HAWAII FIRST
COMMUNITY ASSOCIATION MANAGEMENT
Queen's Court « 800 Bethel Street, Suite 501 « Honolulu, Hawaii 96813

February 7, 2014

HB 2656 – SUPPORT WITH AMENDMENTS

Dear Representatives,

I am submitting testimony on behalf of the Legislative Action Committee of Community Associations Institute (CAI). HB 2656 addresses two important issues that condominiums face today. **Please find attached proposed amendment language that we SUPPORT to accomplish the Bill's intent.** As President of one of Hawaii's largest association management companies, I also support HB 2656 if the Bill includes the attached recommendations.

Annual Meetings: The bylaws of a condominium specify that an annual meeting be conducted each year, directors elected, and tax resolutions adopted. There are cases where a quorum is not established and the board takes the position that the annual meeting occurred (with no quorum) and thus successor directors are not elected and the current directors just remain in place, sometimes for years. If an annual meeting is not conducted, the annual tax resolution that avoids income tax on a condominium's reserve funds also does not get adopted, which potentially imposes a future tax liability on the association. The process can be manipulated where a quorum is not achieved by not soliciting proxies and thus some directors could hold office well beyond their term. HB2656 addresses this issue by requiring than the annual meeting is conducted in the subsequent 90 days and reduces the quorum to a percentage that is easily achieved. In this manner successor directors are elected and appropriate tax resolutions adopted. As attached, **I provided some minor changes to (a) to accomplish this change.**

Managing Agent: There are two specific reasons the intent of HB2656 with amended language is important. At the core of the issue is that a Managing Agent is a fiduciary to the association by law and be discharged by the Board (the Principal) of an association. Managing Agents control the condominium's bank account and reserve funds and Boards who also have a fiduciary duty should be permitted to make the decision as to who best will serve the association. A Managing Agent is simply a business or vendor.

Restrictive Bylaws: Attached are the Bylaws of Hawaii associations that exemplify the problem, a problem that is widespread with newer associations. I have lighted the relevant language in yellow. In some cases, a Managing Agent's contract cannot be cancelled with the prior affirmative vote by 80% of the owners. The initial Bylaws are imposed on all owners and the trend appears to prevent a board from changing Managing Agents without the prior vote of a majority or super majority of owners. The Board is charged with managing the association and such strict limitations on changing the Managing Agent can be injurious to the owners.

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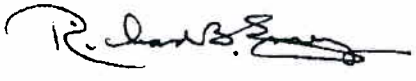
Unintended Consequences: There are other Bylaws that require the Managing Agent's contract to be approve at each annual meeting by a majority of owners (51% if the entire membership whether in attendance or not) and require cancellation if not approved. Often a condominium barely meets quorum (i.e. 51%) and all the owners but one vote to approve the management contract; thus only 49% approval of the entire membership as another 49% did not show up. In this example, the management contract must be terminated or the board goes through the expense of another meeting to create the approval threshold necessary. A super minority of owners should not create a change in management either.

Facts: Both the Boards and the Managing Agent are fiduciaries under the law. The board will have the best knowledge to determine if the Managing Agent is meeting its needs and at a fair price. HB2656 will allow the Board to appoint or terminate the Managing Agent. **These Managing Agent issues can be best addressed by a new Section, 514B-107 HRS as attached.** 514B-104 HRS should NOT be revised.

Safety Net: As a safeguard, the proposed amended language does provide a safety net for owners by allowing the majority (51%) of owners at a meeting to vote to replace the Managing Agent and that the vote is binding on the Board.

Sincerely,



Richard Emery
CAI Legislative Action Committee
President, Hawaii First, Inc.

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HOUSE OF REPRESENTATIVES
TWENTY-SEVENTH LEGISLATURE, 2014
STATE OF HAWAII

H.B. NO. 2656

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

the association is unable to obtain

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 514B, Hawaii Revised Statutes, is amended by adding a new section to subpart B of part VI to be appropriately designated and to read as follows:

"**§514B- Association meetings; failure to obtain a quorum.** (a) If a quorum ~~is not present~~ at the first annual meeting of the association in any year, then the association shall continue the meeting at least once for no more than ninety days.

(b) If the association does not continue the first meeting pursuant to subsection (a), then the board of directors shall call a continuation of the annual meeting within ninety days.

(c) The quorum requirement at the continued meeting shall be reduced to one-half of the requirement as stated in the bylaws."

~~SECTION 2. Section 514B-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:~~

See suggested alternative and substitute language re Section 514B-107, HRS, attached hereto. Section 514B-104, HRS, should not be revised.

