



HAWAII INDEPENDENT CONDOMINIUM & COOPERATIVE OWNERS
1600 ALA MOANA BLVD. - APT. 3100 - HONOLULU - HAWAII 96815

February 25, 2009

Rep. Robert N. Herkes, Chair
Committee on Consumer Protection
and Commerce

Testimony on HB 875 Relating to Condominiums

Dear Representative Herkes:

Thank you for this opportunity to testify in strong support of HB 875 on behalf of the Hawaii Independent Condominium and Co-op Owners (HICCO).

HB 875 ensures that the Alternative Dispute Resolution Process will continue as a pilot for two more years.

We are currently exploring other alternatives to the Alternative Dispute Resolution process with other interested parties. One suggestion presented in meetings this past summer has been an Evaluative Mediation process. However, until this process has been tried successfully with condominium disputes, it is essential that the current process remain in place.

The members of our organization urge that you approve HB 875.

Mahalo,

A handwritten signature in cursive script that reads "Richard Port".

Richard Port, Chair
Legislative Committee



Hawaii Council of Associations of Apartment Owners

P.O. Box 726, Aiea, HI, 96701
Phone: 485-8282 Fax: 485-8282
Email: HCAAO@hawaii.rr.com

February 24, 2009

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

RE: TESTIMONY IN SUPPORT OF HB 875 RE CONDOMINIUMS
Hearing: Wednesday, February 25, 2009, 2 p.m. Conf. Rm. #325

Chair Herkes, Vice-Chair Wakai and Members of the Committee:

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

HCAAO strongly supports this bill and requests that you pass it out.

When this program was initially adopted, it was a 2-year program; however, because of problems associated with the recodification of HRS 514A, i.e., enactment of HRS 514B in 2 separate years, through no fault of anyone, it was mistakenly repealed when HRS 514A was repealed and had to be corrected. It took two sessions to make the corrections to this program, which was intended to provide quick, economical resolution of disputes between apartment owners and their boards, has never had to chance to be fully tested.

During this past summer, representatives of the stakeholders on this issues, i.e., John Morris (CAI), Philip Nerney (Mediation/Association Atty.), Steve Glanstein (Parliamentarian), Richard Port (HICCO), Cynthia Yee (REC) Tracy Wiltgen (Mediation Center of the Pacific) met several times to try to come to some agreement on a dispute resolution program. There was a consensus among the members of the group that we would jointly ask the Real Estate Commission to establish and fund (from the condo education fund) an evaluative mediation program as an alternative to the existing facilitative

HB875 Re Condominiums
House Comm. on Consumer Protection and Commerce
February 24, 2009
Page 2 of 2

mediation program and to include this program in their budget for the next fiscal year. Part of the funding would be used to train and compensate the mediators.

While I believe that an evaluative mediation program may be preferable to the condominium dispute resolution pilot project ("DCCA Hearings"), it will take some time for that program to be developed and we believe that the DCCA Hearings should remain in place as a "safety net" until the evaluative mediation program has been fully developed.

This committee may hear testimony that very few cases have been taken in by the DCCA Hearing and therefore the pilot program should be not be extended; however, the low numbers are likely a result of the fact that there has not been a pro-active campaign by the State to publicize the availability of this program. Also, there is no additional costs to the State if no cases are actually referred to the DCCA Hearings.

Thank you for the opportunity to testify.



Jane Sugimura
President

LAW OFFICES OF PHILIP S. NERNEY, LLLC

A LIMITED LIABILITY LAW COMPANY
737 BISHOP STREET, SUITE 2780, HONOLULU, HAWAII 96813
PHONE: 808 537-1777
FACSIMILE: 808 537-1776

February 23, 2009

Representative Robert N. Herkes
Chair, Consumer Protection
and Commerce Committee
415 S. Beretania Street
Honolulu, Hawaii 96813

Re: HB 875-Oppose
2/25/09 @ 2:00 p.m.

Dear Representative Herkes:

I am an attorney in private practice. I have represented condominium and community associations full time since 1990.¹

HB 875 should not be enacted. It would continue a failed program of no value.

