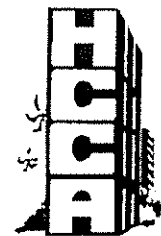




**Hawaii Council of Associations
of Apartment Owners**
DBA: Hawaii Council of Community Associations
1050 Bishop Street, #366, Honolulu, Hawaii 96813



January 30, 2016

Rep. Angus McKelvey, Chair
Rep. Justin Woodson, Vice-Chair
House Committee on Consumer Protection & Commerce

Re: Testimony in Opposition to
HB2248 RELATING TO CONDOMINIUM GOVERNING INSTRUMENTS
Hearing: Wed., February 3, 2016, 2:05 p.m., Conf. Rm. #325

Chair McKelvey, Vice-Chair Woodson and Members of the Committee:

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

HCAAO has strong concerns regarding the proposed revisions to HRS 514A and HRS 514B that would lower the threshold to amend condominium declarations and by-laws. Under existing law, it takes a (i) 75% affirmative vote of the ownership interest to amend the Declaration under HRS 514A and 67% under HRS 514B, which is the primary governing document for a condominium and (ii) 65% affirmative vote of the ownership interest to amend the condominium by-laws under HRS 514A and 67% under HRS 514B. The reason for having these high thresholds is that the Declaration and the by-laws affect all of the owners of the condominium project and if there is going to be a change or amendment in the governing documents it should be made by a more than majority interest. The language being proposed in this bill would allow in some instances less than 50% of the ownership interest to amend governing instruments because it would allow 75% or 67% of those submitting responses to a request for amendment to determine if a change can be made.

Some issues relating to a Declaration amendment could involve change in the use of a common element, i.e., parking stalls; or change in allowing pets in the building or allowing smoking in the building. Some issues relating to by-law amendments could involve changing the process for removal of Board members, implementing term limits for Board members, changing the collection policies of the association.

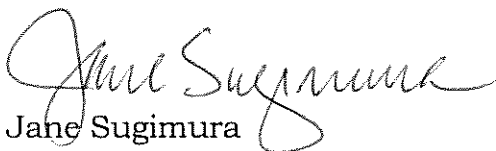
With respect to any of these issues, it would be unfair to the majority of units owners to allow less than a super-majority to decide these issues; and by allowing a lesser number to effectuate an amendment, which would be the case if this bill were to pass, it could lead to abuse by a vocal minority of the ownership interest in a condominium project.

I am aware that there are some condominiums that may have difficulty reaching the statutory thresholds to amend their governing documents because a majority of their unit owners may live abroad and do not read or understand English as their primary language¹. In that case, I would agree that in those specific condominium projects some exception could be made to lower the threshold to amend governing instruments, but that is not the case with respect to this bill.

Steve Glanstein has provided comments and concerns about this bill in his testimony and HCCA agrees and incorporates by reference Mr. Glanstein's comments and concerns.

For the reasons set forth, HCCA respectfully requests that you defer action on this bill or you revise the language so that it will only apply to those condominiums that have a super-majority of their units owners living abroad who do not read or understand English as their primary language.

If you have any questions, please feel free to contact me. Thank you for the opportunity to testify on this matter.



Jane Sugimura
President

¹ I am aware that some condominium associations have their communications to foreign owners translated into Japanese, Chinese and/or Korean when being sent to those owners who live in those countries.

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 30, 2016 5:06 PM
To: CPCtestimony
Cc: richard.emery@associa.us
Subject: Submitted testimony for HB2248 on Feb 3, 2016 14:05PM

HB2248

Submitted on: 1/30/2016

Testimony for CPC on Feb 3, 2016 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Oppose	Yes

Comments: I am the VP of Government Affairs for Associa, America's largest Association management company, that represents approximately 550 Hawaii associations. The Declaration is the foundation to a condominium association and can be amended by the super majority of all owners. It should not be amended by the consent of a majority of owners that consent within one year. It may only lead to accusations, litigation, or less effort on passing important amendments

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

January 30, 2016

Honorable Rep. Angus L.K. McKelvey, Chair
House Committee on Consumer Protection & Commerce
Hawaii State Capitol, Room 326
415 South Beretania Street
Honolulu, HI 96813

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

**RE: Testimony OPPOSING HB2248; Hearing Date February 3, 2016 at 2:05 p.m.;
sent via Internet**

Aloha Chair McKelvey, 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").

