HAWAII LEGISLATIVE
ACTION COMMITTEE
community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

February 1, 2025

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

Re: **SB 147 SUPPORT**

Dear Chair Keohokalole, Vice Chair Fukunaga and Committee Members:

CAI supports SB 147. SB 147 will protect consumers by clarifying the procedures for the assessment and collection of a fine by a condominium association.

CAI notes, however, that SB 146 incorporates the essential features of SB 147 and more broadly addresses alternative dispute resolution in condominiums. CAI prefers SB 146.

SB 147 notably prevents the assessment of attorneys' fees and costs until after a fine is deemed to be collectable. A fine is only collectable after the exhaustion of due process.

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

SB 147, like SB 146, clarifies, simplifies and better operationalizes provisions of Hawaii Revised Statutes §514B-146.

Apart from urging SB 146 as the more appropriate vehicle, CAI requests that the Committee consider the following change to language in Section 2 of SB 147:

> (c) 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 imposed pursuant to this section if a person who first timely appeals the imposition of a fine to the board also files a [~~complaint~~] **statement of claim** within thirty days after receipt of [~~the~~] notice **of the disposition of the appeal initiated** pursuant to subsection (b).

Determination of the appeal should precede small claims court jurisdiction. Also, initiation of a small claims case is pursuant to a statement of claim. See, *e.g.*, Oahu form 1DC06.

CAI prefers SB 146. Alternatively, it supports SB 147.

CAI Legislative Action Committee, by

Philip Nerney

Its Chair

SB-147
Submitted on: 2/2/2025 12:17:20 PM
Testimony for CPN on 2/5/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Testifying for Hawaii First Realty	Support	In Person

Comments:

I support SB147. The Bill addresses potential misuse of attorney fees and provides both association and its owners a fair process to resolve disputes.

SB-147
Submitted on: 2/3/2025 4:57:25 PM
Testimony for CPN on 2/5/2025 10:00:00 AM

LATE

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

Comments:

Dear Senator Keohokalole, Senator Fukunaga, and Member of the Committee:

I OPPOSE S.B. No. 147 for the reasons set forth below.

S.B. No. 147 adds a new provision on fines and appeals from fines. It establishes procedures to be followed by associations and time periods for action. While procedures and time periods serve a good purpose, this provision may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

The new HRS Section 514B-___(c) found in SECTION 2 of the bill provides that 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 amount of a fine imposed pursuant to this section if a person who first timely appeals the imposition of a fine to the board also files a complaint within thirty days after receive of the notice pursuant to subsection (b), which is the notice of the fine. This requires an owner to file a complaint in the small claims court even before an appeal is decided. The deadline for a small claims action should be after the appeal has been decided, not before. There would be no need for such action if the fine is waived or rescinded.

The new subsection (e) provides that no attorneys' fees shall be charged by an association against any unit owner or tenant with respect to a fine before the fine is deemed collectible. 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.

SECTION 3 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.

The proposed changes to HRS Section 514B-146 found in SECTION 5 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 to have not been owed. It is not clear who makes this determination because it follows the section allowing an owner to file a court action or to request mediation. It should be revised to clarify that the determination must be made by a court of competent jurisdiction, via a binding final judgment, and that payment of any refund shall be subject to any orders of a court granting stays or other relief.

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.

Finally, HRS Section 514B-146 requires owners to pay common expense assessments before disputing those amounts, but allows owners to dispute all other assessments prior to payment.

This can place significant financial burdens on associations where the amounts at issue have been paid by an association to third parties, such as payment of submetered utilities. The right to dispute charges prior to payment should be limited to charges for which an association has not advance funds, such as fines, late fees, or interest.

For the foregoing reasons, I respectfully OPPOSE S.B. No. 147 and urge your Committee to defer this measure. Alternatively, if it is to be passed by the Committee, I urge the Committee to amend the bill to address the issues discussed above.