What began as a well-intentioned, but ill-conceived, experiment, is now simply a quixotic quest. The evidence is in. Condo court has been a complete failure.²

That was as predicted. The condominium dispute resolution pilot project ("condo court") was doomed from the start, because it is based on a misapprehension of the problem to be solved.

There is no need for a special adjudicative forum. Existing courts are more than sufficient for handling any claim significant enough to be *adjudicated*.

What is needed is an inexpensive means to enable consumers to address relatively minor matters in a *non-adjudicative* setting. That is why SB 195 was introduced. SB 195 would enable the use of condominium education trust fund resources "to subsidize the cost of mediations using an evaluative method."

¹ In the interest of fuller disclosure, I should mention that I am a member of the CAI Legislative Action Committee. I also volunteer at the Mediation Center of the Pacific as chair and trainer for the condominium specialty area. I mediate there and for the Family Court of the First Circuit (in child abuse and neglect cases). The latter service relates to the fact that I have a master's degree in counseling psychology (with a marriage and family emphasis).

² The attached November 19, 2008 email from the Office of Administrative Hearings ("OAH") shows that exactly one owner prevailed in the entire time the program has been in existence, which covered five fiscal years.

Representative Robert N. Herkes
February 23, 2009
Page two

Some background is in order. The fate of condo court was carefully considered by an ad hoc group of interested persons³ over the summer and fall of 2008.

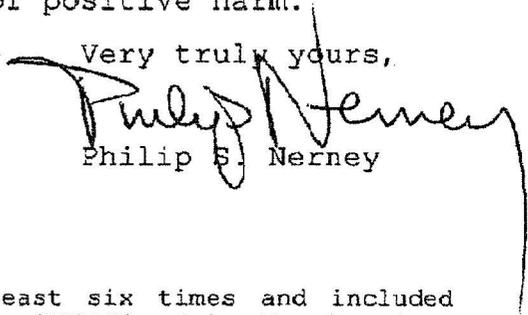
The focus of much attention was on how non-adjudicative methods of dispute resolution were appropriate in the condominium context. The emphasis on evaluative mediation related to the fact that mediators qualified to use that method of mediation would enable consumers to understand how an expert might view the merits of their dispute.⁴

Cost is the barrier to having consumers access evaluative mediation services, since subject matter experts must provide the service. Community mediation centers rely on volunteers, of varying backgrounds, to provide primarily facilitative mediation services. Facilitative mediation emphasizes enabling parties to come to their own agreements without advice, judgment or counseling by the mediators.

The notion is that the less tractable condominium disputes could be referred to a process with an evaluative component. Consumers could then choose to resolve disputes in mediation or proceed through normal channels with a better understanding of the strengths and weaknesses of their position.

If the Legislature is interested in promoting a useful mechanism to resolve condominium-related disputes, then SB 195 should be heard. Condo court hasn't worked, it will never work and it is an instrument of positive harm.

Very truly yours,


Philip S. Nerney

Enclosure

³ Parts or all of the group met at least six times and included Richard Port (HCAAO), Jane Sugimura, Esq. (HCAAO), John Morris, Esq. (CAI), Steve Glanstein (Parliamentarian), Tracey Wiltgen, Esq. (Executive Director of Mediation Center of the Pacific), myself, and various representatives from DCCA (including Cynthia Yee, Esq. (REB), Bendyne Stone, Esq. (REB) and Rod Maile, Esq. (OAH)).

⁴ It was also noted that Sections 16-201-85, et. seq., of the Hawaii Administrative Rules, enable the Real Estate Commission to provide informal interpretations of the condominium law to consumers upon request. This is another readily available and low cost means for consumers to obtain helpful information.

