

**Testimony of the Real Estate Commission**

**Before the  
House Committee on Housing  
Friday, February 3, 2023  
9:00 a.m.  
Conference Room 312 and Videoconference**

**On the following measure:  
H.B. 381, RELATING TO CONDOMINIUMS**

Chair Hashimoto and Members of the Committee:

My name is Derrick Yamane, and I am the Chairperson of the Hawai'i Real Estate Commission (Commission). The Commission supports this bill.

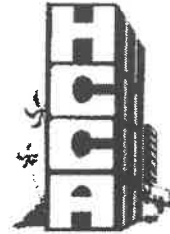
The purpose of this bill is to repeal the sunset date of Act 196, Session Laws of Hawai'i 2018, that allowed for voluntary binding arbitration for condominium related disputes and amended the conditions for mediation.

The Commission supports and continues to subsidize mediation and voluntary binding arbitration and encourages the use of alternative dispute resolution for condominium-related disputes as a valuable self-governance tool.

Thank you for the opportunity to testify on this bill.



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



February 1, 2023

Rep. Troy Hashimoto, Chair  
Rep. Micah P.K. Aiu, Vice-Chair  
House Committee on Housing

Re: Testimony in Support of HB381 Re Condominiums  
Hearing: Friday, February 1, 2023, 9 a.m., Conf. Rm. #312

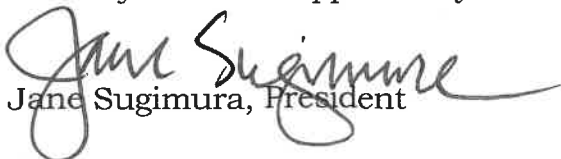
Chair Hashimoto and Vice-Chair Aiu and Members of the Committee:

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

HCCA supports this bill for the following reasons:

- HCCA strongly supported passage of Act 187 as amended by Act 196, which supported the (i) use of mediation and voluntary arbitration to resolve disputes by and among condo owners, their board and managing agents (rather than litigating these disputes in the courts) and (ii) allowing the condo-education fund to subsidize the cost of the mediations and arbitrations.
- As a result of the passage of Act 196, condo owners and associations have had additional remedies to address and resolve condo disputes without having to resort to litigation and the parties have been able to get funds from the condo-education fund to subsidize the costs of those mediations and/or arbitrations.
- The Act has been in effect for over 4 years and HCCA has not heard concerns relating to its implement or enforcement.

For these reasons, HCCA believes that the sunset provision that will become effective on June 30, 2023 in the bill is unnecessary and should be removed. Accordingly, HCCA respectfully requests that you pass out this bill so that subsidized mediation and arbitration will remain available to condo owners and association to resolve their disputes. Thank you for the opportunity to testify on this matter.

  
Jane Sugimura, President

**House of Representatives  
Committee on Housing  
Friday, February 3, 2023  
9:00 a.m.**

To: Chair Representative Troy Hashimoto  
Re: HB 831, Relating to Condominiums

Aloha Chair Hashimoto, Vice-Chair Aiu, and Members of the Committee,

I am Lila Mower, president of Kokua Council, one of Hawaii's oldest advocacy groups with over 800 members and affiliates in Hawaii.

I serve on the board of the Hawaii Alliance for Retired Americans, with a local membership of over 20,000 retirees.

And I am the leader of a coalition of, at last count, over three hundred property owners, mostly seniors. from over 150 common-interest associations throughout Hawaii and served as an officer on three condominium associations' boards.

Mahalo for allowing me to submit **testimony in opposition to HB 381.**

A review of the DCCA Real Estate Commission publication, *Hawaii Condominium Bulletin*, reveals that the current Condominium Education Trust Fund (CETF) subsidized alternative dispute resolution models (ADR) has been **unsuccessful** for condominium owners. ADR case summaries for the period starting March 2016 through its December 2022 publication indicate that an overwhelming majority, nearly 80%, of the CETF subsidized mediation or arbitration cases were initiated by owners against their association and/or board.

But only 37% of these ADR cases during this period were mediated to an agreement, leaving **more than three (3) out of every five (5) CETF-subsidized ADR cases unresolved**, hardly a success by any metric.

And of the cases that reached an agreement, many of those which were settled in favor of owners were allegedly disregarded, lacking enforcement.

Further, HRS 514B-146(g) states that when ADR fails, the association may proceed with the collection of all amounts due from the condominium owner for attorneys' fees and costs, or any other charges that are not imposed as a common expense, revealing a **statute which disincentivizes associations and/or their boards from resolving disputes.**

Claims from experts from the insurance industry corroborate that Hawaii has a greatly disproportionate degree of malfeasance and infidelity to fiduciary duties, reporting that **nationally Hawaii has the most Directors and Officers Insurance claims and among the highest**

**insurance settlements**, despite Hawaii having only a small fraction of homeowners' associations of more populous states like Florida, California, and New York.