Respectfully submitted,

Mark McKellar

LATE

SB-147
Submitted on: 2/3/2025 9:06:50 PM
Testimony for CPN on 2/5/2025 10:00:00 AM

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

Comments:

Honolulu Tower is a 396 unit condominium located at the corner of Beretania and Maunakea Streets. The Board of Directors of the Association of Apartment Owners of Honolulu Tower has long had in place a fine policy. SB147 could well conflict with procedures and time periods for action in our governing instruments. Thus, it is opposed to this bill.

This bill requires an owner to file a complaint in small claims court, even before an appeal is decided. The deadline should be after the appeal has been decided, not before.

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

Idor Harris
Resident Manager

SB-147
Submitted on: 2/2/2025 11:38:46 AM
Testimony for CPN on 2/5/2025 10:00:00 AM

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

Comments:

I live in a condo that has a fines enforcement policy. It was adopted by a resolution in 2008 and amended in 2017. I noticed that on page 6, lines 17-18, you deleted language referring to a resolution of the board ("pursuant to a resolution adopted by the board that establishes a fining procedure"). I believe you need the referral to a resolution of the board so we will be protected. It is not clear that a resolution falls under the categories of bylaws, rules, or regulations.

SB-147
Submitted on: 2/2/2025 12:53:15 PM
Testimony for CPN on 2/5/2025 10:00:00 AM

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

Comments:

SB147 Relating to Condominiums

Aloha Committee Chairs and Members,

My name is Miri Yi, and I am a condominium owner in **strong support** of SB147. I respectfully ask that you pass this bill with additional language to include the following concerns and protections, much of which I have been subjected to for many years:

1. **Prevention of Retaliatory and Unequal Enforcement:**
    - Unequal covenant enforcement and false covenant violations are often used as retaliation, harassment, intimidation, or weapons against homeowners who ask questions, request financial documents, disagree with Board Members, run for a Board position, or engage in protected activities.
    - Covenant enforcement should be applied fairly and consistently to prevent discrimination and abuse.
2. **Limitations on Attorney's Fees and Late Fees:**
    - Attorney's fees and late fees often exceed the original fine or amounts owed, creating financial burdens for homeowners.
    - Homeowners should not face excessive fees that create an inescapable financial trap.
    - The goal of an AOAO/HOA should be to benefit its members, not to financially damage them or facilitate the unjust loss of their homes.
3. **Protection of Homeowners' Rights:**
    - No provision in the Declaration or Governing Documents should supersede a member's constitutional rights, including free speech and protections under state and federal law.
    - All fair housing, fair collections, fair lending, and consumer protection laws should apply equally to all members of AOAO/HOAs.
4. **Clear and Reasonable Notice Requirements:**
    - Homeowners must be given reasonable and consistent time periods to correct CCR (Covenants, Conditions, Restrictions) violations before fines are imposed.
    - All violations and fines must be documented and made readily available to members.
    - A 30-day written notice should be required for all fines, and homeowners should have 30 days to file a dispute.

5. **Fair and Transparent Dispute Resolution Process:**
    - All fines, late fees, and interest should stop accruing once a dispute is filed in writing with the HOA, until resolved in a small claims court or a State Office.
    - The Board must arrange a member appeal at the next Board Meeting, with the appeal taking place at the beginning of the meeting.
    - Each Board Member's vote on the appeal must be recorded and made publicly available.
    - No fines, fees, or attorney fees should be imposed before an official resolution through a small claims court or the State Office.
6. **Limitations on Attorney's Fees:**
    - Attorney fees should not exceed 10% of the original amount owed, excluding fees or interest.
    - Attorney fees should only be charged after the case is decided through small claims court or State Office, and all appeals have concluded.
7. **Judicial Oversight Over HOA Boards:**
    - Challenged CCR violations and fines must be reviewed by small claims court or State Office before any fines are imposed.
    - AOAO/HOA Boards should not serve as judges in disputes where they are a party.
8. **Transparency and Access to HOA Records:**
    - All AOAO/HOA records and arguments to be presented in court or the State Office must be provided to the homeowner at least 30 days before the hearing.
    - All records of CCR violations and fines must be accessible to all members, including the name of the person filing the complaint, the document on which the complaint was filed, and all related communications between the accuser, the Board, and AOAO/HOA employees.