"(a) Except as provided in section 514B-105, and subject to the provisions of the declaration and bylaws, the association, even if unincorporated, may:

(1) Adopt and amend the declaration, bylaws, and rules and regulations;

(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners, subject to section 514B-148;

(3) Hire and discharge [~~managing agents and other~~] independent contractors, agents, and employees;

(4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium. For the purposes of actions under chapter 480, associations shall be deemed to be "consumers";

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) Cause additional improvements to be made as a part of the common elements;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property; provided that:

(A) Designation of additional areas to be common elements or subject to common expenses after the initial filing of the declaration or bylaws shall require the approval of at least sixty-seven per cent of the unit owners;

(B) If the developer discloses to the initial buyer in writing that additional areas will be designated as common elements whether pursuant to an incremental or phased project or otherwise, the requirements of this paragraph shall not apply as to those additional areas; and

(C) The requirements of this paragraph shall not apply to the purchase of a unit for a resident manager, which may be purchased with the approval of the board;

(9) Subject to section 514B-38, grant easements, leases, licenses, and concessions through or over the common elements and permit encroachments on the common elements;

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in section 514B-35(2) and (4), and for services provided to unit owners;

(11) Impose charges and penalties, including late fees and interest, for late payment of assessments and levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association, either in accordance with the bylaws or, if the bylaws are silent, pursuant to a resolution adopted by the board that establishes a fining procedure that states the basis for the fine and allows an appeal to the board of the fine with notice and an opportunity to be heard and providing that if the fine is paid, the unit owner shall have the right to initiate a dispute resolution process as provided by sections 514B-161, 514B-162, or by filing a request for an administrative hearing under a pilot program administered by the department of commerce and consumer affairs;

(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration,

documents requested for resale of units, or statements of unpaid assessments;

(13) Provide for cumulative voting through a provision in the bylaws;

(14) Provide for the indemnification of its officers, board, committee members, and agents, and maintain directors' and officers' liability insurance;

(15) Assign its right to future income, including the right to receive common expense assessments, but only to the extent section 514B-105(e) expressly so provides;

(16) Exercise any other powers conferred by the declaration or bylaws;

(17) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association, except to the extent inconsistent with this chapter;

(18) Exercise any other powers necessary and proper for the governance and operation of the association; [~~and~~]

(19) By regulation, subject to sections 514B-146, 514B-161, and 514B-162, require that disputes between the board and unit owners or between two or more unit owners regarding the condominium be submitted to nonbinding

alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding[.]; and

(20) Notwithstanding any provision of law to the contrary, beginning July 1, 2014, review the hiring or continued employment of a managing agent at an association meeting. A managing agent may be discharged subject to review under this paragraph if voted on by a majority of unit owners present at an association meeting. Managing agents discharged under this review shall be employed on a month-to-month basis until a replacement managing agent is employed."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2014.

INTRODUCED BY: _____

JAN 23 2014

SECTION 2. Section 514B-107, Hawaii Revised Statutes, is amended by adding new subsections (g) and (h), to read as follows:

(g) Notwithstanding any provision of the declaration and bylaws, the board of an association managed by a managing agent shall have the authority to employ and terminate a managing agent subject to subsection (h).

(h) Such employment may be terminated by vote of a majority of the unit owners at an association meeting. If the employment is terminated, the managing agent contract will continue for no longer than three months from the date of termination, and the board shall employ a different managing agent.

H.B. NO. 2056

Report Title:
Condominium Associations; Managing Agent; Condominium Boards

Description:
Establishes provisions for condominium association annual meetings and quorum requirements. Provides that condominium associations may call for the review and discharge of a managing agent hired by the association upon a majority vote by the association members present. Effective July 1, 2014.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

(1) If the Managing Agent is an affiliate of or a person affiliated with the Developer then (i) the Developer must abstain from the vote, and (ii) the Developer's votes will not be considered when determining whether a Majority of the Owners have voted to give the notice;

(2) A decision not to renew the Management Contract cannot be made by the Board alone; the Board has no power or authority to do so; and

(3) Neither the Board nor any officer, Director, employee or agent of the Association can give the notice before a Majority of the Owners vote not to renew the Management Contract at an annual or special meeting of the Association. Any notice sent before then will be void.

E. CANCELLATION BY THE ASSOCIATION. The Management Contract must give the Association the right to cancel in each of the following situations:

1) FOR CAUSE. The Association must have the right to cancel the Management Contract whenever the Managing Agent breaches or fails to observe or perform a material part of the Management Contract and fails to cure its breach or default within the time permitted by the Management Contract;

2) WITHOUT CAUSE. The Association must have the right to cancel the Management Contract on not more than sixty (60) days' written notice. The Management Contract may provide that the Association cannot give this notice of cancellation unless (i) the Board recommends such action, and (ii) 80% of the Owners vote to do so at an annual or special meeting of the Association held within one year before such notice of cancellation. If the Management Contract contains such a provision, then:

(a) If the Managing Agent is an affiliate of or a person affiliated with the Developer then (i) the Developer must abstain from the vote, and (ii) the Developer's votes will not be considered when determining whether a Majority of the Owners have voted to give the notice of cancellation;

(b) A decision to cancel cannot be made by the Board alone; the Board has no power or authority to do so; and

(c) Neither the Board nor any officer, Director, employee or agent of the Association can give the notice of cancellation before a Majority of the Owners vote to cancel the Management Contract at an annual or special meeting of the Association. Any notice sent before then will be void.