Print

Page 1 of 2

From: oah_efiling@dcca.hawaii.gov (oah_efiling@dcca.hawaii.gov)

To: YJS

Date: Wednesday, November 19, 2008 12:27:10 PM

Cc: [REDACTED]

Subject: Re: Condo Dispute Resolution Alternatives

Jane,

Here's the information you requested:

The following table reflects the number of cases filed with each of the Pilot Programs as of November 13, 2008*:

	CDR Pilot Program	CMDR Pilot Program
FY 04-05	0	N/A
FY05-06	7	N/A
FY 06-07	Repealed*	0
FY07-08	11	3
FY08-09	2	0
Total Cases	20	3

*During FY 06-07, 14 cases were filed with the CDR Pilot Program, however, because Act 164 was repealed on June 30, 2006, after Act 277 was passed on July 2, 2007, these cases were dismissed without prejudice. The majority of cases were not subsequently refiled with the CDR Pilot Program

The following table reflects the disposition of all of the cases filed with the CDR and CMDR Pilot Programs:

DISPOSITION	No. of Cases
Dismissed by Hearings Officer	5
Pending	2
Apartment owner prevailed	1
Association of Apartment Owners prevailed	3

<http://us.mg2.mail.yahoo.com/dc/launch?.rand=b21u6ij0sk725>

11/19/2008

Settled, resolved by parties	2
Stipulation to Dismiss Without Prejudice	4
Withdrawn and Dismissed Without Prejudice	4
Grand Total	20

Rod

"YJS"
<YJS@bfsi.com>

11/17/2008 06:30
PM

To
<oah_efiling@dcca.hawaii.gov>
cc

Subject
Condo Dispute Resolution
Alternatives

Rod:

Can you provide us with statistics as to how many cases have complete the administrative hearings procedure and the outcomes of those case, e.g., how many times did the unit owner prevail and how many times did the Board prevail.

This would really help in finalizing a legislative proposal. Thanks.

Jane Sugimura

<http://us.mg2.mail.yahoo.com/dc/launch?.rand=b21u6ij0sk725>

11/19/2008

wakai1-Karen

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 24, 2009 2:04 PM
To: CPCtestimony
Cc: tedwalkey@hmcmtg.com
Subject: Testimony for HB875 on 2/25/2009 2:00:00 PM

Testimony for CPC 2/25/2009 2:00:00 PM HB875

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Ted Walkey
Organization: Individual
Address:
Phone:
E-mail:
Submitted on: 2/24/2009

Comments:

Condo Court has not proven itself. I recommend investigating evaluative mediation as a route to resolving conflicts.

Steve Glanstein
P. O. Box 22885
Honolulu, HI 96823-2885

February 24, 2009

Rep. Robert N. Herkes, Chair
Rep. Glenn Wakai, Vice-Chair
Consumer Protection and Commerce Committee
Hawai'i State Capitol, Room 325
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony opposing HB 875; Hearing Date: February 25, 2009; sent via facsimile to 586-6221; e-mail to: CPCtestimony@Capitol.hawaii.gov.

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

I am an experienced Professional Registered Parliamentarian and have worked with over 120 condominium association meetings last year. I personally was parliamentarian or chair for 81 of these meetings and have three assistants who assist with the other meetings.

It has been my custom for many years to provide the community with the benefit of my experience with numerous condominium, cooperative, and planned community association meetings (about 1,200 in 25 years). This testimony is presented strictly as an individual in that capacity.

The condominium dispute resolution pilot project was established in 2004. HB 875 proposes to extend this project for another two years.

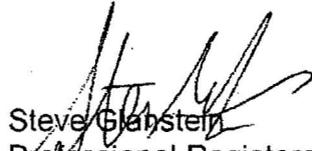
In 5 years, there were about 20 cases filed. Only one owner prevailed against the association in these cases.

I oppose HB 875 for several reasons.

1. There has been no first-hand testimony by any individual or association representative that the condominium dispute resolution pilot project has resolved any association issues.
2. Numerous hours were spent last summer with several stakeholders as well as two proponents (Mr. Port and Ms. Sugimura) of the condominium dispute resolution pilot project. The majority of us felt that this project was not accomplishing its original intent. **The majority was willing to investigate evaluative mediation as an alternative.**
3. **Evaluative mediation is currently available if requested.**
4. After one-half of a decade of this project, it is time to move on to other alternatives.

I urge the committee to hold this bill. Thank you for the opportunity to present testimony on this subject.

Sincerely,



Steve Glanstein
Professional Registered Parliamentarian