

# HAWAII FINANCIAL SERVICES ASSOCIATION

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March 16, 2009

Rep. John M. Mizuno, Chair  
and members of the House Committee on Human Services  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **Senate Bill 572, SD 2 (Condominiums)**  
**Hearing Date/Time: Monday, March 16, 2009, 8:00 A.M.**

I am the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is the trade association for Hawaii's financial services loan companies which are regulated by the Hawaii Commissioner of Financial Institutions under the Code of Financial Institutions (Chapter 412, Article 9 of the Hawaii Revised Statutes).

The HFSA wants to **comment** on this Bill.

The purpose of this Bill is to raise the maximum amount of the special assessment for delinquent monthly common assessments that can be charged against a person who purchases a condominium unit to \$3,600. It expands limitations on association liability for elderly unit owners aging in place to include disabled persons. This would take effect on July 1, 2050.

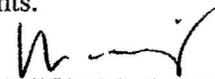
We take no position on the part of this Bill that relates to elderly unit owners.

The other part of this Bill would increase the maximum amount of the special assessment. Currently the special assessment is the lesser of \$1,800 or the amount of 6 months of unpaid condominium common assessments (e.g. maintenance fees). This Bill would increase the amount from \$1,800 to \$3,600. The law regarding these special assessments was first enacted in 2000 as Act 39. This special assessments provision is in Hawaii Revised Statutes Sec. 514A-90 and 514B-146. This provision requires a third party buyer to pay a portion of the delinquent common assessments (e.g. maintenance fees) even if there is no lien recorded in the State Bureau of Conveyances.

These special assessments could affect the price that a buyer pays for the foreclosed property and the amount that a foreclosing lender will net from the sale. We understand that condominium associations need to get paid when there are delinquent maintenance fees. But lenders also need to get paid the amount owed on the mortgage loans especially if the value of the property is less than the mortgage balance. We realize that maintenance fees in general have increased over the past 9 years. But a permanent doubling of the special assessment from \$1,800 to \$3,600 appears to be too much of an increase.

In 2000 when this \$1,800 special assessment was first enacted, there was a sunset (expiration) date provision. After a few years, that sunset date was extended. The sunset date was later repealed so that the \$1,800 was made permanent. If your Committee is inclined to increase the special assessment cap, perhaps that increase could be temporary and subject to a sunset date, after which the increased amount would revert back to \$1,800.

Thank you for considering our comments.

  
MARVIN S.C. DANG  
Attorney for Hawaii Financial Services Association

(MSCD/hfsa)

HAWAII COUNCIL OF ASSOCIATIONS  
OF APARTMENT OWNERS

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March 13, 2009

Rep. John Mizuno, Chair  
Rep. Tom Brower, Vice-Chair  
House Committee on Human Services

RE: TESTIMONY IN SUPPORT OF SB 572 SD2 RE CONDOMINIUMS  
Hearing: Monday, March 16, 2009, 8 a.m. Conf. Rm. #329

Chair Mizuno, Vice-Chair Brower and Members of the Committee:

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

HCAAO strongly supports both parts of this bill and urges that you pass it out without amending Part I and with amendments to Part II as follows;

1. Replace the language in Part II with the House version (copies of pages 3-4 of HB 876 HD1 attached for reference).
2. At page 3 of HB 876 HD1, beginning at line 17, change the language to read as follows: “. . . may request a functional assessment regarding the condition of an elderly or disabled unit owner or resident as well as recommendations ~~[for the services, including appropriate assistance]~~ from mental health or medical practitioners ~~[or the]~~, governmental agencies responsible for adult protective services and from non-profit service providers such as Catholic Charities or Child and Family Services and for-profit service entities, which the elderly or disabled unit owner or resident may require to maintain a level of independence that enables the owner or resident to avoid harm to self or to others, and to avoid disruption to the condominium community. . .”
3. At page 4 of HB 876 HD1, lines 5 - 7, change the language to read as follows: “. . . recommend available services, including but not limited to assistance from state or county agencies and non-profit and for-profit service entities, to an elderly or disabled unit owner or resident which may enable the elderly or disabled unit owner . . .”

Based on the foregoing, we respectfully ask that you pass out Part I unamended and that you amend Part II as requested in this testimony.

Thank you for the opportunity to testify.

A handwritten signature in black ink, appearing to read "Jane Sugimura". The signature is written in a cursive, flowing style.

Jane Sugimura  
President

1 to maintain a level of independence that enables the owner to  
2 avoid any harm to self or to others, and to avoid disruption to  
3 the condominium community. The board, upon request or  
4 unilaterally, and without legal responsibility or liability, may  
5 recommend available services, including assistance from state or  
6 county agencies, to an elderly or disabled unit owner or  
7 resident which might enable the elderly or disabled unit owner  
8 or resident to maintain a level of independent living with  
9 assistance, enabling in turn, the elderly or disabled unit owner  
10 or resident to avoid any harm to self or others, and to avoid  
11 disruption to the condominium community.

12 (c) There is no affirmative duty on the part of the  
13 association, its board, the unit owners[7] or residents or their  
14 agents or tenants to request or require an assessment and  
15 recommendations with respect to an elderly or disabled unit  
16 owner or resident when the elderly or disabled unit owner or  
17 resident may be experiencing the problems related to aging and  
18 aging in place, or living independently with a physical or  
19 mental handicap or disabling condition enumerated in subsection  
20 (a). The association, its board, unit owners[7] or residents,  
21 and their agents and tenants shall not be legally responsible or  
22 liable for not requesting or declining to request a functional



1 assessment of, and recommendations for, an elderly or disabled  
2 unit owner or resident regarding problems relating to aging and  
3 aging in place[-], or living independently with a physical or  
4 mental handicap or disabling condition.

5 (d) If an elderly or disabled unit owner or resident  
6 ignores or rejects a request for or the results from an  
7 assessment and recommendations, the association, with no  
8 liability for cross-claims or counterclaims, may file  
9 appropriate information, pleadings, notices, or the like, with  
10 appropriate state or county agencies or courts to seek an  
11 appropriate resolution for the condominium community and for the  
12 elderly or disabled unit owner[-] or resident.

13 (e) For the purposes of this section:

14 "Elderly" means age sixty-two and older.

15 "Disabled" means a physical or mental impairment that  
16 substantially limits one's ability to carry out normal day-to-  
17 day activities; provided that these impairments do not include  
18 substance abuse and visual impairment that is correctable by  
19 prescription lenses."

