

Testimony of the Hawai'i Real Estate Commission

**Before the
House Committee on Judiciary & Hawaiian Affairs
Tuesday, March 3, 2026
2:00 p.m.
Via Videoconference**

**On the following measure:
H.B. 1897, H.D. 1, RELATING TO CONDOMINIUM ALTERNATIVE DISPUTE
RESOLUTION**

Chair Tarnas 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 offers comments on this bill.

The purpose of this bill is to amend the conditions and procedures of alternative dispute resolution methods for condominium-related disputes, including the use of evaluative mediation or binding arbitration.

This bill establishes minimum qualifications of mediators and arbitrators who provide alternative dispute resolution (ADR) supported by the Condominium Education Trust Fund (CETF). The Commission takes no position on the experience requirements specified under proposed section 514B-F. However, the Commission notes that it does not contract with individual mediators; instead, it contracts with mediation providers to provide ADR supported by the CETF

The Commission supports the proposed initial fee of \$150 to be paid by each party to the mediator (page 8, line 1) and arbitrator (page 9, line 16). This amount represents a reduction from the current statutory fees of \$375 for evaluative mediation and \$175 for voluntary binding arbitration. The reduced fee would address anecdotal concerns from condominium owners who were reluctant to pursue ADR due to its cost, while also ensuring that both parties have a tangible commitment to participating in mediation or arbitration.

Page 8, lines 2-6, authorizes the Commission to waive the initial fee for individuals who provide satisfactory evidence that the fee would pose an unreasonable economic burden. As the Commission meets on a monthly basis, it believes that

requests for fee waivers could be processed more efficiently if the mediation providers, rather than the Commission, were provided with this authority.

Currently, the Commission, through the CETF, provides subsidized support for facilitative mediation, evaluative mediation, and voluntary binding arbitration. As drafted, proposed section 514B-C, HRS, appears to limit CETF support to evaluative mediation and binding arbitration. The Commission opposes reducing the number of ADR options eligible for the CETF to provide subsidized support and respectfully requests that facilitative mediation remain among the options for subsidized ADR.

Thank you for the opportunity to testify on this bill.

P.O. Box 976
Honolulu, Hawaii 96808

February 27, 2026

Honorable David A. Tarnas
Honorable Mahina Poepoe
Committee on Judiciary and Hawaiian Affairs
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **HB 1897 HD1 SUPPORT**

Dear Chair Matayoshi, Vice Chair Grandinetti and Committee Members:

CAI supports HB 1897 HD1 because it provides targeted and sensible amendments to Chapter 514B of the Hawaii Revised Statutes. The amendments protect consumers by, among other things, enhancing due process procedures for the imposition of fines and by improving alternative dispute resolution processes overall.¹

The potential for abusive imposition of fines is constrained by requiring that fines be reasonable, and robust due process procedures are required. An appeal process must be provided, and remaining disputes will be finally resolved by the small claims court. Moreover, HB 1897 HD1 prohibits the reported practice of charging attorney's fees to collect a disputed fine.

HB 1897 HD1 provides support from the condominium education trust fund for evaluative mediation and for voluntary binding arbitration. This valuable subsidy contributes to the prompt and economical resolution of condominium-related disputes.

The fee to participate in evaluative mediation is substantially lowered by HB 1897 HD1. Waiver is authorized if an unreasonable economic burden is shown. Minimum qualifications and disclosure requirements are established, to ensure that mediators and arbitrators constructively serve those roles. HB 1897 HD1 promotes easy access to alternative dispute resolution processes and is user friendly.

¹ A total of 75 subsidized mediations (10 facilitative/65 evaluative) are reported in the 2025 Annual Report, Real Estate Commission ("Report") (DC 132). Report at 31. The number of condominium units existing in 2025 was 175,509. Report at 32.

Honorable David A. Tarnas
Honorable Mahina Poepoe
February 27, 2026
Page 2 of 2

Please pass HB 1897 HD1.

