty days of the statement described in subsection (d). The statement referred to in subsection (d) is given only if an owner requests such a statement. The deadline to request mediation should not be tied to a date that is uncertain and may never arise.

The new subsection (f) states that an owner shall be entitled to a refund of any amounts paid that are determined by a neutral evaluator to have not been owed. This makes the neutral evaluator's decision binding without due process of law.

The new subsection (g) provides that the association may proceed to collect an unpaid assessment by any legal means, except where collection efforts are stayed pursuant to subsection (f). It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to

the recordation of a lien by an association because it is conceivable that an association will need to record a lien during that time period to preserve the priority of its lien.

For the foregoing reasons, I STRONGLY OPPOSE S.B. No. 146 SD1 and urge your Committee to defer this measure.

Respectfully submitted,

Lance Fujisaki

S.B. 146
Testimony for JDC on 2/21/25 at 10:20 a.m.
Submitted by:
Testifier Position: Oppose

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 for the reasons set forth below.

S.B. No. 146 SD1 ("S.B. No. 146") will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

A. S.B. No. 146 Will Delay Resolution of Violations and Impair Associations From Operating Their Projects.

S.B. No. 146 will make it very difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." Section (e) found on page 11 of the bill provides that a party to a dispute that has received a request for early neutral evaluation shall not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of the hearing described in subsection (f), except as reasonably required to preserve a claim or defense (in which case the action will be immediately stayed upon filing). This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by simply "requesting" early neutral evaluation. This bill will leave associations without legal recourse while owners continue to engage in covenant violations which may include damaging or destroying the common elements, making unauthorized alterations and additions, causing disturbances, or preventing the association's contractor from accessing their units to repair the common elements. These are just a few examples of the havoc S.B. No. 146 will create for condominium associations.

B. Attorneys' Fees and Costs Will No Longer Be Due on Demand; Lawsuits will be Required.

S.B. No. 146 will make it much more difficult for associations to recover attorneys' fees and costs from owners who violate the governing documents. S.B. No. 146 will replace Section 514B-157 with Section 514B-A. For decades, the condominium law has contained a clause

stating that reasonable attorneys' fees and costs incurred by an association "shall be promptly paid on demand to the association by such person or persons …." For no good reason, this clause is being omitted in S.B. No. 146 and replaced by a new provision that requires associations to file legal actions to collect attorneys' fees and costs.

Requiring associations to file legal actions to collect fees will cause the associations to incur thousands of dollars more in fees than is necessary because lawsuits require the filing of pleadings and motions, which take time and cost money. This will harm both associations and owners.

If associations are unable to seek reimbursement of legal fees from owners who fail to pay assessments or violate the governing documents without filing suit, many associations may simply decline to take action to collect assessments or enforce the covenants because the cost of suit is too high. If owners learn that they can fail to pay assessments or violate the covenants without threat of being required to pay legal fees (or at least not until the debt or violation reaches some threshold that warrants a legal action), they may be less inclined to pay on time or to abide by the covenants. These factors may lead associations into a downward spiral. Delinquencies and violations may rise and property values may decline. This bill has the potential to lead to disaster.

C. S.B. No. 146 Will Deprive Associations and Owners of Due Process.

S.B. No. 146 adds a new Section 514B-A(c) that will likely prove harmful to both associations and owners. An association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same, will hinge on the outcome of the evaluator's written evaluation of claims and defenses under §514B-F(g). Depending upon the evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court.

For example, if an association commences an early neutral evaluation of a condominium-related dispute with an owner, and the evaluator renders an evaluation that is unfavorable to the association, the association will be precluded from seeking reimbursement of its attorneys' fees from the unit owner, even if a circuit court judge disagrees with the evaluator and enters judgment in favor of the association. In this regard, Section 514B-A(c) may be unconstitutional as it deprives parties of their constitutional right to due process.

Furthermore, because early neutral evaluations may have a major effect on whether an association will be able to recover its attorneys' fees in enforcing its governing documents, which can exceed $100,000 in heavily litigated disputes, Section 514B-A(c) will require associations to

expend significant time and resources preparing for and presenting its position in early neutral evaluations. The early neutral evaluations will become as important and as costly as binding arbitrations.

