

SB1263

Measure Title: RELATING TO REAL ESTATE.

Report Title: Real Estate Licensees; Common Interest Communities; Principal Brokers; Documents, Records, and Information; Real Estate Commission

Description: Requires principal brokers in a brokerage firm to ensure that: associated real estate licensees and other staff who assist common interest communities are responsive to requests from owners regarding association-related finances, documents, records, and information; and any request from the real estate commission to distribute commission-generated information, materials, or documents to an association, a board of directors, or a unit owner in a common interest community is completed within ten days after receiving the request.

Companion: [HB1524](#)

Package: None

Current Referral: CPH

Introducer(s): BAKER, DELA CRUZ, ESPERO, IHARA, KEITH-AGARAN, S. Chang, Harimoto, K. Kahele, Kim, Taniguchi

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Thursday, February 23, 2017
9:30 a.m.

TESTIMONY ON SENATE BILL NO. 1263, RELATING TO REAL ESTATE.

TO THE HONORABLE ROSALYN H. BAKER, 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 in support and a suggested amendment on Senate Bill No. 1263, Relating to Real Estate.

Senate Bill No. 1263 provides an additional measure of protection for the consumer in requiring the principal broker in a real estate brokerage firm to ensure that associated licensees and other staff who assist in common interest communities are responsive to requests from owners and to assist the Commission in distributing Commission generated information.

The Commission believes that generally, principal brokers are required to assist the Commission and this measure provides clarity on the requirement.

Also, to provide further clarity, we offer the following amendment as suggested in a previous hearing, in subsection (10), on page 3, lines 16 – 21, and page 4, lines 1 – 4:

- Ensuring that all associated real estate licensees and other staff who assist in providing management services for common interest

communities, including but not limited to, cooperative housing corporations under chapter 421I, planned community associations under chapter 421J, associations of unit owners under chapter 514B, and time sharing plans under chapter 514E, are responsive to requests for finances, documents, records, and information, whether maintained, kept, or required to be provided pursuant to chapter 421I, 421J, 514B, or 514E; and

Thank you for the opportunity to provide testimony in support of Senate Bill No. 1263.



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February 23, 2017

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce, Consumer Protection, and Health
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: S.B. 1263, Relating to Real Estate

HEARING: Thursday, February 23, 2017, at 9:30 a.m.

Aloha Chair Baker, Vice Chair Nishimoto, and Members of the Committee,

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 9,000 members. HAR **opposes** S.B. 1263.

This measure requires principal brokers in a real estate brokerage firm to ensure that all associated real estate licensees and other staff who assist common interest communities are responsive to requests from owners regarding association-related finances, documents, records, and information. It also provides that any request from the Real Estate Commission to distribute Commission-generated information, materials, or documents to an association, a Board of Directors, or a unit owner in a common interest community is completed within ten days after receiving the request.

HAR has serious concerns that this measure would unnecessarily expose principal brokers to Regulated Industries Complaints Office (RICO) complaints, for actions that are outside of their control or knowledge.

This measure assumes that real estate licensees are managing agents of common-interest communities (planned community, condominium, co-op). If the intent is to ensure that association documents are provided to unit owners upon request, then it is the association's responsibility to deliver documents in a timely manner through a "resident manager" or "managing agent." It is not the responsibility of the real estate licensee outside of the fiduciary role provided during a real estate transaction.

HAR would note that in 2014, the Legislature passed Act 188, which requires that documents, records and information be made available to condominium (Hawai'i Revised Statutes 514A and 514B) unit owners and the owner's authorized agents by the managing agents, resident manager, Board (through a Board member) or the





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Association's representatives. Act 188 also provided that these documents must be provided no later than 30 days after receipt of written request, unless otherwise specified. As such, this measure may not be necessary for condominium units as the law already requires these documents be made available upon request.

Mahalo for the opportunity to testify.



From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 20, 2017 9:52 AM
To: CPH Testimony
Cc: richard.emery@associa.us
Subject: Submitted testimony for SB1263 on Feb 23, 2017 09:30AM

SB1263

Submitted on: 2/20/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

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

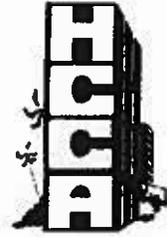
Comments: The intent of this Bill is certainly acceptable. That being said, owners hire Realtors to sell their property. Contracts are signed between the seller and buyer without the involvement of a managing agent that specify a variety of documents, completion of custom forms, calculation of association assessment payoff amounts, coordination with escrow on settlement amounts. These services have short time frames for completion; sometimes just hours. For example, escrow companies the day before closing need written verification of amounts owed as at times checks bounce or new charges occur. The managing agent may be liable if wrong information or amounts are provided. Private transactions must be considered separately. This is not simply providing static documents. Managing Agents charge a fee for this services based on the Realtor's written ala carte request.