By implementing these provisions, SB147 can ensure fair, transparent, and ethical governance of AOAO/HOAs, **protecting homeowners from unjust penalties, financial exploitation, and retaliation.** I urge you to please pass this bill with these additional safeguards in place.

Mahalo for your time and consideration.

Very Sincerely,

Miri Yi

SB-147
Submitted on: 2/2/2025 5:10:31 PM
Testimony for CPN on 2/5/2025 10:00:00 AM

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

Comments:

I support this measure.

To: Hawaii State Legislature
Subject: Testimony in Support of and Concerns Regarding SB 147

Dear Members of the Legislature,

Thank you for the opportunity to submit testimony on SB 147. While I support the bill's intent to establish processes for imposing fines and preventing associations from charging attorneys' fees for fines deemed uncollectible, I have serious concerns about the broader issue of associations charging legal fees to owners without meaningful limitations.

Currently, associations can impose legal fees on owners even when the owner has not engaged an attorney. I consulted with an attorney about my concerns, and I was warned that even sending a letter to my board could prompt them to respond with their attorney, billing me for the legal fees. I have also heard similar stories from other owners, where requesting the board to address an issue has resulted in a cease-and-desist letter accompanied by a bill for the attorney's time.

Unfortunately, from my reading, SB 147 only addresses legal fees related to fines, leaving the issue of legal fees imposed for general communication and other concerns unaddressed. This creates a significant loophole for abuse, where associations can suppress owner concerns through legal threats and fees rather than engaging in good-faith resolution.

To illustrate this issue, though I am nervous, I am submitting a redacted letter I received from my association's attorney. I refrained from responding to it out of fear that any reply—even one made in good faith—could lead to additional legal fees being charged. This is a clear example of how the imbalance of power allows associations to use legal fees as a weapon against owners. Unlike the association, I have no easy ability to recover legal costs by just charging my AOAO if I need to hire an attorney to respond to them. Even more concerning, I was warned that simply communicating with the board could trigger legal fees, despite not engaging an attorney myself.

I have redacted the law firm's information out of concern that they may retaliate against me. The fact that I feel compelled to take such precautions highlights the fear and uncertainty that many condominium owners face when challenging their associations.

To strengthen SB 147, I urge the Legislature to consider the following changes:

1. Expanding the prohibition on legal fees to include general communications between owners and associations, not just fines.
2. Requiring associations to provide clear justification for legal fees charged to owners, and establishing a neutral review process for disputes over such fees.
3. Make it easier for owners to recover legal fees in cases where the association is found to have acted in bad faith or outside the scope of its governing documents.
4. Have laws that actually can be used to hold property managers, boards and their lawyers accountable when they misuse their power.

While I support the bill's intent, I believe these additional protections are necessary to prevent associations from abusing their power to impose legal fees on owners. Thank you for your time and consideration.

Sincerely,

Aaron Cavagnolo

Letter from AOAO Attorneys

Re: Association of Apartment Owners of Diamond Head Surf, Unit 115

Dear Mr. Cavagnolo:

We represent the Association of Apartment Owners of _____ ("Association"). The Association's Board of Directors has asked us to respond to your request for amendments to the governing documents, specifically the Declaration of Condominium Property Regime of _____(the "Declaration") and your claims that you are entitled to the use of parking stall #8 ("Stall #8") at the _____ Condominium Project ("Project"). We have enclosed a copy of the amendments to the Declaration in the Association's files since June 2012 available to the Association.