HSAP opposes this bill.

The bill proposes to clarify, "the procedures to amend condominium association declarations and bylaws."

The effect, if adopted, is to subject associations to a prospectively low threshold for amending their documents.

The bill proposes to:

- (a) force voting to cease when the requisite percentage is achieved on a proposed amendment to the condominium documents or, "sufficient percentage have voted in the negative so that passage is unobtainable"¹, and
- (b) permit a **lower voting requirement** if written consent has not been obtained within three-hundred sixty-five days.

Currently, there are several legal requirements relating to amendment of condominium documents. The three different requirements, depending upon the type of amendment, are 50%, 67%, and 75% of the common interest.

¹ The principle of "unobtainable" is difficult to determine because there are ongoing sales in condominiums and new owners may provide written consent.

These requirements may be satisfied by:

- (a) voting at a properly called condominium meeting, or
- (b) by written consent.

The current deadline for written consent is absolute, i.e. one year. (The bill also adds a deadline to Chapter 514A though that has been substantially superceded by Chapter 514B.)

The high standard is necessary because amendments to the documents can change the use of common elements, such as air conditioning, swimming pools, parking stalls, playgrounds, etc. This can materially affect the value of the entire condominium association.

The bill changes the consent requirement by reducing the requirement for adoption if the requisite percent is not obtained within three hundred sixty-five days of mailing.

It lowers the written-consent approval requirement after three hundred sixty-five days to sixty-seven per cent of those unit owners **who voted**. For example, if only 20% of the owners actually vote and 15% of the 20% approve the amendment, the amendment is adopted. This adoption by **15% of the entire 100%** is significantly lower than the current statutory requirement.

Large associations such as Discovery Bay with 666 units and Honolulu Tower with 396 units amended their documents in 2015 and 2012 respectively, within the constraints of the current one year limitation. They had to work aggressively to obtain written consent but it was accomplished.

We respectfully urge that you defer this bill.

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

Sincerely,

Steve Glanstein, Professional Registered Parliamentarian
Chair, HSAP Legislative Committee
cc: Rep. Karl Rhoads

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 02, 2016 11:53 AM
To: CPCtestimony
Cc: bruceh@hmcmtg.com
Subject: Submitted testimony for HB2248 on Feb 3, 2016 14:05PM

HB2248

Submitted on: 2/2/2016

Testimony for CPC on Feb 3, 2016 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Bruce Howe	Hawaiiana Management Co Ltd	Oppose	No

Comments: Chair McKelvey, Vice Chair Woodson and Committee, Hawaiiana Management Company manages over 650 condo, coop and community associations across all islands. The reduction in the percent of owners envisioned by this bill could allow numerous modifications of condominium documents by a minority of owners if the reductions were to take place. We have read the testimony from Christian Porter on behalf of CAI-LAC and by Steve Glanstein on behalf of the Hawaii State Association of Parliamentarians and feel that both statements convey the reasons for our opposition to HB2448. Respectfully submitted, Bruce A. Howe, VP of Governmental Relations for HMC

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 02, 2016 1:01 PM
To: CPCtestimony
Cc: albertd@hawaiianprop.com
Subject: Submitted testimony for HB2248 on Feb 3, 2016 14:05PM

HB2248

Submitted on: 2/2/2016

Testimony for CPC on Feb 3, 2016 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Al Denys	Hawaii CAI LAC & Hawaiian Properties	Oppose	No