D. S.B. No. 146 Will Make it Practically Impossible for Associations to Impose Fines.

Although no one wants to impose fines on owners, fines can help in the enforcement of governing documents and prevent future violations. S.B. No. 146 adds a new provision, Section 514B-B, on fines, giving owners a statutory right to appeal fines to the small claims court. For many associations with very limited resources, operating with minimal staff, it will no longer be practical to impose fines. The time it will take to attend hearings in small claims court will prevent staff or volunteers from addressing other critical functions of the associations. Many associations may find that it is not worth the effort to impose fines. The result may be an increase in violations.

E. S.B. No. 146 Will Prevent Associations From Charging Owners for Attorneys' Fees Until Fines Are Collectible.

The new Section 514B-B(b), found in SECTION 2 of S.B. No. 146, provides that no attorneys' fees with respect to a fine shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable" (also spelled as "collectible" in another part of the bill). This could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation.

If a board decides to pursue fines and retain an attorney to enforce the governing documents before a fine is deemed collectible, under the new §514B-B(4), the association may be precluded from seeking reimbursement of attorneys' fees and costs until the fine becomes "collectible." This may require associations to wait months after the covenants are violated before collecting attorneys' fees. In the meantime, the Association must pay the attorneys' fees as a common expense, which impacts all owners.

SECTION 8 of the bill amends the fine provision found in HRS Section 104(a)(11), but omits a change to HRS Section 104(b) which also relates to fines. This omission will create

inconsistencies in the law. If a new fine provision is to be added, HRS Section 514B-104(b) should be deleted to avoid conflict with the new provision.

Furthermore, while S.B. No. 146 establishes procedures to be followed by associations and time periods for action which may serve a good purpose, S.B. No. 146 may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

F. Comments on Section 11 of the Bill

The proposed changes to HRS Section 514B-146 found in SECTION 11 of the bill are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification.

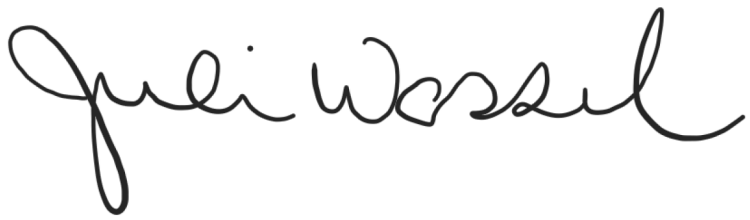
The new Section 514B-146(f) allows a unit owner to request mediation within thirty days of the statement described in subsection (d). The statement referred to in subsection (d) is given only if an owner requests such a statement. The deadline to request mediation should not be tied to a date that is uncertain and may never arise.

The new subsection (f) states that an owner shall be entitled to a refund of any amounts paid that are determined by a neutral evaluator to have not been owed. This makes the neutral evaluator's decision binding without due process of law.

The new subsection (g) provides that the association may proceed to collect an unpaid assessment by any legal means, except where collection efforts are stayed pursuant to subsection (f). It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by an association because it is conceivable that an association will need to record a lien during that time period to preserve the priority of its lien.

For the foregoing reasons, I STRONGLY OPPOSE S.B. No. 146 SD1 and urge your Committee to defer this measure.

Respectfully submitted,



S.B. 146
Testimony for JDC on 2/21/25 at 10:20 a.m.
Submitted by: Laurie Sokach
Testifier Position: Oppose

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 for the reasons set forth below.

S.B. No. 146 SD1 ("S.B. No. 146") will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

A. S.B. No. 146 Will Delay Resolution of Violations and Impair Associations From Operating Their Projects.

S.B. No. 146 will make it very difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." Section (e) found on page 11 of the bill provides that a party to a dispute that has received a request for early neutral evaluation shall not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of the hearing described in subsection (f), except as reasonably required to preserve a claim or defense (in which case the action will be immediately stayed upon filing). This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by simply "requesting" early neutral evaluation. This bill will leave associations without legal recourse while owners continue to engage in covenant violations which may include damaging or destroying the common elements, making unauthorized alterations and additions, causing disturbances, or preventing the association's contractor from accessing their units to repair the common elements. These are just a few examples of the havoc S.B. No. 146 will create for condominium associations.