I. Statutory Time Line for Providing Documents and RICO Complaints

Under sections 514B-154.5(a)(2) and 514B-154.5(c), Hawaii Revised Statutes ("HRS"), the Association is required to provide you with a copy of the declaration and any amendments thereto no later than thirty (30) days after receipt of your written request. Your first request for any amendments to the Declaration was made on August 8, 2023. Thirty (30) days from August 8, 2023 is September 7, 2023. Therefore, pursuant to 514B-154.5(a)(2) and 514B- 154..5(c), the Association has until September 7, 2023 to provide you with the amendments to the Declaration, as requested.

The Association is in compliance with 514B-154.5(a)(2) and 514B-154.5(c) because the Association, through its Managing Agent,_____, has already provided you with a copy of the documents titled "Declaration of Condominium Property Regime of _____," dated April 11, 2000, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-0******; "Amendment to Declaration of Condominium Property Regime of _____," dated March 2, 2005, recorded in the Bureau of Conveyances of the State of Hawaii as Document No, 2005-0*****; and "Amendment to Declaration of Condominium Property Regime of "_____" to Relect Transfer of Exclusive Easement to Parking Stall No. 12, dated May 31, 2012, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-45*******. Nevertheless, we are providing you with another copy of the amendments to the Declaration in the Association's possession, as you requested, on the date of mailing of this letter, by the September 7, 2023 deadline.

Please be aware that owners are entitled to transfer limited common element parking spaces without the signature of any Association officer. Sometimes, owners will provide a copy of their transfer amendment, but this was not required until recently (and even then owners sometimes do not provide copies to the Association). As such, the Association does not have a record of any amendments transferring Stall #8 or any for your unit. That does not mean that it has not occurred, simply that since it does not require a signature from the Association's officers, the Association does not have a copy of such an amendment.

II. The Association will not intervene in matters related to your claims for the use of Stall #8

In this case, you are claiming that you are entitled to Stall #8, which another resident at the Project is using. The Board takes the position that this issue regarding which owner is entitled to Stall #8 should be resolved amongst the owners, not the Association. The Association would not have the standing to bring a claim related to your alleged ownership of your unit or the limited common element parking space that may be associated with your unit. Therefore, the Board will not intervene in the matters related to the claim for the use of Stall #8.

We suggest that you order a Title Report which would provide information about the parking space. In fact, if you obtained a Title Insurance when you acquired your unit, you would have a title report and you should be able to get information from that company for the parking space assigned to your unit if your ordered the correct title report.

III. Your Demand for Mediation is Premature

We are in receipt of your demand for mediation with The Mediation Center of the Pacific ("MCP"). Your requests indicates that you would like to mediate "communication, structural damage, flooding, drainage, retaining wall and lanai concerns." This information is vague and ambiguous and do not provide the Association with any indication of your claim or any information about exactly what you would like to mediate. Therefore, the Association believes that your demand for mediation is premature. While mediation is required under certain circumstances, it has to relate to the interpretation or enforcement of the Association's governing documents. It does not appear that you have identified a claim involving interpretation or enforcement of the governing documents.

Moreover, it appears that your unit has been previously modified without Board approval or the required building permits. Specifically an opening was made to the building and installation of a sliding glass door through which you are accessing a portion of the project that is part of the common elements. The Association is not responsible for unauthorized modifications to your unit and to the extent that damages are ensuing, the building will need to be restored to its original condition.

If you should have any questions, please do not hesitate to contact us. Very truly yours,

Letter I Decided Not to Send

Subject: Concerns Regarding Legal Representation of AOAO

Dear Lawyers,

I am writing to formally express my concerns regarding the handling of various legal matters by your firm in relation to our AOAO. Specifically, I wish to address the following issues, which have raised serious concerns regarding due diligence, ethical conduct, and the appropriate use of AOAO funds.

Lack of Due Diligence and Misrepresentation of Facts

In a letter sent to me by your firm, you alleged that my unit contained an unauthorized modification (a sliding glass door) that lacked board approval and necessary permits. However, your office failed to verify that this modification predated the formation of the AOAO in 2000 and is documented in the official condo map. Proper due diligence would have revealed that this modification existed before the AOAO's establishment.