F. CANCELLATION BY THE MANAGING AGENT. The Management Contract must provide that Managing Agent has the right to cancel the Management Contract on not more than sixty (60) days' written notice.

G. FEES. The Management Contract must specifically state the fees to be paid to the Managing Agent by the Association. The fees do not have to be stated as a dollar amount. For example, the management fee may be set to a percentage of the Project's Common Expenses or to cost plus a percentage profit.

H. BOND. From time to time, the Managing Agent must provide evidence satisfactory to the Board that the Managing Agent is bonded under a fidelity bond in the minimum amount required by the Condominium Property Act.

7.3 EMPLOYMENT OF RESIDENT MANAGER. The Board may also employ a resident manager or may cause the Managing Agent to do so. In either case, the Board will set the compensation of any resident manager. The Board may delegate to the resident manager any of its powers and duties except those that, by law or under the Condominium Documents, it cannot delegate.

7.4 LIMITATIONS ON AUTHORITY TO ENTER INTO CONTRACTS. Neither the Association nor the Managing Agent may enter into a contract with someone else to furnish goods or services for the Common Elements or to the Association for a period longer than one year unless authorized by the vote or written consent of a Majority of the Owners Voting. The Developer must abstain from this vote. This rule does not apply, however, to:

- The Management Contract.
- A contract with a public utility company if the rates charged by it are regulated by the Public Utilities Commission. The term of the contract, however, must be the shortest term the supplier will accept at the regulated rate.
- Prepaid casualty and/or liability insurance policies not lasting more than three years, provided that the policy permits "short-rate cancellation" by the insured.

2. Bylaws of the Association of Apartment Owners of Ocean Villas at Turtle Bay Resort Document number 3172941, dated September 29, 2004, pages 15-16; Document number 2004-200493, dated September 29, 2004, pages 15-16 (See item 7)

the Common Elements rather than merely against the interest of particular Owners. If one or more Owners are responsible for the existence of any such lien, they will be jointly and severally liable for the cost of discharging it or bonding against it, and the costs incurred by the Board by reason of such lien.

T. PURCHASING APARTMENTS. The Board may buy, lease or otherwise acquire any Apartment on behalf of the Association. It may take title in the name of the Association or the Board may have someone else, such as a trustee, hold title.

U. LEGAL PROCEEDINGS. Subject to the provisions contained in the Declaration, if any, the Board may begin, defend, settle, or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters relating to (i) enforcement of the Condominium Documents; (ii) damage to the Common Elements to the extent that the Association is obligated to maintain and repair it; (iii) damage to any part of any Apartment to the extent that the Association is obligated to maintain and repair it; or (iv) damage to the Apartments which arises out of, or is integrally related to, damage to any the Common Elements or to any part of any Apartment to the extent that the Association is obligated to maintain and repair them. If the Board or an Owner requests mediation of a dispute, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless at the end of the mediation process, both parties agree that one party shall pay all or a specified portion of the mediation costs. If the Board or an Owner refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding costs and attorneys' fees.

7.2 MANAGING AGENT.

A. MANAGING AGENT. The Association must hire and at all times it must have a Managing Agent.

B. QUALIFICATIONS. The Managing Agent must be properly registered with the Real Estate Commission of the State of Hawaii. The Managing Agent may be the Developer or an affiliate of the Developer.

C. SELECTION. The Developer has the right to choose and employ the first Managing Agent for the Project. (At the outset, the Developer is the only Member of the Association.) The Managing Agent may only be replaced upon the affirmative vote of eighty percent (80%) of the Apartment Owners to replace the Managing Agent at an annual or special meeting of the Association called for that purpose, unless the Association is entitled to terminate the Managing Agent by reason of the Managing Agent's material breach of any of its obligations to the Association, in which event no vote of the Apartment Owners shall be necessary to replace the Managing Agent. In the event that the Managing Agent must be replaced as provided herein, the Board will choose the replacement. The Board must use its best efforts to hire and keep a responsible company as the Managing Agent.

D. MANAGEMENT CONTRACT. The Managing Agent must sign a written contract (the "*Management Contract*"). Subject to the requirements of the Condominium Property Act:

1) POWERS AND DUTIES. The Management Contract may delegate to the Managing Agent any of the Board's powers and duties except those that, by law or under the Condominium Documents, it cannot delegate. It may also permit the Managing Agent to delegate its power and duties to one or more sub-agents for any period and upon any terms it deems proper. In all cases, the Managing Agent and any sub-agents will be subject to the direction of the Board and to the limits listed in Section 7.4.

2) TERM. The Management Contract:

(a) May provide for an initial term of not more than one year from the Starting Date. The "*Starting Date*" is the date on which the Managing Agent must begin its performance. Unless otherwise provided in the Management Contract, the Starting Date will be the later of (i) the first date on which a deed of an Apartment is recorded, or (ii) the first date on which the City and County of Honolulu issues a temporary or permanent certificate of occupancy for an Apartment in the Project.