Comments: Aloha Chair McKelvey, Co-Chair Woodson and Committee Members, I wish to submit testimony in opposition to HB 2248 for the following reasons. If this reduction is allowed to happen, the percent of owners required to make changes will be dramatically reduced which would in effect allow a small minority of owners to make adverse modifications to the association's documents to suit their agenda without basing their decisions on community association management "best practices" causing undue hardship to the rest of the owners. Also the testimony submitted by Chris Porter on behalf of Hawaii CAI LAC and Steve Glanstein on behalf of the Hawaii State Assoc of Parliamentarians further clarifies the details on why I oppose HB 2448. Mahalo. warmest aloha, Al Denys

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Feb, 2, 2016

TO: CPC

REP Justin Woodson
REP Angus McKelvey

RE: HB 2248 Support with Comments
Date: Feb. 3, 2016, 2:00 pm

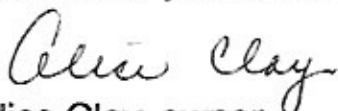
Dear Chair McKelvey, Vice Chair Woodson and Members of the Committee on Consumer Protection and Commerce,


Hui O'Malama Hale would like to go on record as supporting HB2248 with comments and suggestions, if we may.

As a condominium which is self-governed, there are issues which we do not have control over such as proxies which owners have not received for annual meetings etc. Changes to our documents in one case, where a Board Member was told by another Board member that she was not going to be on the Board in the future since they were going to delete cumulative voting and between the management company and the BOD, they mail out supposedly and handled all the proxies. How do we verify that all owners received and how many responded to change to delete cumulative voting in our documents? The way HB2248 is written does not spell out the mailing of the proxies and who is responsible for tallying the results. We are told by the BOD that they received enough votes and that we will change the documents. We are dictated to and we are concerned that we are not self-governed and too many issues go on which we owners are not asked, but told.

Would also like to see term limits added to this bill if possible. WE NEED TERM LIMITS in our condominium.

Mahalo for your time and appreciate your kokua.


Alice Clay, owner


Julie Taura, owner



February 2, 2016

VIA WEB TRANSMITTAL

Hearing Date: Wednesday, February 3, 2016

Time: 2:05 p.m.

Place: Conference Room 325

Committee on Consumer Protection & Commerce
House of Representatives, the 28th Legislature
Regular Session of 2016

Re: Community Associations Institute's **Opposition Testimony** on HB 2248

Dear Chair McKelvey, Vice Chair Woodson and Committee members:

I am the Chair of the Community Associations Legislative Action Committee ("CAI"). We represent the condominium and community association industry.

HB 2248's apparent objective is to lower the threshold for amending condominium documents from the current requirement that owners representing 67% of the common interest must vote in favor of such a measure, to proposing to allow such an amendment if only 67% of those that voted are in favor of the measure.

So the current law would require for a building with 100 units – and assuming that each unit held a 1% common interest – to have 67 votes in favor of the proposed amendment. HB 2248 would provide that if only 60 units voted on the proposed amendment, it could pass with only 40.2 in favor of the proposed amendment.

CAI opposes HB2248 for the following reasons:

- (1) Associations are successfully amending their documents when the proposed amendment has the support of 67% of the common interest. We have condominiums with over 1,000 units that are able to do this.
- (2) Allowing for such a lower threshold for the amending of the governing documents will lead to attempts by minority groups to push "their agenda" that would not be in the best interest of the project, but could pass if the other owners simply do not chose to vote, or are away on vacation, or if the project has a lot of absentee owners.
- (3) Allowing for such a lower threshold could result in numerous amendments to the governing documents, which could lead to challenges to enforcement efforts by the Board of the governing documents as owners may attempt to argue that one set of documents did not control as the amendments were approved or were in the process of being approved.
- (4) Allowing for such a lower threshold would result in instability with the condominium structure as the administration and proper functioning of a condominium project relies on clear and consistent documents that owners can rely on that could not be changed by a small group of owners.
- (5) Allowing for such a lower threshold will create the potential for inconsistent treatment of owners between one set of documents and then having them amended on numerous occasions. In other words, what could be an offense or violation of the governing documents in one month, may not be an offense or violation of the governing documents the next month.
- (6) Allowing for such a lower threshold will likely lead to constitutional challenges and lawsuits against proposed amendments.