Furthermore, your firm failed to acknowledge that similar modifications exist elsewhere in the building—including in the unit directly above mine—yet no action has been taken regarding those discrepancies. Notably, the window in the family room of unit 215 does not appear on the condo map, yet this issue has not been addressed, demonstrating an apparent selective enforcement of alleged unauthorized modifications.

Retaliatory Legal Action & Ethical Concerns

The letter from your firm combined a denial of my mediation request with a sudden challenge to the existence of my sliding glass door. I had been communicating with the Board about multiple outstanding structural and safety issues for months, and my mediation request covered those concerns. The fact that the sliding glass door issue was raised for the first time in the same letter rejecting mediation strongly suggests a retaliatory motive. This raises concerns that legal resources were used to intimidate me rather than to fairly enforce the governing documents.

Improper Use of AOAO Funds for Legal Fees

My request for amendments to the Declaration was submitted to the property management company, Unnamed Company, in accordance with HRS 514B-154.5. The statute requires the property manager—not the AOAO—to provide such documents upon request. I followed the proper procedure by submitting a structured request letter, including notice of my intent to report noncompliance to RICO (Real Estate Commission).

Despite this, your firm responded to my request at the AOAO's expense, even though the responsibility lay with the property manager and the AOAO is not overseen by RICO. This raises

concerns regarding the potential misuse of AOAO funds for legal matters that fell outside the appropriate scope of the Association's legal counsel.

Failure to Engage in Good Faith Mediation

Rather than participating in evaluative mediation to address the legitimate concerns I raised in numerous emails and in a multi page document—including structural safety issues affecting the building and the AOAO's responsibility to maintain the complex—your firm advised the AOAO to decline mediation. This refusal contradicts the intent of Hawaii's condominium dispute resolution framework and suggests an unwillingness to resolve disputes in good faith. By delaying the resolution process and complicating the matter unnecessarily, your firm exacerbated the dispute rather than working toward a fair resolution.

Further Delay and Inaction in Mediation Process

I requested a second mediation to address the perceived retaliation related to the sliding glass door and other unresolved issues. However, the mediation process was delayed for over six months, primarily due to the board's difficulties in securing legal counsel. Despite being the AOAO's primary legal representative, your firm refused to participate in this mediation. This decision, combined with the board's struggle to find alternative counsel, prolonged the dispute's resolution and resulted in unnecessary legal expenses as a new attorney had to be hired and brought up to speed. These actions raise concerns about your firm's handling of the situation and its failure to engage in good faith efforts to resolve the issues.

Incorrect Timeline Regarding Required Documents

Your firm's letter stated that the AOAO had until September 7, 2023, to provide amendments to the Declaration based on my request made on August 8, 2023. However, this timeline is incorrect. These documents should have been provided during escrow when I was in the process of purchasing my unit in April 2023, as required by Hawaii's condominium sales disclosure laws.

By misrepresenting the applicable deadline, your firm overlooked the legal obligation to provide these documents during escrow. This raises additional concerns about whether AOAO funds were improperly used to justify the delay rather than ensuring compliance with legal disclosure requirements.

Failure to Enforce Governing Documents and Legal Responsibilities

As the AOAO's legal representatives, your firm has a duty to ensure compliance with the governing documents. The Declaration clearly states that Stalls #8 and #29 are assigned to my unit (Apartment 115), yet another resident is currently using Stall #8 without resolution. Your firm has maintained that this issue is not the AOAO's responsibility and that I must resolve it directly with another owner.

However, the governing documents explicitly assign these spaces, and it is the AOAO's responsibility to enforce them or figure out why there is this disconnect between the governing documents and onsite practices. Your firm's failure to intervene and ensure compliance with these documents raises concerns about the selective enforcement of the Association's legal obligations.