(b) May provide that after the first term and each later term ends, the contract will be renewed automatically unless a written notice canceling the Management Contract is sent by either party at least sixty (60) days before the renewal date. The Management Contract may provide that the Association cannot give this notice unless a Majority of the Owners vote to do so at an annual or special meeting of the Association held within one year before the renewal date. If the Management Contract contains such a provision, then:

1. Bylaws of the Association of Apartment Owners of Hokua at 1288 Ala Moana
Document number 3023804, Dated November 6, 2003, pages 15-16 (See item 7)

of the Association in litigation, arbitration, mediation, or administrative proceedings in matters relating to (i) enforcement of the Condominium Documents; (ii) damage to the Common Elements to the extent that the Association is obligated to maintain and repair it; (iii) damage to any part of any Apartment to the extent that the Association is obligated to maintain and repair it; or (iv) damage to the Apartments which arises out of, or is integrally related to, damage to any the Common Elements or to any part of any Apartment to the extent that the Association is obligated to maintain and repair them. If the Board or an Owner requests mediation of a dispute, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless at the end of the mediation process, both parties agree that one party shall pay all or a specified portion of the mediation costs. If the Board or an Owner refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding costs and attorneys' fees.

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(a) If the Managing Agent is an affiliate of or a person affiliated with the Developer then (i) the Developer must abstain from the vote, and (ii) the Developer's votes will not be considered when determining whether a Majority of the Owners have voted to give the notice of cancellation;

(b) A decision to cancel cannot be made by the Board alone; the Board has no power or authority to do so; and

(c) Neither the Board nor any officer, Director, employee or agent of the Association can give the notice of cancellation before a Majority of the Owners vote to cancel the Management Contract at an annual or special meeting of the Association. Any notice sent before then will be void.

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H. BOND. From time to time, the Managing Agent must provide evidence satisfactory to the Board that the Managing Agent is bonded under a fidelity bond in the minimum amount required by the Condominium Property Act or any higher amount as the Board may reasonably require.

7.3 EMPLOYMENT OF RESIDENT MANAGER. The Board may also employ a resident manager or may cause the Managing Agent to do so. In either case, the Board will set the compensation of any resident manager. The Board may delegate to the resident manager any of its powers and duties except those that, by law or under the Condominium Documents, it cannot delegate.

7.4 LIMITATIONS ON AUTHORITY TO ENTER INTO CONTRACTS. Neither the Association nor the Managing Agent may enter into a contract with someone else to furnish goods or services for the Common Elements or to the Association for a period longer than one year unless authorized by the vote or written consent of a Majority of the Owners Voting. The Developor must abstain from this vote. This rule does not apply, however, to:

- The Management Contract.
- A contract with a public utility company if the rates charged by it are regulated by the Public Utilities Commission. The term of the contract, however, must be the shortest term the supplier will accept at the regulated rate.
- Prepaid casualty and/or liability insurance policies not lasting more than three years, provided that the policy permits "short-rate cancellation" by the insured.
- Agreements for cable television, satellite television, and/or internet services and equipment for five years or less provided that neither the Developer nor the Managing Agent owns, directly or indirectly, 10 percent or more of the provider or supplier.
- Agreements for sale or lease of burglar alarm and fire alarm equipment, installation, and services for five years or less provided that neither the Developer nor the Managing Agent owns, directly or indirectly, 10 percent or more of the supplier.
- Any other contract for three years or less so long as the Association can cancel it after no more than one (1) year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

7.5 LIMITS ON ASSOCIATION AUTHORITY. Unless authorized by the vote or written consent of a Majority of the Owners Voting (not counting the Developer's votes), the Association shall not:

A. Incur aggregate expenditures for Capital Improvements to the Common Elements in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year; or

B. Sell during any fiscal year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that fiscal year.

HAWAIʻI STATE ASSOCIATION OF PARLIAMENTARIANS
LEGISLATIVE COMMITTEE
P. O. BOX 29213
HONOLULU, HAWAIʻI 96820-1613
E-MAIL: HSAP.LC@GMAIL.COM

COMMENTS

February 8, 2014

Honorable Rep. Mark J. Hashem, Chair
House Committee on Housing
Hawaii State Capitol, Room 326
415 South Beretania Street
Honolulu, HI 96813

Honorable Rep. Justin H. Woodson, Vice Chair
House Committee on Housing
Hawaii State Capitol, Room 305
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony with COMMENTS regarding HB2656; Hearing Date February 10, 2014 at 9:00 a.m.; sent via Internet

Aloha Chair Hashem, Vice-Chair Woodson, and Committee members,

Thank you for the opportunity to provide testimony on this bill on behalf of the Hawaii State Association of Parliamentarians ("HSAP").

I will address the larger issues presented by this bill below:

A. Section 1 -- Association Meetings; Failure to obtain a quorum

The bylaws of many condominium associations provide for annual meetings. At these meetings, reports are provided, directors are usually elected, a tax resolution is adopted, and there may be borrowing or expense related resolutions.