CAI Legislative Action Committee, by

Handwritten signature of Philip Hervey in black ink.

Its Chair

HB-1897-HD-1

Submitted on: 2/28/2026 4:09:26 PM

Testimony for JHA on 3/3/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Associa	Comments	Written Testimony Only

Comments:

Hawaii is a special place and authority to fly the Hawaiian flag in an appropriate size and manner is important.

As a three decade association manager and the Hawaii liaison for CAI for the other jurisdictions I can only advise care in the law to support flying the flag appropriately for recognition versus a political statement.

Mainland jurisdictions allow flying a flag attached to the structure at 45 degrees that in a way limits the flag size. I oppose flagpoles as it will create adverse effects for associations in private yard areas. 20' is extreme.

Be prepared for other to cry foul for discrimination of their heritage such as the French flag for Bastille Day, or the Mexican Flag for Cinco De Mayo, etc. Mainland has seen Pride, POW, Isis and other flags attempted to be flown.

By limiting the USA and Hawaiian flag to the structure will allow recognition of our heritage and eliminate the other problems associated thereto. It is defendable..

HB-1897-HD-1

Submitted on: 3/1/2026 8:38:03 AM

Testimony for JHA on 3/3/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Idor Harris	Honolulu Tower	Oppose	Written Testimony Only

Comments:

Honolulu Tower is a fee simple 396 unit condominium located at the corner of Maunakea and Beretania Streets. At its February 2, 2026 meeting the board unanimously voted to oppose HB1897. Among our reasons are:

Page 3, lines 7-12, provides for a right to appeal a fine within 30 days. This may override longer appeal periods in bylaws and house rules. It needs clarification.

The definition of condominium related dispute on page 12, line 19-21, page 13, lines 1-2, should be revised to include disputes between a unit owner and the association as well as the board.

The procedure for imposing fines against owners should be the same as the procedures for imposing fines against tenants.

Page 32, lines 16-19, permits an association to collect unpaid assessment by any legal means except when collection efforts are stayed pursuant to 514B-146 (f). There are times that a lien must be recorded to preserve the priority of an association's lien, but the association will be barred from doing so because of the stay.

The right to demand non-binding arbitration should not be deleted.

You also need to know that some insurance companies will not cover awards through binding arbitration unless they have agreed to that provision in advance.

Idor Harris
Resident Manager, Honolulu Tower

HB-1897-HD-1

Submitted on: 3/2/2026 8:55:40 AM

Testimony for JHA on 3/3/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mark McKellar	Law Offices of Mark K. McKellar, LLC	Support	Written Testimony Only

Comments:

I support HB No. 1897 H.D.1, but it needs to be amended to avoid issues in enforcement. I join in the testimony of M. Anne Anderson and urge the Committee to make the changes set forth in her testimony.

Sincerely,

Mark McKellar

February 28, 2026

RE: H.B. No. 1897 H.D.1 - Testimony in Support with Suggested Changes.

Dear Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:

I support the intent of H.B. No. 1897, H.D.1 but believe that it needs to be amended to address issues that will arise in enforcement.

1. Comments Regarding SECTION 2.

The new Section 514B-B(a)(2)(C) (pg. 3, lines 7-12) provides for a right to appeal a fine within thirty days. While thirty days is a normal time period for the appeal of fines, there may be bylaws and house rules that provide for longer periods to appeal. It is not clear whether the new Section 514B-B(a)(2)(C) is intended to override longer appeal periods in bylaws and house rules. This should be clarified.

The new Section 514B-B(b) (pg. 4 lines 9-11) of the bill provides that “[n]o attorneys’ fees with respect to a fine shall be charged by an association to any unit owner or tenant before the fine is deemed collectable.” This could be construed as prohibiting an association from recovering attorneys’ fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines if doing so means that it must also waive all attorneys’ fees incurred by the association in connection with the violation. To help clarify that the attorneys’ fees referenced are “attorneys’ fees incurred in connection with the imposition or collection of a fine,” it is suggested that line 9-11 on page 4 of the bill be revised to read:

“(b) No attorneys’ fees incurred in connection with the imposition or collection of a fine shall be charged by an association to any unit owner or tenant before the time when a fine is deemed to be collectable.”