B. Attorneys' Fees and Costs Will No Longer Be Due on Demand; Lawsuits will be Required.

S.B. No. 146 will make it much more difficult for associations to recover attorneys' fees and costs from owners who violate the governing documents. S.B. No. 146 will replace Section 514B-157 with Section 514B-A. For decades, the condominium law has contained a clause

stating that reasonable attorneys' fees and costs incurred by an association "shall be promptly paid on demand to the association by such person or persons …." For no good reason, this clause is being omitted in S.B. No. 146 and replaced by a new provision that requires associations to file legal actions to collect attorneys' fees and costs.

Requiring associations to file legal actions to collect fees will cause the associations to incur thousands of dollars more in fees than is necessary because lawsuits require the filing of pleadings and motions, which take time and cost money. This will harm both associations and owners.

If associations are unable to seek reimbursement of legal fees from owners who fail to pay assessments or violate the governing documents without filing suit, many associations may simply decline to take action to collect assessments or enforce the covenants because the cost of suit is too high. If owners learn that they can fail to pay assessments or violate the covenants without threat of being required to pay legal fees (or at least not until the debt or violation reaches some threshold that warrants a legal action), they may be less inclined to pay on time or to abide by the covenants. These factors may lead associations into a downward spiral. Delinquencies and violations may rise and property values may decline. This bill has the potential to lead to disaster.

C. S.B. No. 146 Will Deprive Associations and Owners of Due Process.

S.B. No. 146 adds a new Section 514B-A(c) that will likely prove harmful to both associations and owners. An association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same, will hinge on the outcome of the evaluator's written evaluation of claims and defenses under §514B-F(g). Depending upon the evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court.

For example, if an association commences an early neutral evaluation of a condominium-related dispute with an owner, and the evaluator renders an evaluation that is unfavorable to the association, the association will be precluded from seeking reimbursement of its attorneys' fees from the unit owner, even if a circuit court judge disagrees with the evaluator and enters judgment in favor of the association. In this regard, Section 514B-A(c) may be unconstitutional as it deprives parties of their constitutional right to due process.

Furthermore, because early neutral evaluations may have a major effect on whether an association will be able to recover its attorneys' fees in enforcing its governing documents, which can exceed $100,000 in heavily litigated disputes, Section 514B-A(c) will require associations to

expend significant time and resources preparing for and presenting its position in early neutral evaluations. The early neutral evaluations will become as important and as costly as binding arbitrations.

D. S.B. No. 146 Will Make it Practically Impossible for Associations to Impose Fines.

Although no one wants to impose fines on owners, fines can help in the enforcement of governing documents and prevent future violations. S.B. No. 146 adds a new provision, Section 514B-B, on fines, giving owners a statutory right to appeal fines to the small claims court. For many associations with very limited resources, operating with minimal staff, it will no longer be practical to impose fines. The time it will take to attend hearings in small claims court will prevent staff or volunteers from addressing other critical functions of the associations. Many associations may find that it is not worth the effort to impose fines. The result may be an increase in violations.

E. S.B. No. 146 Will Prevent Associations From Charging Owners for Attorneys' Fees Until Fines Are Collectible.

The new Section 514B-B(b), found in SECTION 2 of S.B. No. 146, provides that no attorneys' fees with respect to a fine shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable" (also spelled as "collectible" in another part of the bill). This could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation.

If a board decides to pursue fines and retain an attorney to enforce the governing documents before a fine is deemed collectible, under the new §514B-B(4), the association may be precluded from seeking reimbursement of attorneys' fees and costs until the fine becomes "collectible." This may require associations to wait months after the covenants are violated before collecting attorneys' fees. In the meantime, the Association must pay the attorneys' fees as a common expense, which impacts all owners.

SECTION 8 of the bill amends the fine provision found in HRS Section 104(a)(11), but omits a change to HRS Section 104(b) which also relates to fines. This omission will create

inconsistencies in the law. If a new fine provision is to be added, HRS Section 514B-104(b) should be deleted to avoid conflict with the new provision.