There are a few considerations associated with annual meetings that lead to the requirement for associations to have functioning annual meetings:

1. Many developer attorneys have used boiler plate bylaws which have handicapped associations. This has resulted in difficulty in conducting business at annual meetings.

2. A few boards have simply decided that the effort and expense of continuing an annual meeting in order to obtain a quorum cannot be financially justified.

3. A few boards have used the failure to obtain a quorum as a mechanism to continue their term in office.[1]

4. There is a risk that the Internal Revenue Service will impose taxes on a condominium association for failure to formally adopt when it known as a rollover resolution.

The existing wording in Section 1 is problematic because it doesn't entirely solve the problem.

We worked with the Hawaii Chapter of the Community Associations Institute (CAI) to draft wording that was more precise. The wording is highlighted on the bill that is attached to these comments.

B. Section 2 -- Relating to Property Managers

The proposed wording completely changes the responsibility for "reviewing and discharging" a managing agent from a board of directors to a majority of members present at an association meeting.

The current wording presents the antithesis of good management.

A Managing Agent is a vendor with a fiduciary relationship to the association. The Managing Agent receives direction from the board of directors. The board of directors has a fiduciary duty to take care of and act on behalf of the association.

A condominium association is not a plebiscite where the members at an association meeting decide every element of the management agreement.

A further problem exists with developer imposed bylaws that make it nearly impossible for either a board or the association to discharge a managing agent.

For example, one association's bylaws make it impossible for the board to fire a managing agent without prior notice at an association meeting **and** an 80% vote of the owners.

We propose the following:

1. The board is responsible for hiring, supervising, and discharging a managing agent.

2. At an annual or a properly noticed special meeting, the owners by "vote of a majority of the unit owners" will have the right to reject a managing agent. This rejection shall act as an order for the board to find a different managing agent within a limited period of time.

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[1]This can backfire for the same board because a no quorum meeting would provide that more positions are up for election in a subsequent year, making a complete takeover by a temporary majority at the next annual meeting more likely.

Note that a majority of the unit owners also has the power to remove and replace the entire board [HRS §514B-106(f)].

We believe this balances the board's responsibility for hiring a proper managing agent with the association's right to exercise veto power in a way that doesn't become micro-management.

We worked with the CAI to draft wording that was more in line with this principle. The wording is attached to these comments on the last page.

If you require any additional information, your call is most welcome. I may be contacted via phone: 423-6766 or by e-mail: hsap.lc@gmail.com. Thank you for the opportunity to present this testimony.

Sincerely,

Steve Glanstein

Digitally signed by Steve Glanstein
DN: cn=Steve Glanstein, o, ou, email=Steveghi@Gmail.com, c=US
Location: Honolulu, HI
Date: 2014.02.09 00:37:50 -10'00'

Steve Glanstein, Professional Registered Parliamentarian
Chair, HSAP Legislative Committee
SG:tbs/Attachment

HOUSE OF REPRESENTATIVES
TWENTY-SEVENTH LEGISLATURE, 2014
STATE OF HAWAII

H.B. NO. 2656

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

the association is unable to obtain

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 514B, Hawaii Revised Statutes, is amended by adding a new section to subpart B of part VI to be appropriately designated and to read as follows:

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(b) If the association does not continue the first meeting pursuant to subsection (a), then the board of directors shall call a continuation of the annual meeting within ninety days.

(c) The quorum requirement at the continued meeting shall be reduced to one-half of the requirement as stated in the bylaws."

~~SECTION 2. Section 514B-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:~~

See suggested alternative and substitute language re Section 514B-107, HRS, attached hereto. Section 514B-104, HRS, should not be revised.

"(a) Except as provided in section 514B-105, and subject to the provisions of the declaration and bylaws, the association, even if unincorporated, may:

(1) Adopt and amend the declaration, bylaws, and rules and regulations;

(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners, subject to section 514B-148;

(3) Hire and discharge [~~managing agents and other~~] independent contractors, agents, and employees;

(4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium. For the purposes of actions under chapter 480, associations shall be deemed to be "consumers";

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) Cause additional improvements to be made as a part of the common elements;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property; provided that:

(A) Designation of additional areas to be common elements or subject to common expenses after the initial filing of the declaration or bylaws shall require the approval of at least sixty-seven per cent of the unit owners;

(B) If the developer discloses to the initial buyer in writing that additional areas will be designated as common elements whether pursuant to an incremental or phased project or otherwise, the requirements of this paragraph shall not apply as to those additional areas; and

(C) The requirements of this paragraph shall not apply to the purchase of a unit for a resident manager, which may be purchased with the approval of the board;

(9) Subject to section 514B-38, grant easements, leases, licenses, and concessions through or over the common elements and permit encroachments on the common elements;

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in section 514B-35(2) and (4), and for services provided to unit owners;

