



The Judiciary, State of Hawaii

Testimony to the House Committee on Consumer Protection & Commerce

Representative Angus L.K. McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair

Wednesday, January 30, 2013, 2:00 p.m.
State Capitol, Conference Room 325

by
Elizabeth Kent
Director
Center for Alternative Dispute Resolution

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 24, Relating to Condominiums.

Purpose: Specifies that a percentage of fees paid into the condominium education trust fund shall be spent to support mediation of condominium related disputes.

Judiciary's Position: The Judiciary takes no position on the merits of this bill and requests a change to descriptions of mediation to promote consistent with language in existing statutes.

This bill does not directly impact the Judiciary. However, one of the main focuses of the Center for Alternative Dispute Resolution is mediation, and in the past we have been told it is useful when we provide technical advice. As such, we recommend a small change, namely the deletion of the phrase "community-based and professional" at page 2, lines 17 and 18.

This phrase is restrictive and not particularly descriptive. Deleting "community-based and professional" will still allow the goal of the bill to be met, provide more flexibility for the staff who will implement it, and be more consistent with other statutes referring to mediation.

Thank you for the opportunity to testify on House Bill No. 24.

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013

Wednesday, January 30, 2013
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 24, RELATING TO CONDOMINIUMS.

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nikki Senter and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony on House Bill No. 24, Relating to Condominiums. House Bill No. 24 specifies that a percentage of fees paid into the Condominium Education Trust Fund shall be used to support mediation of condominium related disputes. The Commission believes House Bill No. 24 is unnecessary and opposes the bill for the following reasons.

- The Commission does and has for many years expended monies from the Condominium Education Trust Fund to support mediation of condominium related disputes as the bill proposes. It has and continues to contract with mediation providers on Oahu, Maui, Hawaii and Kauai to provide both facilitative and evaluative mediation services for unit owners and boards. The Commission believes that these are the community-based and professional mediation services referenced and proposed on page 2 of the bill, lines 17 and 18.

- Although there is a decline in the use of mediation, the bill proposes to dedicate, arguably earmark, \$1 of the current \$2 contributed by each condominium unit owner times the number of registered condominium units (approximately 156,846 unit owners) to support mediation. The Commission has attached a report taken from its 2012 Annual Report to the Governor and Legislature indicating a decline in the use of mediation. In light of the condominium community's level of use of mediation services, this proposal is not fiscally sound and may have unintended consequences. Thus, setting aside a large amount of the Condominium Education Trust Funds (over and above what historically has been expended) for an educational purpose not widely used by its beneficiaries while other educational purposes go under funded or unfunded might be seen as fiscally unsound and a breach of the Commission's fiduciary duty.
- Finally, the proposed \$1 dedication will require the Commission to prepare a new budget, submit the new budget for legislative approval and have the Legislature amend its approved budget ceiling.

For the reasons discussed, the Commission opposes House Bill No. 24. Thank you for the opportunity to testify.

to reflect changes in the law and for distribution to the condominium community on the Commission website.

Condominium Association Registration – The Commission administered the condominium association registration program, including a review of submitted applications and the assessment of Commission registration policies and procedures. It also considered appeals, subpoenas, and requests for records under Office of Information Practices rules and procedures. For FY 2012, the Commission continued its biennial condominium association registration. There were 1,649 condominium projects registered, representing 156,846 condominium units, registered with the Commission (See Chart 17). In addition, the Commission continued the implementation of an online registration process and continued to make available on the Commission website a list of all association contact information. The Commission also responded to requests for lists of pet-friendly,