The new Section 514B-B(c) (pg. 4 lines 12-14) of the bill provides that “[t]he imposition of a fine, and the determination of a small claims court, if any, shall be without prejudice to the exercise of any other remedy available to an association.” In order to make it clear that a decision of the small claims court, from which there is no right of appeal, shall not be deemed to constitute res judicata or collateral estoppel as to any issue other than the determination of whether a fine is valid and collectible, please consider adding the following sentence to the new subsection (c) found on page 4, lines 12-14: “Any determination of a small claims court regarding the validity or amount of a fine pursuant to this section shall be binding on the parties but shall not constitute res judicata or collateral estoppel as to any issue, factual finding, or determination regarding the underlying violation, bases for the fine, or other issue.”

2. Comments on SECTION 3.

The new Section 514B-D(g)(3) (at page 8, lines 10-11) states that evaluative mediation may include disputes and parties in addition to those “identified in subsection (a).” This is confusing because subsection (a) does not specifically identify any parties. Subsection (a) does refer to a condominium-related dispute which is defined to identify certain parties, but having to go to one section and then another to try to apply meaning to Section 514B-D(g)(3) is a bit confusing. This section should be amended to refer to the disputes and parties identified in the definition of “condominium-related disputes” if that is what is intended.

The new Section 514B-D(g)(3) goes on to state that additional claims and parties may be included “provided that a unit owner or a developer and board are parties to the evaluative mediation at all times and the unit owner or developer and board mutually consent in writing to the addition of the disputes and parties.” This is confusing because the developer is not even listed as a party in the definition of a condominium-related dispute found in SECTION 5 (pg. 12, lines 19-21 and pg.13, lines 1-2) of the bill and it completely ignores managing agents, who are listed in the definition of a condominium-related dispute.

To address these issues, Section 514B-D(g)(3) (pg. 8, lines 10-11) could read: “May include disputes and parties in addition to those identified in the definition of a “condominium-related dispute” found in Section 3; provided that a condominium-related dispute is at all times part of the mediation and the parties to the condominium-related dispute consent, in writing, to the addition of the disputes or parties to the evaluative mediation.”

3. Comments on SECTION 5.

The definition of “condominium-related dispute” found in SECTION 5 (pg. 12, lines 19-21, pg. 13, lines 1-2) should be revised to include disputes between a unit owner and the “association” as well as the board.

4. Comments Regarding SECTION 8.

SECTION 8 amends HRS Section 514B-104(a)(11) (pg. 18, lines 12-21, pg. 19, lines 1-7) to clarify that the board may impose fines in accordance with the new section 514B-B (*i.e.*, the new provision on fines), but fails to delete HRS Section 514B-104(b) which pertains to fines against tenants and conflicts with the new Section 514B-B. The procedure for imposing fines against owners should be the same as the procedures for imposing fines against tenants. HRS Section 514B-104(b) should be eliminated to avoid conflict.

The amendment to HRS Section 514B-104(a)(11) states at page 19, lines 6-7 of the bill that it is subject to “subpart ____.” It is impossible to determine what subpart is being referenced to be able to comment on the unidentified subpart. More clarity should be provided so the public can comment on this section.

5. Comments on SECTION 11.

SECTION 11 of the bill amends HRS Section 514B-146 to add a new subsection (g) (pg. 32, lines 16-19) which permits an association to collect unpaid assessment by any legal means except when collection efforts are stayed pursuant to subsection (f). There may be times that a lien must be recorded to preserve the priority of an association's lien, but an association will be barred from doing so because of the stay. To address this issue, please consider amending subsection (g) found on page 32 (lines 16-19) to read: "(g) An association may defend an assessment in court and in evaluative mediation. The association may proceed to collect an unpaid assessment by any legal means except when collection efforts are stayed pursuant to subsection (f), provided, however, that nothing herein shall preclude an association from recording a notice of lien while a stay pursuant subsection (f) is in effect."

