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TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

Date: Wednesday, February 6, 2013
Time: 2:30 p.m.
Conference Room: 325

TESTIMONY FOR HEARING ON HB 997
RELATING TO CONDOMINIUMS

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR & THE HONORABLE DEREK S.K. KAWAKAMI, VICE CHAIR, AND MEMBERS OF THE HOUSE COMMITTEE

The Office of Administrative Hearings (OAH) of the Department of Commerce and Consumer Affairs ("the Department") appreciates the opportunity to offer comments for the Committee's Hearing on House Bill 997, relating to Condominiums. My name is David Karlen, and I am the Senior Hearings Officer of the OAH.

The Bill provides for an alternative dispute resolution process for disputes between apartment owners and their condominium's board of directors that involves hearings before the OAH. The OAH has administered pilot programs for such hearings

from July of 2004 through June of 2011, when the pilot programs sunsetted by law. For the reasons set forth below, the Department does not support this bill.

While the Department shares the Legislature's concerns about providing a cost-effective and timely mechanism for resolving condominium disputes, based on OAH's seven years of experience with the condominium pilot program, the Department does not believe that the process as proposed in this bill is the appropriate answer to those concerns. OAH found that usage of the program was low. Moreover, the structure of the program both in the past and in this bill may actually deter rather than encourage mediation of condominium disputes.

1. Past experience did not demonstrate strong usage of the dispute resolution process culminating in an OAH hearing.

The statistics concerning past requests for OAH hearings on condominium disputes do not demonstrate a real demand for such hearings. A total of thirty-eight (38) hearing requests were filed in the seven years the pilot programs were authorized. This averaged out to less than six (6) requests per year.

Statistical analysis is made a bit more complicated because there were actually two pilot programs. The first was established by Act 164, 2004 Session Laws, and it applied to condominiums organized under HRS Chapter 514A. It sunsetted on June 30, 2006, but was then revived to operate from July 1, 2007 through June 30, 2011.

The second program was established by Act 277, 2006 Session Laws, and applied to condominiums organized under the newly enacted provisions of HRS Chapter 514B. This program operated from July 1, 2006 through June 30, 2011.

The two programs thus were both operational during the four years ending June 30, 2011. These four years would therefore be expected to experience, in combination, the most use of OAH hearings. During those years, however, there were a total of 25 hearing requests. This averages out to slightly more than six (6) requests per year.

2. The proposed legislation unfortunately discourages mediation

Mediation has been an increasingly favored method of alternative dispute resolution, and the Department strongly supports the resolution of condominium disputes through mediation. A professionally conducted mediation can often resolve disputes between owners and condominium boards (who, after all, must remain neighbors) while reducing antagonisms or hard feelings between the parties. Unfortunately, the preferred use of mediation is actually discouraged by the proposed legislation. This is because the party receiving the mediation demand, despite the mandatory language in HRS Sections 514A-121.5 and 514B-161, will often refuse to mediate, thereby allowing the requesting party to make a request for an OAH hearing without any prior mediation.

In the OAH's experience, almost all mediation demands were filed by unit owners. Further, the majority of condominium boards in OAH cases had refused to participate in the demanded mediation, so in those cases there were no alternative dispute resolution efforts prior to the OAH hearing.

In addition, the legislation does not realistically provide for consequences to condominium boards that refuse to mediate in the cases that need mediation the most, namely cases filed by *pro se* unit owners. The only possible sanction available to the court or a hearings officer if the condominium board refuses to mediate and the *pro se*

unit owner then prevails at hearing (which is not typical), is an award of costs and attorney's fees. However, in the normal case those costs would not be substantial, and there would by definition be no attorney's fees because the pro se apartment owner is not represented by an attorney.

Given the lack of a history of use of the prior program, the Department believes that parties to a condominium dispute may be better served by strengthening the existing condominium mediation option rather than permitting the parties to avoid mediation and use OAH to resolve their differences.

Thank you for the opportunity to provide comments on this proposed legislation.

HAWAII CHAPTER
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February 3, 2013

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

Re: **HB 997/OPPOSE**

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

I chair the CAI Legislative Action Committee. CAI prefers the approach reflected in HB 24.

HB 997 seeks to revive "condo court" which had a fair trial in the past. CAI urges the legislature to support mediation instead.

Mediation is better for consumers than condo court. Notably, mediation empowers consumers through self-determination. That is, mediation allows consumers to craft their own solutions to problems, and to preserve or develop relationships within the condominium community. Condo court only provides for one party to win and for one party to lose.

Mediators facilitate peaceful dialogue in a safe setting, and can serve as a neutral, unbiased resource for information. Consumers can informally air concerns, test out ideas and explore creative ways to come to agreement in mediation. In contrast, a condo court hearings officer simply receives evidence and argument then makes either/or decisions based on formal legal standards and procedures.

HB 24 provides support for mediation by increasing contributions to the condominium education trust fund. Those contributions will be paid by condominium owners, through registration fees, and will not come from the general fund.

CAI has a fair basis for being aware of what is most likely to provide real benefit to consumers. Subsidized access to professional mediation services, which HB 24 enables, will provide real benefit to consumers.

CAI opposes HB 997 and respectfully requests that the Committee decline to pass it. HB 24 is a better alternative.

Very truly yours,

Philip Nerney

Philip Nerney

kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 02, 2013 10:59 PM
To: CPCtestimony
Cc: gomem67@hotmail.com
Subject: Submitted testimony for HB997 on Feb 6, 2013 14:30PM

Follow Up Flag: Follow up
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HB997
Submitted on: 2/2/2013
Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Eric Matsumoto	Individual	Oppose	No

Comments: The life of "Condo Court" was extended far beyond its useful life, draining dollars from the General Fund, while not fulfilling its expectations of use by AOAOs andf its members. The experiment did not workand to resurrect it would be again throwing away needed dollars unnecessarily, while avoidance by the consumers, AOAOs and their members, of this avenue for dispute resolution will continue. It's time to move on. Recommend this bill be deferred.

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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