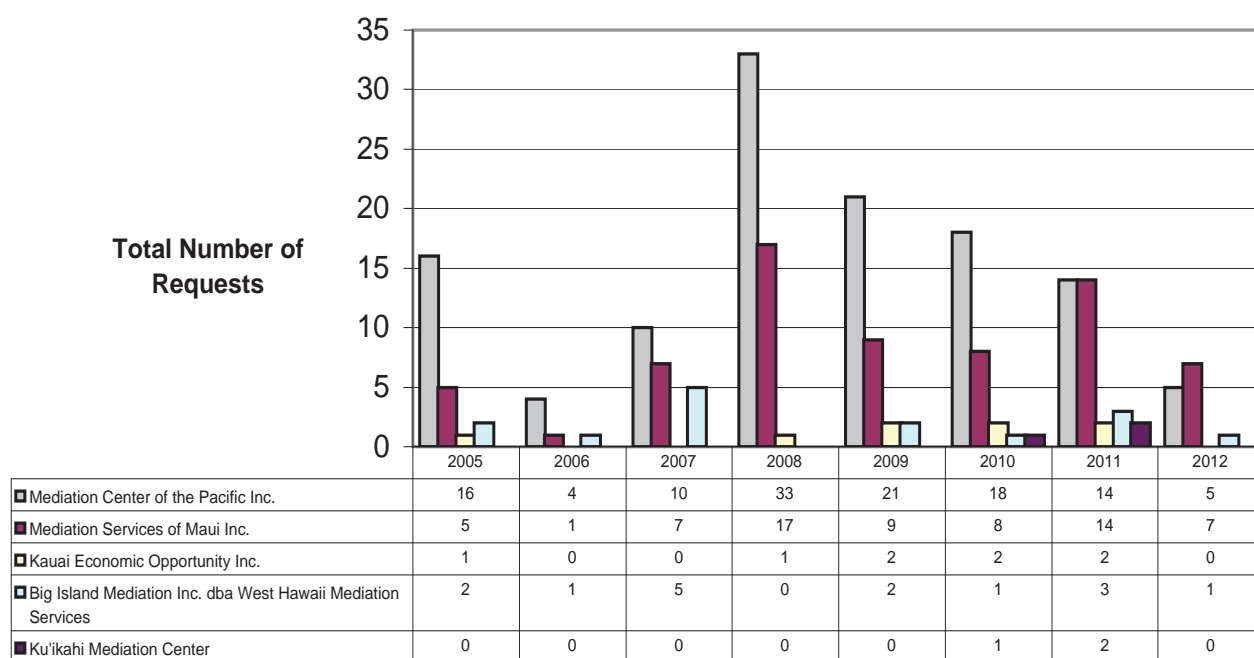
leaseholds, and Neighbor Island-specific condominium associations.

Condominium Seminars and

Symposiums – The Commission continued to produce seminars for the condominium community utilizing Commission staff, procured providers, and volunteer faculty of representatives from the condominium governance, development, and real estate community. The Commission continued to administer CETF subsidies for Commission-approved seminars, including the following for FY 2012:

- July 2011 – Legislative Update
- August 2011 – Dealing with Criminal Elements in Associations
- October 2011 – Covenants Enforcement
- January 2012 – Board Blunders
- March 2012 – Insurance – How Much is Enough? (Kona)
- May 2012 – Insurance – How Much is Enough? (Honolulu)

Chart 16. Condominium Governance Mediations





P.O. Box 976
Honolulu, Hawaii 96808

January 28, 2013

Honorable Angus L.K. McKelvey
Honorable Derek S.K. Kawakami
Consumer Protection and Commerce
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **HB 24/SUPPORT**

Dear Chair McKelvey, Vice-Chair Kawakami and Committee Members:

I chair the CAI Legislative Action Committee. CAI supports HB 24.

The missing piece in the search for consumer-friendly means of resolving condominium-related disputes has always been funding for mediation. HB 24 provides that funding by increasing contributions to the condominium education trust fund ("trust fund").

HB 24 does not involve the expenditure of general funds. Condominium associations pay into the trust fund through periodic registration fees. That is, the funding comes entirely from the affected community and not from the public at large. CAI is the relevant national industry organization representing condominium associations, so its support for this initiative should be regarded as significant.

