ASTON
Hotels & Resorts

January 24, 2012

Via Email: HSGtestimony@capitol.hawaii.gov

Committee on Housing
Representative Rida T.R. Cabanilla, Chair
Representative Ken Ito, Vice Chair
415 South Beretania Street, Room 442
Honolulu, Hawaii 96813

Re: H.B. No. 2069 Relating to Housing

Dear Representative Cabanilla and Representative Ito:

My name is Kelvin Bloom. I am the Manager and President of Aston Hotels & Resorts, LLC, which operates resort rental programs in 18 condominium projects in the State of Hawaii. I have also served on several boards of associations of apartment owners, and am currently the President of an association of apartment owners . I am writing regarding H.B. No. 2069 which seeks to prohibit a condominium board of directors from setting the rent for a common element at an amount below fair market rent value, and to require all direct costs attributable to condominium hotel operations to be charged only to unit owners whose units are included in condominium hotel operations. I oppose H.B. No. 2069 Relating to Housing.

Associations of apartment owners frequently rent common elements to any number of lessees including restaurants, convenience store operators, travel agents, real estate brokerages, health facilities, beauty parlors, and condominium hotel operators. The desirability of one condominium project over another to a lessee is influenced by a variety of factors including the location of the project, the quality of the project, the size of the project, the amount transient occupancy versus resident occupancy, the current competition and market, etc. The value of various lessees occupying the common element space to an association of apartment owners will also vary from one condominium project to another depending on the particular circumstances facing the association of apartment owners at the time. Often, the board of directors of an association of apartment owners will have to provide significant incentives to lessees including below market rent to attract an appropriate tenant (much less any tenant) who will provide the services desired by the association of apartment owners to owners and

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guests. Moreover, the value of a tenancy is measured in many ways including improving the desirability of the project for owners and guests and improving the market value of the units for owners. It would be very difficult for an association of apartment owners to determine a fair market rental value for any common element space without incurring a significant valuation cost to the association, and ultimately, the unit owners.

With respect to allocating all direct costs attributable to the condominium hotel operations to only the unit owners with units included in the condominium hotel operation, please note that condominium property regimes do not currently distinguish between residential units and condominium hotel units. If a residential unit can be used for residency or transient occupancy, it is the unit owner who determines how the unit will be used at any given time. Further, should a unit owner decide to use his or her unit for transient occupancy, the unit owner may rent the unit directly or via any number of on-site and off-site condominium hotel operators who may offer transient rentals in the condominium project. How will the costs be allocated amongst the various condominium hotel operators offering transient rentals in a condominium project? How will the costs be assessed and collected? What if a unit owner chooses to use his unit for residency in some months and transient occupancy in other months? Will owners who do not use their units for transient occupancy, but still take advantage of the services offered by a condominium hotel operator also be assessed? How will the direct costs attributable to condominium hotel operations be determined? The proposed statutory amendment raises a number of questions which need to be addressed.

I believe it would be more appropriate for the board of directors of any association of apartment owners to apply their business judgment to these issues taking into consideration the interest of all unit owners who they represent or to amend their governing documents as deemed appropriate, than amend the statutory language pertaining to condominiums.

We urge you to hold this measure.

Sincerely,

Kelvin Bloom

KB:krs

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 24, 2012 3:30 PM
To: HSGtestimony
Cc: easthawaiidogpsychologycenter@yahoo.com
Subject: Testimony for HB2069 on 1/25/2012 9:20:00 AM
Attachments: Testimony for HB2069.wps

Testimony for HSG 1/25/2012 9:20:00 AM HB2069

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Dr Carl F. Oguss
Organization: Individual
E-mail: easthawaiidogpsychologycenter@yahoo.com
Submitted on: 1/24/2012

Comments:
Testimony in favor of HB2069

My name is Dr. Carl F. Oguss and I am the owner of a condominium apartment at Country Club Hawaii in Hilo, HI. There are few condominium regimes which are still plagued by the abuses of the past which gave rise to our condominium laws, 514A and 514B. The owners at Country Club Hawaii have been forced as a group to pay the costs of the resort hotel rental operation, which rents out several apartments here which are privately owned. If the AOAO owns the apartments, then they should be responsible for the costs associated with renting THOSE units, but when the units have private owners, then the costs of the rental operation ought to be paid by those owners alone. This revision of the condominium law should not be necessary, but sadly, it is. It will save other AOAOs like ours from having to take legal action against corrupt board members who are self-dealing and/or misappropriating our funds, a practice which costs my AOAO $300,000 yearly!
The rationale and logic of this proposed clarification of what is obviously intended by existing law is clear and convincing: where there is no common ownership, and no common profits, their ought to be no common expenses.
My thanks to Representative Evans for taking on this and the related issues in HB2069. In our case, the commingling has gone on since 1985 and taken millions of dollars from hundreds of owners. It is time to put a stop to this once common abuse of owners by corrupt managing agents, boards of directors, and developers.