Furthermore, while S.B. No. 146 establishes procedures to be followed by associations and time periods for action which may serve a good purpose, S.B. No. 146 may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

F. Comments on Section 11 of the Bill

The proposed changes to HRS Section 514B-146 found in SECTION 11 of the bill are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification.

The new Section 514B-146(f) allows a unit owner to request mediation within thirty days of the statement described in subsection (d). The statement referred to in subsection (d) is given only if an owner requests such a statement. The deadline to request mediation should not be tied to a date that is uncertain and may never arise.

The new subsection (f) states that an owner shall be entitled to a refund of any amounts paid that are determined by a neutral evaluator to have not been owed. This makes the neutral evaluator's decision binding without due process of law.

The new subsection (g) provides that the association may proceed to collect an unpaid assessment by any legal means, except where collection efforts are stayed pursuant to subsection (f). It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by an association because it is conceivable that an association will need to record a lien during that time period to preserve the priority of its lien.

For the foregoing reasons, I STRONGLY OPPOSE S.B. No. 146 SD1 and urge your Committee to defer this measure.

Respectfully submitted,

Laurie Sokach

S.B. 146
Testimony for JDC on 2/21/25 at 10:20 a.m.
Submitted by: Michael B. Wilde
Testifier Position: Oppose

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 for the reasons set forth below.

S.B. No. 146 SD1 ("S.B. No. 146") will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

A. S.B. No. 146 Will Delay Resolution of Violations and Impair Associations From Operating Their Projects.

S.B. No. 146 will make it very difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." Section (e) found on page 11 of the bill provides that a party to a dispute that has received a request for early neutral evaluation shall not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of the hearing described in subsection (f), except as reasonably required to preserve a claim or defense (in which case the action will be immediately stayed upon filing). This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by simply "requesting" early neutral evaluation. This bill will leave associations without legal recourse while owners continue to engage in covenant violations which may include damaging or destroying the common elements, making unauthorized alterations and additions, causing disturbances, or preventing the association's contractor from accessing their units to repair the common elements. These are just a few examples of the havoc S.B. No. 146 will create for condominium associations.

B. Attorneys' Fees and Costs Will No Longer Be Due on Demand; Lawsuits will be Required.

S.B. No. 146 will make it much more difficult for associations to recover attorneys' fees and costs from owners who violate the governing documents. S.B. No. 146 will replace Section 514B-157 with Section 514B-A. For decades, the condominium law has contained a clause

stating that reasonable attorneys' fees and costs incurred by an association "shall be promptly paid on demand to the association by such person or persons …." For no good reason, this clause is being omitted in S.B. No. 146 and replaced by a new provision that requires associations to file legal actions to collect attorneys' fees and costs.

Requiring associations to file legal actions to collect fees will cause the associations to incur thousands of dollars more in fees than is necessary because lawsuits require the filing of pleadings and motions, which take time and cost money. This will harm both associations and owners.

If associations are unable to seek reimbursement of legal fees from owners who fail to pay assessments or violate the governing documents without filing suit, many associations may simply decline to take action to collect assessments or enforce the covenants because the cost of suit is too high. If owners learn that they can fail to pay assessments or violate the covenants without threat of being required to pay legal fees (or at least not until the debt or violation reaches some threshold that warrants a legal action), they may be less inclined to pay on time or to abide by the covenants. These factors may lead associations into a downward spiral. Delinquencies and violations may rise and property values may decline. This bill has the potential to lead to disaster.

C. S.B. No. 146 Will Deprive Associations and Owners of Due Process.

S.B. No. 146 adds a new Section 514B-A(c) that will likely prove harmful to both associations and owners. An association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same, will hinge on the outcome of the evaluator's written evaluation of claims and defenses under §514B-F(g). Depending upon the evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court.

For example, if an association commences an early neutral evaluation of a condominium-related dispute with an owner, and the evaluator renders an evaluation that is unfavorable to the association, the association will be precluded from seeking reimbursement of its attorneys' fees from the unit owner, even if a circuit court judge disagrees with the evaluator and enters judgment in favor of the association. In this regard, Section 514B-A(c) may be unconstitutional as it deprives parties of their constitutional right to due process.