Request for Response and Resolution

In light of these concerns, I request that your firm:

1. **Clarify the basis** for the claims made regarding my sliding glass door and acknowledge the modification's pre-AOAO existence.
2. **Provide an explanation** for your firm's refusal to participate in mediation and the resulting delays.
3. **Address concerns** regarding the potential misuse of AOAO funds in matters that should have been handled by the property management company.
4. **Confirm your firm's stance** on enforcing the AOAO's governing documents, particularly regarding assigned parking stalls.

I look forward to your prompt response.

Sincerely,

Aaron Cavagnolo

Committee on Consumer Protection and Commerce

SB 147: Regarding Fines

Wednesday, February 5, 2025 @ 10:00AM

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

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

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

Revision 1:

Page 2: 514B-___(b)(4) (regarding information included with violation notices): 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. (**We have a Constitutional right to see the evidence used against us**. If not, it means we are a dictatorship.) The due date of the fine shall be clearly stated.

Revision 2:

Page 2: 514B-___(b)(5) (regarding the notification of a violation/fine): The notifications in this subsection shall be provided to the owner without costs or attorney fees incurred to the owner. (My association charged me attorney fees at $400/hr to provide me this information.)

Revision 3:

Page 3: 514B-___(c)(1) (regarding small claims): Attorney fees related to attorney time spent preparing for or participating in the small claim suit shall not be charged to the losing party. (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. Even though 514B-B(e) has similar wording, that section would still allow for attorney fees to be charged to the owner after a judgement that the fine is collectable.)

Revision 4:

Page 19: 514B-146(d)(4) (related to requested information for assessments): Attorney fees shall not be charged to the owner for providing the information included in this subsection. (**Hawaiiana has posted thousands of dollars of erroneous charges to my account over many different separate**

incidences. When I asked them to doublecheck their charges, they said that they could have their attorneys review my ledger for errors, but they would have to post their attorney charges ($400/hr) to my account. It makes no sense for an owner to ask for a verification of debt if they are going to get charged $400/hour for that.)

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

Thank you for the opportunity to provide testimony,

Jeff Sadino

JSadino@gmail.com

(808) 371-2017

As the highlights in this email show:

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

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

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

jsadino.axa@hotmail.com

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

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Jesi, DPR

Jeff,

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

Here is the attorney handling your case:

Mike Biechler
mbiechler@hawaiilegal.com

Laree McGuire
lmcguire@hawaiilegal.com

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

Mahalo,

Jesi K. Anderson-Park | Management Executive, CMCA®
Hawaiiana Management Company, Limited
Pacific Park Plaza, Suite 700
711 Kapiolani Boulevard | Honolulu, HI 96813
PH: 808.593.6319 Cell: 808.694.0782
www.hmcmgt.com | jesia@hmcmgt.com

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

Hi Jesi,

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

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

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

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

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

Jeff,

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

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

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

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

Jesi K. Anderson-Park | Management Executive, CMCA®
Hawaiiana Management Company, Limited
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SB-147
Submitted on: 2/3/2025 1:48:21 AM
Testimony for CPN on 2/5/2025 10:00:00 AM

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

Comments:

While I support SB147 and its intentions, this bill needs to be amended. Small Claims Court in Hawaii has strict limitations to what can be adjudicated. The monetary limit to recover is only $5K and the opposing side can file a counterclaim for up to $40K.

As the legislative session is so rushed, and bills are scheduled so quickly, I don't have sufficient time to provide a thorough review and suggested amendments, but I can clearly see some are needed.

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 concerns with fines and assessments and the serious issues of misconduct and corruption at condominium associations throughout Hawaii.

Gregory Misakian

SB-147
Submitted on: 2/3/2025 8:20:36 AM
Testimony for CPN on 2/5/2025 10:00:00 AM

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

Comments:

I support this bill.

The Senate
The Thirty-Third Legislature
Committee on Commerce and Consumer Protection
Wednesday, February 5, 2025
10:00 a.m.

To: Senator Jarrett Keohokalole, Chair
Re: SB 147, Relating to Condominiums

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 147.

