



February 9, 2009

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE REGARDING  
HOUSE BILL 355

Hearing Date : MONDAY February 9, 2009  
Time : 2: 15 p.m.  
Place : Conference Room 325

Chair Herkes and Members of the Committee:

My name is John Morris and I am testifying on behalf of the Hawaii Legislative Action Committee of the Community Associations Institute ("CAI") to support House Bill 355, *with minor changes*. CAI Hawaii is the local chapter of a national organization dedicated to improving the management and operation of community associations nationwide. CAI has over 200 members in Hawaii and over 14,000 nationwide.

CAI supports HB 355 but believes changes should be made to clarify its intent. One of the primary purposes of a late fee is to encourage all owners to pay their maintenance fees to the association on time. Since maintenance fees are the primary source of income for most associations, they are the "lifblood" of the associations, without which the associations cannot function and supply the basic services that residents need. Moreover, if one owner fails to pay, the other owners must make up the difference.

If a late fee is too small, it does not encourage owners to pay on time -- for example, a \$10 late fee on a \$400 monthly maintenance fee is so small that an owner can ignore it with little downside. In contrast, if a late fee is too large, it may make it difficult for owners to pay if they miss a payment -- for example, a \$200 late fee on a \$400 monthly maintenance fee may overwhelm an owner who is close to default.

HB 355 seems to strike a reasonable balance by allowing a monthly late fee to be up to 20% of the amount due for the month. For example, on a \$400 monthly maintenance fee, the late fee could not exceed \$80 and would probably be less. Nevertheless, it is not clear from the wording of section 1 of HB 355 whether the late fee to be permitted is a one-time charge or could continue for as long as the amount remains unpaid. The CAI believes the latter is the intent of the bill and therefore suggests that the bill should be clarified by making the following changes (in bold):

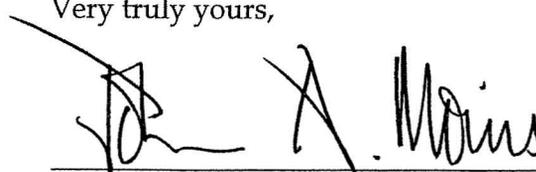
"(b) Except for assessments under subsections (c), (d), and (e), all common expenses shall be assessed against all the units in accordance with the allocations under section 514B-41. Any past due common expense assessment or installment thereof shall bear interest at the rate established by the association, provided that the rate shall not exceed eighteen per cent per year. Any late fee for a past due common expense assessments shall not exceed twenty per cent of the monthly maintenance fee in effect at the time the delinquency occurs per month but may be charged for every month that any past due common expense assessment remains unpaid."

Otherwise, if the late fee can only be charged once and the past due amount remains unpaid for more than one month, there will be no incentive for the owner to pay the past due amount after the first month.

Finally, CAI has no objection to the amendments proposed by section 2 of the bill but believes they are unnecessary. Most, if not all condominium associations have the first notices of delinquency -- usually two and sometimes three notices -- sent out by the managing agent before the matter is turned over to the association's attorney. Under that process, an owner may have 45 to 90 days to pay a delinquency before the association's attorney becomes involved. In virtually all cases, because of federal law, the managing agent will give the owner at least 30 days to respond before turning the matter of the to the association's attorney. Therefore, CAI believes the change being made by section 2 serves no real purpose except to further complicate the condominium law.

Please contact me at 523-0702 if you have any questions. Thank you for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "John A. Morris". The signature is written in a cursive style with a horizontal line underneath it.

John A. Morris  
Hawaii Legislative Action Committee  
of the Community Associations Institute

JAM:alt  
Enclosure



Mililani Town Association

95-303 Kaloapau Street  
Mililani Town, HI 96789  
Phone (808) 623-7300

February 7, 2009

Representative Robert Herkes, Chair  
Representative Glenn Wakai, Vice-Chair  
Committee on Consumer Protection  
& Commerce  
State Capitol  
Honolulu, HI 96813

VIA E-Mail: CPCTestimony@Capitol.hawaii.gov

Re: H.B. No. 355 – Relating to Condominiums  
Hearing: Monday, February 9, 2009, 2:15 pm, Conf Room 325

Dear Chair Herkes, Vice-Chair Wakai and Committee Members:

My name is Eric Matsumoto, Vice-President of the Mililani Town Association (MTA). I have served in MTA leadership capacities on the board for 24 of the last 30 years. MTA encompasses 16,000 plus units involving both single family units and numerous townhouse project sub-associations.

We cannot support this bill as written for the following reasons:

- While a 20% cap on one month's delinquent assessment fee is reasonable, it is unreasonable if the intent is to preclude charging the 20% for each month's delinquency. The result would quickly put the association in a declining revenue mode, as homeowners would begin to not pay or delay the payments. As the monthly assessments are the primary source of revenues for associations to perform their functions, the result could very be catastrophic in the long run.
- By way of information, notices are provided by nearly all associations when monthly assessments become delinquent, before forwarding to the attorney for action. If there are a few associations that do not provide adequate notice, legislative redress is not a reasonable recourse for resolving a situation that does not impact the much greater number of associations. As such this provision should be deleted.

Based on the above, we strongly request this bill be either withheld or revised.

Sincerely yours,

Eric M. Matsumoto  
Vice-President, Board of Directors

Cc: Sen Kidani, Sen Bunda  
Rep Lee, Rep Yamane

HAWAII COUNCIL OF ASSOCIATIONS  
OF APARTMENT OWNERS

P.O. Box 726  
Aiea, Hawaii 96701  
Telephone (808) 566-2122

February 7, 2009

Rep. Robert Herkes, Chair  
Rep. Glenn Wakai, Vice-Chair  
House Committee on Consumer Protection & Commerce

Rep. Jon Riki Karamatsu, Chair  
Rep. Ken Ito, Vice-Chair  
House Committee on Judiciary

RE: TESTIMONY IN OPPOSITION TO HB 1792 RE CONDOMINIUMS  
Hearing: Monday, February 9, 2009, 2:00 p.m., Conf. Rm. #325

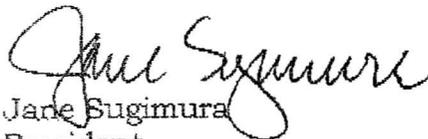
Chairs Herkes and Karamatsu, Vice-Chairs Wakai and Ito and Members of the  
Committee:

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

HCAAO asks that you defer action on this bill.

We support evaluative mediation as a dispute resolution program; however,  
legislation is not necessary to implement such a program. HCAAO and others  
who have been involved in dispute resolution programs for many years and  
trying to find quick, inexpensive and non-adversarial programs for condo  
owners and boards met during the summer to try to find a better solution and  
agreed that evaluative mediation should be added as a program administered  
by the Real Estate Commission ("REC"). The REC already has a mediation  
program in place, which program is supported by the Condominium Education  
Fund and we plan to petition the REC to add an evaluative mediation program  
as well.

Thank you for the opportunity to testify.

  
Jane Sugimura  
President

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