HB 24 does not affect the Real Estate Commission's ("REC") power to set the amount of the registration fee for other purposes and it does not interfere with REC's discretionary authority over other trust funds. HB 24 merely dedicates a prescribed portion of the trust funds to pay for mediation.

REC presently provides quite limited funding to mediation providers. That funding is insufficient to subsidize consumer access to professional mediation services.

Honorable Angus L.K. McKelvey
Honorable Derek S.K. Kawakami
January 28, 2013
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Volunteer, community-based mediation has a definite place in the spectrum of mediation services that should be available to consumers. The needed addition is funding to subsidize consumer access to the services of professional mediators who have subject matter expertise.

That is, professional mediators should be available to consumers, on a subsidized basis, when complex, challenging and vexing problems arise in the condominium context. HB 24 provides the funds to subsidize such access.

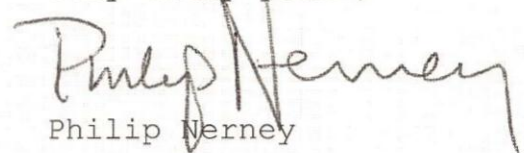
Many retired judges, for example, serve as professional mediators. They quite reasonably charge rates corresponding to their years of experience in law practice and on the bench. There is an obvious benefit to consumers by making the services of professional mediators available to consumers and distributing the expense throughout the entire condominium community through registration fees paid into the trust fund.

Many litigation cases are referred to mediation by judges anyway. It is better to provide a robust mediation opportunity to consumers in the first place, so condominium-related disputes can be resolved before legal action in any adjudicatory forum is considered. Moreover, with the support of HB 24, courts faced with condominium-related disputes will have the option to refer such disputes back to mediation knowing that the cost of mediation will not be a burden on consumers.

In summary, HB 24 will provide real benefit to consumers. The funding for this initiative will come entirely from condominium associations. General funds are not involved. REC discretion over other trust funds is not impinged.

CAI represents the condominium industry, and endorses this approach. We respectfully request the Committee to pass HB 24.

Very truly yours,


Philip Nerney

888 Mililani Street, 2nd Floor
Honolulu, Hawaii 96813-2918
January 28, 2013

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
REGARDING HOUSE BILL 24

Hearing Date: WEDNESDAY, January 30, 2013
Time : 2:00 p.m.
Place : Conference Room 325

Chair McKelvey, Vice Chair Kawakami, and Members of the Committees,

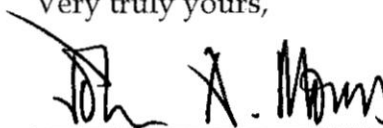
My name is John Morris and I am testifying on HB 24. One of the major and continuing problems in condominium living remains disputes between: (i) members of the association or (ii) members and their boards of directors. Since those involved in those disputes must continue to live together, mediation is a recognized means of resolving disputes in a way that allows the parties to continue to co-exist.

More specifically, successful mediation requires compromise and agreement between both sides to the dispute, which generally eliminates the concept of having a "winner" or a "loser" in any dispute. Therefore, HB 24 serves a worthwhile purpose of promoting mediation.

Nevertheless, it might be worthwhile passing this bill with a sunset date. Now that there are more than 150,000 condominium units in the state, this bill could result in more than \$150,000 being set aside for mediation, which may exceed the cost of the number of disputes needing mediation. For that reason, it may be advisable to pass this bill for a one-year or a two-year period, to determine whether it serves its purpose. Otherwise, a large amount of money could be set aside for mediation and not be used, when, in fact, it could be used for other purposes.

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', is written over a horizontal line.

John A. Morris

kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 29, 2013 8:51 AM
To: CPCtestimony
Cc: SherlBlod@aol.com
Subject: Submitted testimony for HB24 on Jan 30, 2013 14:00PM

HB24

Submitted on: 1/29/2013

Testimony for CPC on Jan 30, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Gladys Sherley Blodgett	Individual	Support	No

Comments: \$1 per condominium unit per year is a reasonable fee to pay to help resolve condominium disputes.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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