The apparent goal of the legal profession serving associations is to make it difficult for owners to file complaints and to prevent those complaints from becoming a part of the public record. Thus, association attorneys may be reluctant to end CETF-subsidized ADR because they are cloaked by nondisclosure agreements, making it impossible for the condo community to learn constructively from the legal dispute and resolution (if any).

A fellow advocate wrote, "The current dispute resolution process is attended by those who may be more interested in the 'dispute' rather than the 'resolution.' The more they [associations' attorneys] prolong the dispute, the greater their reward, and one wonders if, personally, the 'resolution' has little meaning for them as they will be compensated regardless [of] how the 'dispute' is settled."

Additionally, some legal professionals, including those who lobby at the Legislature for the condominium trade industry, market their ADR services to associations, creating an additional income stream for themselves while creating the possibility of biased and lopsided ADR.

In earlier legislative sessions, mediation and arbitration were promoted as inexpensive avenues to dispute resolution, however, owners' experiences contradict that assertion. Owners who can afford the \$375 fee to participate in mediation complain of the additional thousands needed to proceed against a platoon of association attorneys representing the association and/or board. Associations have the combined financial resources of all of their members, including insurance coverage that protects board members from personal liability, and the ability to raise additional funds through assessments from owners.

But an owner has only his or her resources, a circumstance which precludes many owners from seeking justice.

Owners also allege that the costs of arbitration are as costly or costlier than litigation, thus CETF subsidized ADR fails its intention.

### **A different model is needed.**

Rather than owners retaining attorneys as their only recourse in their disputes to assert or defend their rights against their associations or boards, proposals for a cost-effective Ombudsman's Office have been initiated by Kokua Council as **HB 178** and **HB 1501**.

The purpose of the Ombudsman's Office is to provide an expeditious, efficient, cost-effective means of alternative dispute resolution, and to reduce court dockets and trials. The office will **not** use taxpayer funding, using only monies paid by owners with minimal financial impact--**an estimate of \$1 per month per owner**--to review complaints concerning violations of state

condominium laws by owners, the association's board of directors, officers, or professional managers.

The Ombudsman's Office will:

- be the main department to address all condominium and HOA complaints from homeowners and associations;
- work with the DCCA to accept, mitigate, and resolve all valid complaints brought to the attention of the Ombudsman's Office;
- enforce any applicable State laws related to condominiums and HOAs;
- apply and enforce any fines and penalties, including removal of association directors who intentionally violate State laws, and suspend or revoke the license of community association management real estate brokers who intentionally violate State laws;
- upon request, monitor and review associations' annual elections, with qualified staff available to oversee elections;
- generate reports to the Governor's Office, State Legislature, and DCCA, with statistical data and summaries of the activities of the Ombudsman's Office, and to make recommendations. Areas include, but are not limited to, rules, procedures and processes, staffing needed, and funding needs.

Because of the government's focus on providing more housing, especially affordable housing, more and more communities will be constructed as high-density, lower-cost condominiums and built as associations that maintain their infrastructure, relieving the government of that cost.

Given that a home is, for most people, the most significant asset they have, protecting the value of that asset and mitigating disputes over that asset is an important policy goal, one that has not been served well by current CETF-funded ADR.

The laws written now will decide how we will live our lives in the future. We should not be stuck on models that do not work. I urge you to repeal HRS 514B sections 161, 162, and 162.5, **oppose HB 381**, and enact **HB 178** or **HB 1501** would create an Ombudsman's Office that could reduce the conflicts between owners, associations, boards, and management.

Mahalo for the opportunity to testify in **opposition to HB 381**.

## **Testimony to Oppose HB381**

**Submitted for:** Housing (HSG) Committee Hearing, scheduled to be heard on Friday, 2/3/23 at 9:00 AM

Aloha Chair Hashimoto, Vice Chair Aiu, and Members of the Committee,

**I do not support HB381.**

Mediation and Arbitration have been found to not be working as hoped, and those in the condominium trade industry who say they are, are not telling the truth. Those that are profiting from Mediation and Arbitration are private Attorneys and the Mediators (who are also Attorneys). The cost to file for a Mediation is \$375 each time, and does not include other costs, such as hiring an Attorney to represent you, when the other side is stacked with Director & Officer (D&O) Insurance assigned Attorneys and Association Attorneys.

I also have first-hand experience with Mediation, to highlight further that it is not effective and is costly. Arbitration is even more costly for homeowners, and subsequently is not used very often for that reason alone.

Mediation is also driving up the cost of D&O Insurance, which is passed on to every condominium owner via their maintenance fees. Companies that provide D&O Insurance are also not providing new policies to Associations. I know this well, as the D&O insurance company at my Association would not renew the policy, and our Board could only get insurance from Lloyd's of London. The policy is one third of the coverage, and the deductible is 7x more.