(11) Impose charges and penalties, including late fees and interest, for late payment of assessments and levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association, either in accordance with the bylaws or, if the bylaws are silent, pursuant to a resolution adopted by the board that establishes a fining procedure that states the basis for the fine and allows an appeal to the board of the fine with notice and an opportunity to be heard and providing that if the fine is paid, the unit owner shall have the right to initiate a dispute resolution process as provided by sections 514B-161, 514B-162, or by filing a request for an administrative hearing under a pilot program administered by the department of commerce and consumer affairs;

(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration,

documents requested for resale of units, or statements of unpaid assessments;

(13) Provide for cumulative voting through a provision in the bylaws;

(14) Provide for the indemnification of its officers, board, committee members, and agents, and maintain directors' and officers' liability insurance;

(15) Assign its right to future income, including the right to receive common expense assessments, but only to the extent section 514B-105(e) expressly so provides;

(16) Exercise any other powers conferred by the declaration or bylaws;

(17) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association, except to the extent inconsistent with this chapter;

(18) Exercise any other powers necessary and proper for the governance and operation of the association; [~~and~~]

(19) By regulation, subject to sections 514B-146, 514B-161, and 514B-162, require that disputes between the board and unit owners or between two or more unit owners regarding the condominium be submitted to nonbinding

alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding[.]; and

(20) Notwithstanding any provision of law to the contrary, beginning July 1, 2014, review the hiring or continued employment of a managing agent at an association meeting. A managing agent may be discharged subject to review under this paragraph if voted on by a majority of unit owners present at an association meeting. Managing agents discharged under this review shall be employed on a month-to-month basis until a replacement managing agent is employed."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2014.

INTRODUCED BY: _____

JAN 23 2014

SECTION 2. Section 514B-107, Hawaii Revised Statutes, is amended by adding new subsections (g) and (h), to read as follows:

(g) Notwithstanding any provision of the declaration and bylaws, the board of an association managed by a managing agent shall have the authority to employ and terminate a managing agent subject to subsection (h).

(h) Such employment may be terminated by vote of a majority of the unit owners at an association meeting. If the employment is terminated, the managing agent contract will continue for no longer than three months from the date of termination, and the board shall employ a different managing agent.

MCCORRISTON MILLER MUKAI MACKINNON LLP

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February 7, 2014

Rep. Mark J. Hashem, Chair
Rep. Justin H. Woodson, Vice Chair
Members of the Committee on Housing
Twenty-Seventh Legislature
Regular Session, 2014

Re: H.B. 2656
Hearing on February 10, 2014, 9:00 a.m.
Conference Room 329

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

My name is Charles Pear. I am appearing as legislative counsel for ARDA Hawaii.

ARDA Hawaii ~~opposes~~ the bill.

The bill as currently drafted would apply to time share condominiums.

In recent years, most time share resorts have been developed and are operated by major hospitality brands such as Disney, Westin, Hilton, Marriott and so on. In virtually every case, an affiliate of the brand owner serves as the managing agent of the condominium.

In addition, most of these hospitality companies own and operate a vacation club that allows owners of time share interests in a Hawaii resort to exchange their Hawaii use rights for the right to use other time share plans in their vacation club. For example, a owner in Disney's Aulani resort may choose instead to stay in the Animal Kingdom time share plan at Walt Disney World.

If the managing agent is discharged, however, then the project will no longer be branded as a Disney, Westin, Hilton or Marriott resort. In addition, the resort will no longer be a participating resort in the company's vacation club.

In time share plans, it is very common for only a handful of owners to attend a meeting of the association of owners. Under HB2656, if a dozen owners attend a meeting and seven of them vote to terminate the management agreement, then the project would lose its branding and *all* of the owners could lose their rights to participate in the vacation club.

This is a very important decision for the members of a time share plan. While there may be valid reasons for an association to terminate its management agreement, such a decision should not be made without the consent of at least a majority of all of the owners, not just a majority of the handful that attend an association meeting.

For the foregoing reasons, ARDA opposes the bill at least as to a time share plan. We fully understand that circumstance may differ for a condominium used as a principal residence by the owners who live in the project. But if the committee is inclined to advance the bill, we ask that you require that the vote of a majority of all the owners, not just a vote of a majority of owners present, be required in the case of a time share condominium.

Thank you for your kind consideration of this legislation. I would be happy to take any questions if you think that I may be of assistance.

Very truly yours,

McCorriston Miller Mukai MacKinnon LLP

Charles E. Pear, Jr.

9002 San Marco Court
Orlando, Florida 32819
(407) 418-7271

February 10, 2014

To: Honorable Mark Hashem, Chair
Honorable Justin Woodson, Vice Chair
House Committee on Housing

RE: **HB 2656 – Relating to Condominiums – In Opposition**
Conference Room 329; 9:00 a.m.

Chair Hashem, Vice Chair Woodson and members of the committee:

Starwood Vacation Ownership ("Starwood") ~~opposes~~ HB 2656 which establishes provisions for condominium association annual meetings and quorum requirements and provides that condominium associations may call for the review and discharge of a managing agent hired by the association upon a majority vote by the association members present.