6. Comments on SECTION 12.

SECTION 12 completely eliminates Part VI Subpart D of HRS Chapter 514B. The deletion of HRS Section 514B-161 and 514B-162.5 makes sense because those sections are being replaced by new sections found in the bill. However, it is not clear why the bill is eliminating the right to demand nonbinding arbitration with a right to a trial de novo. Nonbinding arbitration has been used to resolve many condominium disputes in the past and should be preserved.

Respectfully submitted,



M. Anne Anderson

HB-1897-HD-1

Submitted on: 2/28/2026 4:20:13 PM

Testimony for JHA on 3/3/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Joe M Taylor	Individual	Support	Written Testimony Only

Comments:

I support HB No. 1897 H.D.1, but it needs to be amended to avoid issues in enforcement. I join in the testimony of M. Anne Anderson and urge the Committee to make the changes set forth in her testimony

HB-1897-HD-1

Submitted on: 2/28/2026 4:53:08 PM

Testimony for JHA on 3/3/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lance S. Fujisaki	Individual	Support	Written Testimony Only

Comments:

I support HB No. 1897 H.D.1, but it needs to be amended to avoid issues in enforcement. I join in the testimony of M. Anne Anderson and urge the Committee to make the changes set forth in her testimony.

Thank you,

Lance Fujisaki

HB-1897-HD-1

Submitted on: 2/28/2026 6:12:39 PM

Testimony for JHA on 3/3/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Oppose	Written Testimony Only

Comments:

There are so many objectionable things in this bill I don't know where to begin. And since it would take too much time to suggest revisions that will work, i strongly object to this bill. This testimony is not all inclusive.

1. There is a right to appeal a fine within 30 days. This could override e longer periods in bylaws and house rules.
2. A board may be less inclined to waive fines if it means that it must also waive all attorneys fees incurred by the association in connection with the violation.
3. Definition of condominium related dispute is incomplete. There is at least one category missing.
4. Procedures for imposing fines should be same for both owners and tenants.
5. Non binding arbitration has been deleted. Some insurance companies will not agree to settlements if they do not agree beforehand.
6. If certain unpaid assessments are stayed, there will be times when attorneys cannot impose liens, jeopardizing the association's finances.

lynne matusow

HB-1897-HD-1

Submitted on: 2/28/2026 6:34:56 PM

Testimony for JHA on 3/3/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
mary freeman	Individual	Support	Written Testimony Only

Comments:

I support HB No. 1897 H.D.1, if it is amended to avoid issues in its enforcement. I join in the testimony of M. Anne Anderson and urge the Committee to make the changes set forth in her testimony.

Mary Freeman

Ewa Beach

HB-1897-HD-1

Submitted on: 2/28/2026 6:48:08 PM

Testimony for JHA on 3/3/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
John Toalson	Individual	Support	Written Testimony Only

Comments:

I support HB No. 1897 H.D.1, but request that it be amended to avoid issues in enforcement. I support the testimony of M. Anne Anderson and urge the Committee to make the changes set forth in her testimony.

John Toalson

**House of Representatives
The Thirty-Third Legislature, 2026
Committee on Judiciary and Hawaiian Affairs
Tuesday, March 3, 2026
2:00 p.m.**

To: Representative David A. Tarnas, Chair
Re: HB 1897 HD1, Relating to Condominium Alternative Dispute Resolution

Aloha Chair David A. Tarnas, Vice-Chair Mahina Poepoe, and Members of the Committee,

Mahalo for the opportunity to testify in **opposition to HB1897 HD1** because it weakens condominium owners' protections and rights.