Furthermore, because early neutral evaluations may have a major effect on whether an association will be able to recover its attorneys' fees in enforcing its governing documents, which can exceed $100,000 in heavily litigated disputes, Section 514B-A(c) will require associations to

expend significant time and resources preparing for and presenting its position in early neutral evaluations. The early neutral evaluations will become as important and as costly as binding arbitrations.

D. S.B. No. 146 Will Make it Practically Impossible for Associations to Impose Fines.

Although no one wants to impose fines on owners, fines can help in the enforcement of governing documents and prevent future violations. S.B. No. 146 adds a new provision, Section 514B-B, on fines, giving owners a statutory right to appeal fines to the small claims court. For many associations with very limited resources, operating with minimal staff, it will no longer be practical to impose fines. The time it will take to attend hearings in small claims court will prevent staff or volunteers from addressing other critical functions of the associations. Many associations may find that it is not worth the effort to impose fines. The result may be an increase in violations.

E. S.B. No. 146 Will Prevent Associations From Charging Owners for Attorneys' Fees Until Fines Are Collectible.

The new Section 514B-B(b), found in SECTION 2 of S.B. No. 146, provides that no attorneys' fees with respect to a fine shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable" (also spelled as "collectible" in another part of the bill). This could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation.

If a board decides to pursue fines and retain an attorney to enforce the governing documents before a fine is deemed collectible, under the new §514B-B(4), the association may be precluded from seeking reimbursement of attorneys' fees and costs until the fine becomes "collectible." This may require associations to wait months after the covenants are violated before collecting attorneys' fees. In the meantime, the Association must pay the attorneys' fees as a common expense, which impacts all owners.

SECTION 8 of the bill amends the fine provision found in HRS Section 104(a)(11), but omits a change to HRS Section 104(b) which also relates to fines. This omission will create

inconsistencies in the law. If a new fine provision is to be added, HRS Section 514B-104(b) should be deleted to avoid conflict with the new provision.

Furthermore, while S.B. No. 146 establishes procedures to be followed by associations and time periods for action which may serve a good purpose, S.B. No. 146 may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

F. Comments on Section 11 of the Bill

The proposed changes to HRS Section 514B-146 found in SECTION 11 of the bill are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification.

The new Section 514B-146(f) allows a unit owner to request mediation within thirty days of the statement described in subsection (d). The statement referred to in subsection (d) is given only if an owner requests such a statement. The deadline to request mediation should not be tied to a date that is uncertain and may never arise.

The new subsection (f) states that an owner shall be entitled to a refund of any amounts paid that are determined by a neutral evaluator to have not been owed. This makes the neutral evaluator's decision binding without due process of law.

The new subsection (g) provides that the association may proceed to collect an unpaid assessment by any legal means, except where collection efforts are stayed pursuant to subsection (f). It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by an association because it is conceivable that an association will need to record a lien during that time period to preserve the priority of its lien.

For the foregoing reasons, I STRONGLY OPPOSE S.B. No. 146 SD1 and urge your Committee to defer this measure.

Respectfully submitted,

Michael B. Wilde

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 because it will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

S.B. No. 146 will make it very difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." The bill provides that a party to a dispute that has received a request for early neutral evaluation may not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of a hearing. This will enable owners to prevent associations from enforcing the covenants against them for long periods of time by simply "requesting" early neutral evaluation. This bill will leave associations without legal recourse while owners continue to engage in covenant violations which may include damaging or destroying the common elements, making unauthorized alterations and additions, or causing disturbances.

S.B. No. 146 will also make it much more difficult for associations to recover attorneys' fees and costs from owners who violate the governing documents. Previously, the condominium law required that reasonable attorneys' fees and costs incurred by an association caused by a person violating the association's governing documents shall be promptly paid on demand to the association by such person or persons. If this bill is enacted, associations will be required to file legal actions to collect attorneys' fees and costs, which will cause the associations to incur substantial more cost than is necessary. This will harm both associations and owners.