These are just some of the reasons that CAI opposes HB 2248. Thank you.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'C. Porter', written in a cursive style.

Christian P. Porter, Chair of CAI LAC Hawaii

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 01, 2016 10:48 PM
To: CPCtestimony
Cc: lynnehi@aol.com
Subject: Submitted testimony for HB2248 on Feb 3, 2016 14:05PM

HB2248

Submitted on: 2/1/2016

Testimony for CPC on Feb 3, 2016 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Oppose	No

Comments: Please accept this as testimony in strong opposition to HB2248 relating to condominium governing documents. Since 1987 I have lived in a Downtown Honolulu high rise condominium, and currently serve on its board of directors. Instead of majority rule, this bill would give power to a small group, who could tyrannize the others. Currently we require written consent of 67% of the owners within a 365 day period. This bill is a back door way of getting something to pass when the 67% is not obtained in the time frame. My condominium has almost 400 units. If only 20% of the owners vote, i.e., 80, and 15% of them vote in favor of the amendment, only a small portion of the owners will control the outcome. Amendments to the documents can change the use of common elements, such as parking spaces, pet ownership, dog parks, air conditioning, swimming pools, Jacuzzi's, recreation areas, use of elevators, FOBs, etc. Not only can this affect the value of the property, but if the tyrannical small group takes control, could result in a "taking." People buy into these properties with the knowledge that they have certain rights, amenities, etc. and HN2248 will take that all away. Thank you for the opportunity to submit testimony. I respectfully ask you to permanently defer this bill. Lynne Matusow 60 N. Beretania, #1804 Honolulu, HI 96817 808 531-4260

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 02, 2016 9:17 AM
To: CPCtestimony
Cc: kulalaplace@gmail.com
Subject: Submitted testimony for HB2248 on Feb 3, 2016 14:05PM

HB2248

Submitted on: 2/2/2016

Testimony for CPC on Feb 3, 2016 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Deborah Ramirez	Individual	Comments Only	No

Comments: Thank you for the opportunity to be heard and invited to submit this written testimony in support of HB 2248 and any other legislative attempts to eradicate mortgage fraud. Mortgage fraud isn't sexy. It's complicated, layered with corruption, and considered a problem only for those who've lived it. It's ignored as a bygone issue. This legislation, is a very thoughtful effort, but in the world of mortgage fraud, a world unto itself, this legislation is meaningless. White Collar criminals will continue to dance around the language of the law and change up their scams. There's a Bermuda Triangle sized disconnect between courtrooms and living rooms. White Collar criminals banked on that. Homeowners' Associations have assumed too much authority. This must be regulated. We get that judges don't want to (or can't) rule on fraud. They base their judgements on contractual law using a mortgage contracts authored by thieves. These contractual laws were intercepted by fraud. These foreclosures weren't incomplete passes by homeowners; they were interceptions by lenders, homeowners' associations (i.e. Associa-Hawaii / Associa-Texas) , insurance companies, title companies, Fannie Mae and Freddie Mac, Wall Street, notaries public, and the law firms that support them. We, the homeowners, do understand the rampant unimaginable greed of financial institutions that goes unpunished--Hollywood does too. We had hoped recent films would have made a powerful impact but that hasn't happened, yet. So Hollywood and many other industries have also capitalized on our loss. This is the decade of our discontent. If this legislation passes it must pursue consequence and enforcement and accountability. This state and country, with the exception of a few trailblazers, have turned a blind eye to the mortgage crimes of the past, present, and future. As long as financial institutions are allowed to get away with crimes they will become endemic. The homeowner is still the sacrificial lamb. They pay not only from their pockets, but with their heart and soul, digestive systems, and central nervous systems. These systems, like the legislative and judicial systems, are now irreparably damaged. Where do we go from here? Perhaps Iceland. Mahalo. Aloha, Debbie Ramirez Waianae, Hawai'i