This bill would allow an extremely small majority of owners to terminate an existing management contract by permitting termination by a majority vote present at a meeting versus a majority vote of the total voting interest. Most timeshare owners do not participate in the annual meeting in person. This provision could allow 3 or 4 owners to make an extremely significant decision on behalf of thousands of owners.

The provisions in HB 2656 are not appropriate for timeshare resorts. If the committee is considering passing this bill, we would like to request an exemption for timeshare resort condominiums.

Thank you for the opportunity to comment on this measure.

Robin Suarez
Vice President/Associate General Counsel
Starwood Vacation Ownership

woodson1-Brina

From:	mailinglist@capitol.hawaii.gov
Sent:	Friday, February 07, 2014 3:19 AM
To:	HSGtestimony
Cc:	icalkins@hawaii.rr.com
Subject:	Submitted testimony for HB2656 on Feb 10, 2014 09:00AM
Attachments:	.~lock.DEMOCRATIC PARTY LINE.odt#

HB2656
Submitted on: 2/7/2014
Testimony for HSG on Feb 10, 2014 09:00AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
IRA CALKINS	Individual	Support	No

Comments: IRA CALKINS INNER-GOVERNMENTAL RESEARCH 730 Captain Cook Ave Unit 426 Honolulu, Hawaii 96813-2161 808-4696434 808-3498667 FAX 5454707 Washington D.C. 202-697-9782 It does not matter what the people think, the Democratic Party has already decided for us on all bills before the State of Hawaii Legislature . The chairman's in all committee meetings has a script to follow that the Speaker of the House, and the Speaker of the Senate has given the Committee Chairs to follow, to instruct the committee how to vote on a any given bill in all committees of the State of Hawaii Legislature. It is determined ahead of time by the Democratic Party how a committee will vote on any given bill in the State of Hawaii Legislature, there is no democracy in this state, no will of the people. It appears the Legislators are being black mailed in to voting the Democratic party line or the Democratic Party will not support them in there next election. Ira Calkins

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

House Committee on Housing
Monday, February 10, 2014
9:00 am, Conf Rm 329

Rep. Mark Hashem, Chair
Rep. Justin Woodson, Vice Chair

RE: **Testimony In Support of HB 2656**, Relating to Condominiums

My name is Laurie Hirohata, and I am a member of the *Condo Transparency Bill* group trying to pass HB 2401. I support **HB 2656** because condo owners need more protection from unethical and illegal activities conducted by the Property Management Co. (PM Co.) and the Condo Board (Board). I believe that the passage of HB 2656 and HB 2401 would go a long way in protecting the condo owners from possible scams, fraud, and mismanagement of funds.

When HB 2401 was heard last week, the HI Real Estate Commission (HREC) testified that according to CH 514B, condominiums are supposed to have self-enforcing governance. Condominiums should have self-enforcing governance when it comes to House Rules and other daily operational management issues. However, when the PM Company or the Board is involved in gross negligence, or misconduct that may include fraud or other illegal activities, or misappropriation of funds that are in violation of state laws, or hiring unlicensed entities or entities not paying state taxes; then I believe the state has a fiduciary responsibility to implement a Code of Conduct and other guidelines to ensure the safety and well-being for all of the residents in Hawaii living in condos.

I would like to focus on the added language in **HB 2656,** Sec. 2 (20), which *would allow the condo owners to take a vote to discharge their Managing Agent at a Condo Association meeting.* I fully support this addition to CH 514B, because the problem for many Condo Associations is that they are not able to obtain the 65%-67% votes needed to make significant changes.

Furthermore, I would like to recommend that two additional items be considered for HB 2656:

1) [In addition to the annual financial audits which is currently required:] Add Language to **require Management or Performance Audits every 2-3 years** on the condo's operations, including the property management's operations and the condo's reserve funds and any other special projects the condo board may have. The completed Management Audit shall be presented and discussed at the annual Condo Association Meeting and a copy of the final Management Audit Report shall be given to each condo owner.

Regular management audits would further protect the Condo Association from misconduct, fraud and misappropriation of funds in a timely manner. The findings from the management audit would be a useful tool for the Condo Association to minimize or mitigate their damages and would provide the supporting evidence needed to discharge a Managing Agent or PM Company.

2) Add Language to require Condo Boards to **review and revise their condo by-laws every 3 years**. If no revisions are made, then an "official declaration" letter with the Board Member's and Managing Agent's signatures shall be attached to the by-laws. The by-laws shall be presented to the Condo Association for approval. The Condo Association approval shall be by the majority vote at the next Condo Association meeting.
Once the by-laws are approved by the Condo Association, the by-laws shall be filed with the [State Bureau of Conveyance and/or HREC(?)] A copy of the by-laws shall be given to each condo owner.

Updated by-laws are needed for the auditors to perform an in-depth and effective management audit. Having the Board members listed on the "official declaration" letter will assist anyone reading the by-laws to identify who was involved in the review and revision process.

[NOTE: A number years ago, the Attorney General issued similar mandates for all non-profit (501(C)3) charitable organizations doing business with the state. Since the Condo Associations are non-profit (501(C)4) shouldn't they have similar mandates?]