Many associations may simply decline to take action to collect assessments or enforce the covenants because the cost of suit is too high. Without the requirement to pay legal charges caused by non-compliance, those owners may be less inclined to pay on time or to abide by the association's project documents. Nonpayment of an owner's share of common expenses and violations may rise and property values may decline.

New Section 514B-A© will impair an association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same if the recovery hinges on the outcome of the evaluator's written evaluation. Section 514B-A© will require associations to expend significant time and resources preparing for and presenting its position in early neutral evaluations. Depending upon the evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court. In this regard, Section 514B-A© may be unconstitutional as it deprives parties of their constitutional right to due process.

The prospect of being charged a fine helps in the enforcement of governing documents and deters future violations. S.B. No. 146 gives owners a statutory right to appeal fines to the small claims court. For many associations, it will no longer be practical to impose fines. The time it will take to attend hearings in small claims court will prevent staff or volunteers from addressing other critical functions of the associations. Many associations may find that it is not worth the effort to impose fines, which may result in an increase in violations.

The new Section 514B-B(b) of S.B. No. 146 prohibits an association from charging attorneys' fees incurred with respect to a fine against any violator before the fine is deemed to be "collectable." This could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The waiver or rescission does not mean that there was no violation warranting the attorney services. A board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in enforcing the governing documents.

Prohibiting the association from seeking reimbursement of attorneys' fees and costs until the fine becomes "collectible" may require associations to wait months after the covenants are violated before collecting attorneys' fees. In the meantime, the Association must pay the attorneys' fees as a common expense, which is payable by all owners, not just the violators.

The new Section 514B-146(f) allows a unit owner to request mediation within thirty days of the statement described in subsection (d). The statement referred to in subsection (d) is given only if an owner requests such a statement. The deadline to request mediation should not be tied to a date that is uncertain and may never arise. Further, the new subsection (f) states that an owner shall be entitled to a refund of any amounts paid that are determined by a neutral evaluator to have not been owed. This makes the neutral evaluator's decision binding without due process of law.

For the foregoing reasons, I S OPPOSE S.B. No. 146 SD1 and urge your Committee to defer this measure.

Respectfully submitted,

Pamela J. Schell

LATE

SB-146-SD-1
Submitted on: 2/20/2025 11:22:19 AM
Testimony for JDC on 2/21/2025 10:20:00 AM

Submitted By	Organization	Testifier Position	Testify
Gregory Misakian	Individual	Oppose	Written Testimony Only

Comments:

As I previously testified, SB146 (now SB146 SD1) is not well thought out and is not the answer to help condominium owners resolve issues and concerns.

If you have already tried mediation and it didn't work, why would you want to try it again and at a higher cost and higher risk, with more attorney's fees involved. Calling a mediation another name is just a creative way for attorneys to make more money.

HB890 and its companion bill **SB1265**, which will establish an **Ombudsman's Office for Condominium Associations** at no cost to the State of Hawaii, is the only real solution to finally address the serious issues of misconduct and corruption at condominium associations throughout Hawaii, and the many predatory attorneys who earn their living on the backs of condominium owners.

While I see many oppose SB146, it seems to be that politically charged one that our legislators will push through no matter what. With large campaign donations from some supporting the decision makers, why not pass it to ensure more large campaign donations.

The residents of Hawaii will not forget the continuing saga of how poorly our legislators have treated condominium owners in 2025. The HGIA loan bills, HPIA insurance bills and other insurance bills, will also not be the savior for this session, as all of these are flawed. But our legislators continue to push them through, so you can say we did something for condominium owners.

Gregory Misakian

LATE

SB-146-SD-1
Submitted on: 2/20/2025 9:01:49 PM
Testimony for JDC on 2/21/2025 10:20:00 AM

Submitted By	Organization	Testifier Position	Testify
Jacob Wiencek	Individual	Oppose	Written Testimony Only

Comments:

Aloha Committee Members,

I understand the urgency to reform mediation laws for condo associations. Some reform no doubt is needed. However, I don't think this bill gets it right. As a Director serving my condo association, many of the proposed changes in this bill would make it harder to ensure proper adherence to our governing documents.

I respectfully urge the Committee to OPPOSE this bill.