In earlier testimony today, I provided my background and wrote that 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.

In this testimony, I repeat comments made in testimony to that earlier heard measure because they are relevant to SB 147:

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 Statutes[1] 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,*

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

*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 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 required in paragraph (b) or paragraph (d), a fine or suspension may not be imposed.*

Mahalo for the opportunity to submit these comments regarding SB 147.

Malama pono.

Lila Mower

SB-147
Submitted on: 2/3/2025 8:47:20 AM
Testimony for CPN on 2/5/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Jonathan Billings	Individual	Support	Written Testimony Only

Comments:

I support this bill.

LATE

SB-147
Submitted on: 2/3/2025 5:46:30 PM
Testimony for CPN on 2/5/2025 10:00:00 AM

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

Comments:

Dear Senator Keohokalole, Senator Fukunaga, and Member of the Committee:

I OPPOSE S.B. No. 147 for the reasons set forth below.

S.B. No. 147 adds a new provision on fines and appeals from fines. It establishes procedures to be followed by associations and time periods for action. While procedures and time periods serve a good purpose, this provision may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

The new HRS Section 514B-___(c) found in SECTION 2 of the bill provides that 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 amount of a fine imposed pursuant to this section if a person who first timely appeals the imposition of a fine to the board also files a complaint within thirty days after receive of the notice pursuant to subsection (b), which is the notice of the fine. This requires an owner to file a complaint in the small claims court even before an appeal is decided. The deadline for a small claims action should be after the appeal has been decided, not before. There would be no need for such action if the fine is waived or rescinded.

The new subsection (e) provides that no attorneys' fees shall be charged by an association against any unit owner or tenant with respect to a fine before the fine is deemed collectible. 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.

SECTION 3 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.

The proposed changes to HRS Section 514B-146 found in SECTION 5 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 to have not been owed. It is not clear who makes this determination because it follows the section allowing an owner to file a court action or to request mediation. It should be revised to clarify that the determination must be made by a court of competent jurisdiction, via a binding final judgment, and that payment of any refund shall be subject to any orders of a court granting stays or other relief.

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.

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

For the foregoing reasons, I respectfully OPPOSE S.B. No. 147 and urge your Committee to defer this measure. Alternatively, if it is to be passed by the Committee, I urge the Committee to amend the bill to address the issues discussed above.

Respectfully submitted,

Anne Anderson

LATE

SB-147
Submitted on: 2/3/2025 6:47:46 PM
Testimony for CPN on 2/5/2025 10:00:00 AM

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

Comments:

Dear Senator Keohokalole, Senator Fukunaga, and Member of the Committee:

I OPPOSE S.B. No. 147 for the reasons set forth below.

S.B. No. 147 adds a new provision on fines and appeals from fines. It establishes procedures to be followed by associations and time periods for action. While procedures and time periods serve a good purpose, this provision may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

The new HRS Section 514B-___(c) found in SECTION 2 of the bill provides that 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 amount of a fine imposed pursuant to this section if a person who first timely appeals the imposition of a fine to the board also files a complaint within thirty days after receive of the notice pursuant to subsection (b), which is the notice of the fine. This requires an owner to file a complaint in the small claims court even before an appeal is decided. The deadline for a small claims action should be after the appeal has been decided, not before. There would be no need for such action if the fine is waived or rescinded.

The new subsection (e) provides that no attorneys' fees shall be charged by an association against any unit owner or tenant with respect to a fine before the fine is deemed collectible. 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.

SECTION 3 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.

The proposed changes to HRS Section 514B-146 found in SECTION 5 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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Finally, HRS Section 514B-146 requires owners to pay common expense assessments before disputing those amounts, but allows owners to dispute all other assessments prior to

payment. This can place significant financial burdens on associations where the amounts at issue have been paid by an association to third parties, such as payment of submetered utilities. The right to dispute charges prior to payment should be limited to charges for which an association has not advance funds, such as fines, late fees, or interest.