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



February 22, 2017

Senator Roslyn Baker, Chair
Senator Clarence Nishihara, Vice-Chair
Senate Committee on Commerce, Consumer Protection and Health

Re: Testimony in Opposition to
SB1263 RELATING TO REAL ESTATE
Hearing: Thursday, February 23, 2017, 9:30 a.m., Conf. Rm. #229

Chair Baker, Vice-Chair Nishihara and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA). This organization represents the interests of condominium and community association members.

HCAAO has always supported and has affirmatively advocated for legislation that allows condominium unit owners to receive association-related documents (i.e., as specified in HRS 514B-154) in a timely manner; however, this bill seems to be placing the responsibility on the managing agent to ensure that the association complies with the existing law. This emphasis and reliance is misplaced and therefore, HCAAO opposes this bill. HCAAO also incorporates by reference the testimony in opposition to this bill by Richard Emery of Associa Hawaii.

The responsibility for compliance with any provision of HRS 514B and especially with HRS514B0154 lies squarely with the Board of Directors and not with its managing agent for the following reasons:

- The Managing Agent has no authority to make decisions for the Board and therefore should not be liable or held responsible for the Board's failure or refusal to comply with the HRS Chapter 514B. Under the condominium's Declaration of Horizontal (or Condominium) Property Regime, the Board is empowered to hire a managing agent to assist it in managing the project. The Board hires and fires the managing agent and also instructs the managing agent what to do. Under the management agreement, the managing agent is supposed to advise the Board of Directors – not make decisions for the Board (and if the managing agent is making decisions for the Board then the Board is in breach of its fiduciary duty to the association and the members should be removed.) In fact, in some cases, the Board will not even listen to advice given them by their managing agent and those Boards do so at their peril.

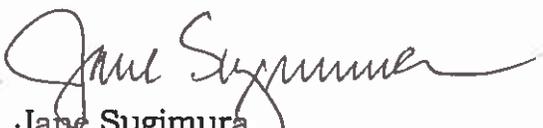
- Some associations are self-managed and don't have a managing agent.
- Some management agreements between association and management companies may be limited to fiscal management and not to governance and property administration.

If the intent of this bill is to establish effective sanctions (or consequences) for failure or refusal to comply with HRS Chapter 514B and especially with HRS 514B-154, then the emphasis or focus should be on establishing sanctions for Board members who do not comply with the law.

I suggest using the following language "any failure or refusal to comply in a timely manner with HRS 514B-154, i.e., within 30 days of an owner's request for documents, shall be a violation thereof and will be deemed to be a breach of the Board's fiduciary duty under HRS 514B-106(a), provided, however, a board member can avoid liability hereunder by taking affirmative action to ensure that association employees and its managing agent act in compliance with the law."

In the committee report on the amendment to this bill, you can explain that the rationale for this sanction is to make the Board responsible for these decisions to produce or not produce documents with the risk that non-compliance will mean that the association's Directors and Officers insurance carrier will not defend Board members who may be in breach of their fiduciary duty. This also prevents the Board from relying on its managing agent to handle these requests by owners for condominium records. The Board is the one that hires the managing agent and instructs the managing agent (not the other way around) so if the Board tells the managing agent to comply with the law and if it fails to do so, the Board has grounds to terminate the managing agent who causes them to breach their fiduciary duty. A director can avoid liability if he or she votes for compliance at the Board meeting and that vote appears in the minutes.

Based on the foregoing, HCAAO respectfully requests that you defer this bill or you adopt its suggested revisions to this bill. If you have any questions, please feel free to contact me. Thank you for the opportunity to testify on this matter.


Jane Sugimura
President

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 8:19 PM
To: CPH Testimony
Cc: lila.mower@gmail.com
Subject: *Submitted testimony for SB1263 on Feb 23, 2017 09:30AM*

SB1263

Submitted on: 2/21/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Lila Mower	Hui `Oia`i`o	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 11:17 PM
To: CPH Testimony
Cc: sunnymakaha@yahoo.com
Subject: Submitted testimony for SB1263 on Feb 23, 2017 09:30AM

SB1263

Submitted on: 2/21/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Dale A. Head	Individual	Support	No

Comments: I support this bill as we now have, as a routine, denial of requested documents.

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