The PM Co. has a fiduciary responsibility to guide the volunteer Condo Board on ethical and legal practices and are supposed to have the knowledge & skills to provide technical assistance as needed. Dealing with an unscrupulous PM Co. and/or Board is very time-consuming and can be quite expensive. For example, the Moana Pacific Condo (MPC), which is a large (750 units) and high-end complex, has been involved in a drawn-out battle over their PEX (plumbing) pipes which has cost millions of dollars and has created a complex legal battle for such a new condo!
(For more details on the MPC issue, go to the MPC Website @ http://moanapacificinfo.com/)

The following is my interpretation of the MPC's PEX (plumbing) pipes problem. The MPC was about 2 years old when their PM Co. informed the MPC Board that the PEX pipes used in their complex were defective and subject to catastrophic breaks. The PM Co. encouraged the Board to take out a $10 million loan to mitigate the possibility of catastrophic breaks. The PM Co. hired an "expert" engineer to conduct an evaluation of the MPC pipes to substantiate their claim.

Some of the owners objected to the loan and questioned why the problem was not being handled through the Developer's or General Contractor's insurance/bond or the manufacturer's warranty, etc. The Board tried to pressure the owners to vote for the $10 million loan to make the necessary repairs.

A dispute ensued, which eventually led to litigation. The opposing owners hired their own expert engineer to review the first engineer's findings and he disagreed with the first engineer. The first engineer kept delaying the final report. The final report took approximately 2 years to complete. While the first engineer worked on the final report, he provided photos of damaged and corroded pipes and brief summary updates to the owners to support his claims.

When MPC went to court the first engineer admitted in the deposition that the photos and summary updates he provided to the MPC owners were not from the MPC. (I checked to see if this person paid state taxes for the 2 years he claimed to be conducting his study in Hawaii and he was not registered with the HI State Tax Office, so he probably didn't pay any state taxes.)

The attorney who accompanied the first engineer was admonished by the HBA, Office of Disciplinary Council because he also provided false information to the MPC owners.

The PEX pipe manufacturer testified and provided evidence to substantiate that their product was not the defective product that was causing problems. The PM Co. & Board President continued to pressure the owners to vote for the $10 million loan. The court ruled in favor of an injunction to stop the $10 million loan process until the issue of whether the contractor's insurance/bond would cover the cost for replacing the PEX pipes. The PM Co. and Board President continued to pressure the owners to replace their PEX pipes and to vote for the loan.

In the meantime, the Koolani Condo, which is another high-end condo a few blocks away, had the defective PEX pipes and was having problems with leaking and breaking pipes and had to change their PEX pipes. The irony is that the Koolani, selected and replaced their defective pipes with PEX pipes from the same company the MPC used. One would think that the Koolani did their research and would not have chosen a company with a low rating or a defective product to replace their deteriorating pipes. The MPC owners I spoke to said their condo is now about 6-7 years old and they have not had a single catastrophic leak or break in their PEX pipes till date.

In my opinion, this situation appears to be a major scam, which included fraudulent expert reports and deceitful practices by the PM Co. and it's attorney and expert witness.

If it was not for the sharp eyes of our 82-year-old neighbor who spotted one of the MPC's articles in the newspaper, we would have never known about this situation! This story scared many of us at our condo and our neighboring condos because we all have, or had, the same PM Co. We have many stories that parallel the MPC's experience and now wonder if we have been scammed too.

Our condo is an older, moderately-priced, 200 units, complex (with 3 buildings). For us, $300,000 is a large contract! For us, hiring an attorney to fight our battles would be a terrible hardship! For us, a catastrophic plumbing or electrical problem would seriously affect the health & well-being for many of our elderly residents.

We are eager to tell our stories to anyone in authority, but till date we cannot find that entity!

I am supporting HB 2656 & HB 2401 because I feel that if the PM Co. and their affiliates were involved in a scam or deceptive practices; why hasn't the State, such as the DCCA, Regulated Industries Complaints Office (RICO) or the HREC, investigated this matter? The MPC owners claimed that they filed a complaint with the HREC and the HREC responded that they do not have investigative or enforcement authority.

However, if it appeared that a violation of the PM Co's fiduciary responsibilities, or possible illegal activities had occurred, shouldn't the HREC have referred the MPC's complaint to the RICO for investigation?

If the RICO discovered that a crime had been committed, wouldn't the State entity have had a 'duty' to inform the public, so we can better protect ourselves from the same PM Co? Condo owners cannot self-govern effectively if they are not provided timely information that may impact their safety & well-being.

We need more tools to be able to enforce our self-governance. HB 2656 and HB 2401 would be instrumental for many condo owners to increase their ability to enforce self-governance.

In closing, I humbly ask all of you to please consider and pass **HB2656** with my recommended amendments to provide condo owners more tools to protect themselves from unscrupulous PM Companies and Condo Board Members.

Thank you very much for your time and attention to this matter.

Respectfully Submitted By:

Laurie Hirohata
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Cell: 398-3492