For the foregoing reasons, I respectfully OPPOSE S.B. No. 147 and urge your Committee to defer this measure. Alternatively, if it is to be passed by the Committee, I urge the Committee to amend the bill to address the issues discussed above.

Respectfully submitted,

Mary Freeman

Ewa Beach

LATE

SB-147
Submitted on: 2/4/2025 7:28:50 AM
Testimony for CPN on 2/5/2025 10:00:00 AM

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

Comments:

Dear Senator Keohokalole, Senator Fukunaga, and Member of the Committee:

I OPPOSE S.B. No. 147 for the reasons set forth below.

S.B. No. 147 adds a new provision on fines and appeals from fines. It establishes procedures to be followed by associations and time periods for action. While procedures and time periods serve a good purpose, this provision may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

The new HRS Section 514B-___(c) found in SECTION 2 of the bill provides that 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 amount of a fine imposed pursuant to this section if a person who first timely appeals the imposition of a fine to the board also files a complaint within thirty days after receive of the notice pursuant to subsection (b), which is the notice of the fine. This requires an owner to file a complaint in the small claims

court even before an appeal is decided. The deadline for a small claims action should be after the appeal has been decided, not before. There would be no need for such action if the fine is waived or rescinded.

The new subsection (e) provides that no attorneys' fees shall be charged by an association against any unit owner or tenant with respect to a fine before the fine is deemed collectible. 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.

SECTION 3 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.

The proposed changes to HRS Section 514B-146 found in SECTION 5 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 respectfully OPPOSE S.B. No. 147 and urge your Committee to defer this measure. Alternatively, if it is to be passed by the Committee, I urge the Committee to amend the bill to address the issues discussed above.

Respectfully submitted,

Julie Wassel

LATE

SB-147
Submitted on: 2/4/2025 8:32:03 AM
Testimony for CPN on 2/5/2025 10:00:00 AM

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

Comments:

Dear Senator Keohokalole, Senator Fukunaga, and Member of the Committee:

I OPPOSE S.B. No. 147 for the reasons set forth below.

S.B. No. 147 adds a new provision on fines and appeals from fines. It establishes procedures to be followed by associations and time periods for action. While procedures and time periods serve a good purpose, this provision may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

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For the foregoing reasons, I respectfully OPPOSE S.B. No. 147 and urge your Committee to defer this measure. Alternatively, if it is to be passed by the Committee, I urge the Committee to amend the bill to address the issues discussed above.

Respectfully submitted,

Carol Walker

LATE

SB-147
Submitted on: 2/4/2025 8:50:10 AM
Testimony for CPN on 2/5/2025 10:00:00 AM

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

Comments:

Dear Senator Keohokalole, Senator Fukunaga, and Member of the Committee:

I OPPOSE S.B. No. 147 for the reasons set forth below.

S.B. No. 147 adds a new provision on fines and appeals from fines. It establishes procedures to be followed by associations and time periods for action. While procedures and time periods serve a good purpose, this provision may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

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For the foregoing reasons, I respectfully OPPOSE S.B. No. 147 and urge your Committee to defer this measure. Alternatively, if it is to be passed by the Committee, I urge the Committee to amend the bill to address the issues discussed above.

Respectfully submitted,

Lance Fujisaki

LATE

Dear Senator Keohokalole, Senator Fukunaga, and Member of the Committee:

I OPPOSE S.B. No. 147 for the reasons set forth below.

S.B. No. 147 adds a new provision on fines and appeals from fines. It establishes procedures to be followed by associations and time periods for action. While procedures and time periods serve a good purpose, this provision may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

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SECTION 3 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.

The proposed changes to HRS Section 514B-146 found in SECTION 5 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.

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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.

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

For the foregoing reasons, I respectfully OPPOSE S.B. No. 147 and urge your Committee to defer this measure. Alternatively, if it is to be passed by the Committee, I urge the Committee to amend the bill to address the issues discussed above.

Respectfully submitted,

Pamela J. Schell