The "prevailing party" rule gives the *appearance* of fairness, however, the proposed section, 514B-A(b), favors associations. In fairness, should an owner or owners prevail, they should also be "promptly paid on demand" and the section found in HRS 514B-157(c) should be added to HB 1897:

"If the claims upon which the association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any applicable person or persons as a result of the action of the association, shall be promptly paid on demand to the person or persons by the association."

The word, "reasonable," is arbitrary and subjective. The most recent issues of the Hawaii Condominium Bulletin reveal that the cause of disputes for nearly all reported mediation cases is due to interpretations of associations' governing documents (see the addendum on page 3). Thus, leaving less to interpretation may resolve more disputes. The amounts of fines, penalties, and charges should be pre-defined in documents accessible to associations owners so that owners and residents are informed, and those fines, penalties, and charges are not arbitrary.

Other HRS 514B sections that should not be repealed include:

- HRS514B-146 (d) (3) "Payment in full of the common expense assessment shall not prevent the owner from contesting the common expense assessments or receiving a refund of amounts not owed."
- The section in HRS 514B-157 which protects owners who make good faith efforts to resolve disputes:

"If any claim by an owner is not substantiated in any court action against an association, any of its officers or directors, or its board to enforce any provision of the declaration, bylaws, house rules, or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an association shall be awarded to the association, unless

before filing the action in court the owner has first submitted the claim to mediation, or to arbitration under subpart D, and made a good faith effort to resolve the dispute under any of those procedures.”

Mahalo for allowing me the opportunity to testify in strong opposition to HB 1897 HD1.

ADDENDUM

(source: Hawaii Condominium Bulletin, Volume 31, No. 3, December 2025)

Dispute Prevention and Resolution, Inc.

AOUO vs Owner	Dispute over the interpretation of the bylaws on approved flooring	Mediated to Agreement
Owner vs AOOU	Dispute over the interpretation of the bylaws and house rules on approved flooring	No Agreement
AOUO vs Owner	Dispute over the interpretation of the declaration and bylaws regarding water damage	No Agreement
AOUO vs Owner	Dispute over the interpretation of the bylaws and house rules on aggressive animals	Mediated to Agreement
Owner vs AOOU	Dispute over the interpretation of the governing documents related to financial management, reserves, and vendor contracts	Mediated to Agreement
Owner vs AOOU & Owner	Dispute over the interpretation of the bylaws regarding noise mitigation regarding health and safety	No Agreement

Mediation Center of the Pacific

Owner vs AOOU	Dispute over the interpretation of the bylaws related to fees and fines	Mediated to Agreement
Owner vs AOOU	Dispute over the interpretation of the governing documents related to maintenance, pipes, and repairs	No Agreement
Owner vs AOOU	Dispute over the interpretation of the declaration and bylaws regarding water damage and leaks	No mediation, neither party participated
Owner vs AOOU	Dispute over the interpretation of the bylaws and house rules regarding fines and fees	No Agreement
Owner vs Property Management Company	Dispute over the interpretation of the declaration and bylaws regarding water damage and leaks	No mediation, owner withdrew
Owner vs AOOU	Dispute over the interpretation of the bylaws and house rules regarding right of owners to participate in board meetings, access to records, and capital expenditures	No Agreement
Owner vs AOOU	Dispute over the interpretation of the bylaws regarding fees and fines	No mediation, neither party participated
Owner vs AOOU	Dispute over the interpretation of the declaration and bylaws regarding water damage and leaks	No Agreement

Mediation Case Summaries (cont. from page 4)

Lou Chang

Owner vs AOOU	Dispute over the interpretation of the governing documents over insurance and common area damages	No Agreement
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HB-1897-HD-1

Submitted on: 3/2/2026 3:08:32 AM

Testimony for JHA on 3/3/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Paul A Ireland Koftinow	Individual	Support	Remotely Via Zoom

Comments:

I support HB No. 1897 H.D.1, but it needs to be amended to avoid issues in enforcement. I join in the testimony of M. Anne Anderson and urge the Committee to make the changes set forth in her testimony.

Respectfully submitted,

Paul A. Ireland Koftinow