Homeowners in Hawaii need a "fair" and "cost effective" means to resolve disputes with their Condominium Associations and HOAs, and I ask you to please schedule hearings for:

- 1) HB178 - Ombudsman's Office for Condominium Associations, Planned Community Associations, and Cooperative Housing Corporations
- 2) HB1501 - Ombudsman's Office for Condominium Associations

Both measures are supported by the Kokua Council, and are the means to solve this longstanding problem by providing fair and equitable dispute resolution and enforcement of HRS 514B statutes.

**I ask the Committee and all State Legislators to oppose HB381.**

**I also ask you to support and act on HB178 and HB1501, which were introduced by the Kokua Council on behalf of our kupuna and all residents of Hawaii.**

Mahalo,

Gregory Misakian

2<sup>nd</sup> Vice President, Kokua Council  
Board Member, Waikiki Neighborhood Board

*The Kokua Council is one of Hawaii's oldest elder advocacy groups. We advocate for issues, policies, and legislation that impact the well-being of seniors and our community.*

HOUSE COMMITTEE ON HOUSING

Hearing Date: Friday, February 3, 2023

Time: 9:00 AM

Place: Conference room 312, via video conference

Testimony re House Bill 381

Chair Baker and Members of the Committee

My name is John Morris, and I am testifying on behalf of the Legislative Action Committee Of The Community Associations Institute, Hawaii Chapter. CAI is a national organization devoted to improving the management and operation of condominiums and other homeowner associations. The Hawaii chapter is a local chapter of the national CAI organization.

CAI strongly supports HB381, which would repeal the sunset date of Act 196 (SLH 2018 ). That act was passed to allow for voluntary binding arbitration for condominium disputes in accordance with section 514B-162.5. The act also amended certain conditions for mediation.

Disputes between owners and boards about the management and operation of condominium projects continue to arise. Therefore, the more options the legislature can provide for resolving those disputes, the better. In this case, section 514B-162.5 allows the parties to a dispute to agree to submit it to binding arbitration, with the added benefit of a \$6000 subsidy from the Condominium Education Trust Fund towards the cost of the binding arbitration. (That fund is supported by fees collected from condominium owners to support education and dispute resolution.)

Continuing the option for voluntary binding arbitration can be very cost effective when boards and owners cannot resolve their disputes through negotiation or mediation, yet still want to have a final decision on the issue in dispute. In that case, they can submit the issue to a neutral arbitrator and obtain a decision, one way or another, so they can move on from their dispute.

While it is possible for the boards and owners to go to court, that takes more time and more State resources. In contrast, if the issue in dispute is relatively straightforward and simply requires a decision, voluntary binding arbitration can be the quickest, cheapest, and most effective way of resolving the dispute. Therefore, CAI supports the repeal of the sunset date of act 196 so that section 514B-162.5 can continue to offer boards and owners the option of voluntary binding arbitration.

Thank you for this opportunity to testify.

John Morris

For CAI Hawaii Chapter



**HB-381**

Submitted on: 2/1/2023 12:33:25 PM

Testimony for HSG on 2/3/2023 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Marcia Kimura	Individual	Comments	Written Testimony Only

Comments:

Mediation per se, has not been an effective means of dispute resolution, as less than half of cases submitted to it have been resolved satisfactorily for either owners or association boards. An ombudsman's office would provide for much more far-reaching action to ENFORCE statutes protecting the rights of both condo owners and management. Furthermore, the use of surplus CETF monies should definitely not be expended to cover education as heretofore prescribed by the condo industry - "education" benefitting only management.

**HB-381**

Submitted on: 2/1/2023 1:09:14 PM

Testimony for HSG on 2/3/2023 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
R Laree McGuire	Individual	Support	Written Testimony Only

Comments:

Aloha,

The availability of all means of dispute resolution to condominium owners is critical to not only the owners, but also to the condominium industry and its stakeholders as it provides them with an efficient and economical means to resolve disputes outside of the costly judicial system.

Respectfully submitted.

**HB-381**

Submitted on: 2/1/2023 1:42:47 PM

Testimony for HSG on 2/3/2023 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Raelene Tenno	Individual	Support	Written Testimony Only

Comments:

I am in support of removing the sunset provision (Act 196, 2018)

**HB-381**

Submitted on: 2/1/2023 3:02:27 PM

Testimony for HSG on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Dale A. Head	Individual	Oppose	Remotely Via Zoom

Comments:

*Aloha: Nope, HB381 does not cure the problem of anti-consumer conduct of contract management companies. Better idea is to schedule and pass HB176 & 178.*

*Dale Head*

**HB-381**

Submitted on: 2/1/2023 4:23:12 PM

Testimony for HSG on 2/3/2023 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Richard Emery	Individual	Support	Written Testimony Only

Comments:

The continuation of this option in dispute resolution is very helpful and resolves problems.

SUPPORT.