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 02, 2016 2:58 PM
To: CPCtestimony
Cc: lila.mower@gmail.com
Subject: Submitted testimony for HB2248 on Feb 3, 2016 14:05PM

LATE

HB2248

Submitted on: 2/2/2016

Testimony for CPC on Feb 3, 2016 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lila Mower	Individual	Support	No

Comments: I am spokesperson for Hui `Oia`i`o, a coalition of condo owners from approximately 50 different condo associations. Hui `Oia`i`o supports HB2248 in its intent to allow action on proposed amendments to condominiums' legal documents if the proposed declaration or bylaw amendment fails to garner the vote or consent necessary before 365 days expire. However, because there seems to be an unspoken and possibly untrue assumption that non-responding owners are either negligent or apathetic, our support is contingent upon the assurance that boards or their agents make honest attempts to reach all owners. An amendment to a condominium's governing documents is not an insignificant matter, thus condo boards or their agents should be required to provide evidence that they made fair and honest attempts to reach every owner, such proof being evidence of certified or registered mail delivery to every owner's most recent mailing address on record. Additionally, there should be assurance that all owners' responses are properly recorded. Without these assurances, there is a possibility that decisions may be tainted, lacking the participation of disenfranchised owners.

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LATE

MOANA PACIFIC
ASSOCIATION OF APARTMENT OWNERS

TESTIMONY IN SUPPORT OF HB 2248
RELATING TO CONDOMINIUM GOVERNING INSTRUMENTS

COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Wednesday, February 3, 2016, 2:05 p.m., Conference Room 325

Representative Angus L. K. McKelvey, Chair
Representative Justin H. Woodson, Vice Chair
Members of the Committee on Consumer Protection & Commerce

Aloha, Chair McKelvey, Vice Chair Woodson, and Members of the Consumer Protection & Commerce Committee

The Board of Directors of the Moana Pacific, a 720 unit condominium complex, testifies in support of HB2248, Relating to Condominium Government Instruments. We are governed under the provisions of HRS 514B that proposes to be amended by this bill.

As applicable to our condominium, HB 2248 proposes to amend Section 514B-23, Section 514B-32(a)(11), and Section 514B-108(e) of the Hawaii Revised Statutes to require the following:

- Any proposed amendments, rationale, and ballots for voting shall be mailed by the board to the owners at the expense of the association for vote or written consent.
- The vote or written consent, to be valid, must be obtained within three hundred sixty-five days after mailing.
- Voting shall cease if the required approval is obtained prior to the passage of three-hundred-sixty-five days, upon which the proposed amendment to the declaration, bylaws, condominium map or other constituent documents shall be duly adopted; or, if a sufficient percentage have voted in the negative so that passage is unobtainable.
- If the required approval is not obtained after passage of three hundred sixty-five days after the mail out of the ballots, the proposed amendment will be adopted as follows:
 - Under HRS Section 514B-23 (concerning adoption of bylaws to bring it into conformance with HRS 514B-123), by a majority of the unit owners who voted
 - Under HRS Sections 514B-32(a)(11) (concerning declaration amendments) and HRS Section 514B-108(e) (concerning bylaws amendments), by at least sixty-seven per cent of those unit owners who voted

The Moana Pacific Association of Apartment Owners (AOAO) has a number of owners who live off-property. The proposed amendments as noted above would facilitate decisions and seem reasonable. We encourage adoption.

Respectfully

Mel Farber
President, Board of Directors