

P.O. Box 976
Honolulu, Hawaii 96808

February 6, 2026

Honorable Jarret Keohokalole
Honorable Carol Fukunaga
Committee on Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **SB 2037 OPPOSE**

Dear Chair Keohokalole, Vice Chair Fukunaga and Committee Members:

CAI opposes SB 2037. The primary reason is that a 25% cap on attorneys' fees would disable associations from collecting common expense assessments and from enforcing the governing documents.

It is fundamental that: "Under Hawaii law, a unit owner has no right to withhold common expense assessments for any reason;" Hawaii Revised Statutes §514B-146(d)(1). Performance of that statutory obligation is essential for a condominium association to exist. Thus, an effective remedy to enforce that obligation is also essential.¹

The obligation to pay common expense assessments is also contractual, because it is contained in the governing documents of an association.² A 25% fee cap would impair existing contracts.

1

[T]he very definition of a contract "is a promise or set of promises for the breach of which the law gives a remedy." Restatement (Second) of Contracts § 1 (1981). A contract purporting to disclaim any meaningful remedy is no contract at all. Cf. *United States v. Pena-Gonzalez*, 62 F.Supp.2d 358, 365 (D.P.R.1999) ("We begin with a fundamental principle of our jurisprudence, *ubi jus ibi remedium*- where there is a right there is a remedy[,] ... [whose] necessary corollary is that a right without a remedy is no right at all."). And the Court would be loath to read a contract as defeating its own existence.

Revel Sys. v. Frisch's Rests., 1:23-cv-507 (S.D. Ohio Apr 02, 2024)

² Per *Harrison v. Casa De Emdeko, Inc.*, 418 P.3d 559 (Haw. 2018):

Generally, the declaration and bylaws of a condominium serve as a contract between the condominium owners and the association, establishing the rules governing the condominium. See *Association of Apartment Owners of Maalaea Kai, Inc. v. Stillson*, 108 Hawai'i 2, 9, 116 P.3d 644, 651 (2005) (citing *Bradford Square Condo. Ass'n v. Miller*, 258 Ga.App. 240, 245, 573 S.E.2d 405, 409 (2002) ("The condominium instruments, including the bylaws and the sales agreement, are a contract that governs the legal rights between the [a]ssociation and unit owners."))).

Honorable Jarret Keohokalole
Honorable Carol Fukunaga
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Page 2 of 2

Those contracts also include requirements that an association must be able to enforce. Indeed, directors have a fiduciary duty to enforce the governing documents of the association. It cannot be that fiduciaries are required to act and lack a necessary remedy to fulfill fiduciary duty.

Ignoring impairment of contract issues,³ two choices exist when a condominium owner defaults in the performance of an obligation. The first choice is to assign the expense of enforcing compliance to the wrongdoer. The second choice is to assign that expense to the innocent consumers who pay an association's expenses.

The latter choice would be unfair, unjust and inequitable. Owners who meet their obligations to an association should not bear the burden and expense of the misconduct of wrongdoers.

SB 2037 also requires a fine to become "collectable" before attorneys' fees may be charged to collect it. SB 2037 does not define the referenced appeal right or procedure related to it. The absence of clarity diminishes the potential utility of an appeal requirement. Language contained in HB 1897 provides a more functional model for addressing this issue.

Please, therefore, defer SB 2037.

CAI Legislative Action Committee, by


Its Chair

³ In Galima v. Ass'n of Apartment Owners of Palm Court, 453 F.Supp.3d 1334 (D. Haw. 2020), the court held a Hawaii condominium law to be unconstitutional:

"Act 282 [2019] therefore is unconstitutional because it violates Plaintiffs' rights under the Contracts Clause of the United States Constitution."



Collection Law Section

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Karyn A. Doi

Vice Chair:

William J. Plum

Secretary:

Charles Prather

Treasurer:

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Directors:

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Charles Prather

Reply to:

KARYN A. DOI, CHAIR

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February 10, 2026

**Re: S.B. 2037 (Relating To Foreclosures)
Hearing: February 13, 2026, 9:30 a.m.
Testimony in Opposition**

Dear Senator Jarrett Keohokalole, Chair, Senator Carol Fukunaga, Vice Chair, and Committee Members:

This testimony is submitted on behalf of the Collection Law Section (“CLS”) of the Hawaii State Bar Association.¹

The CLS **opposes** S.B. 2037.

While this measure appears intended to limit costs to unit owners of condominium associations, it does so in a manner that is vague, arbitrary, and ultimately harmful to condominium associations and their members.

1. Proposed HRS § 514B-157(c): Attorneys’ Fees Related to Fines.

The proposed new subsection (c) prohibits a condominium association from charging attorneys’ fees related to a fine unless the fine is deemed “collectable.” Furthermore, a fine is deemed collectable only if the time to initiate an appeal has expired without an appeal, or if the fine has been upheld following a timely appeal. This provision is **vague and ambiguous**. The measure does not specify:

- The time period within which an appeal must be initiated;

¹ *The comments and recommendations submitted reflect the viewpoint of the Collection Law Section of the Hawaii State Bar Association only. This viewpoint has not been reviewed or approved by the HSBA Board of Directors.*

- Whether the appeal is to the board, a Court, or another body; or,
- What procedures govern the appeal process.

Without this context, condominium associations, unit owners, attorneys, and courts are left to guess at how the provision should be applied. This ambiguity invites inconsistent interpretation, increased disputes, and additional litigation — precisely the opposite of what the statute should accomplish.

If the Legislature intends to condition recovery of attorneys’ fees on the exhaustion of a clearly defined internal appeal process, that process should be **explicitly stated** in the statute. Absent such clarification, this provision should not be adopted.

2. Proposed HRS § 514B-157(d): Twenty-Five Percent Cap on Attorneys’ Fees.

The CLS **strongly opposes** proposed subsection (d), which limits attorneys’ fees charged or awarded under HRS § 514B-157 to twenty-five percent of the underlying claim. The proposed cap should be deleted for the following reasons.

First, the proposed cap is **arbitrary**. There is no articulated rationale for selecting twenty-five percent as a universal limit, regardless of the complexity of the dispute, the conduct of the parties, or the importance of the issue to the association and its members. A flat percentage cap bears no relationship to the actual work required to enforce condominium association governing documents or statutory obligations.

Second, this cap will **shift costs from noncompliant owners to compliant owners**. When attorneys’ fees exceed the statutory cap, the excess will be absorbed by the association and funded through common expense assessments. This means that owners who pay their assessments on time and comply with the rules will subsidize those who do not. **This will result in increases in assessments for owners who are compliant and pay their assessments.** This outcome is inequitable and undermines the fundamental principle that enforcement costs should be borne by the party whose conduct necessitated enforcement.

Third, many enforcement actions are **non-monetary in nature**. Associations frequently seek injunctive relief. In those cases, there may be no “underlying claim” to which a percentage cap can logically apply. The proposed cap would be meaningless in such situations and could effectively bar associations from recovering any attorneys’ fees at all, leaving one hundred percent of the cost to be borne by the community.

Finally, limiting fee recovery in this manner **reduces incentives for compliance** and encourages prolonged disputes. Owners may be more inclined to resist enforcement efforts if they know the association's ability to recover fees is severely constrained.

For these reasons, proposed subsection (d) is unjust and should be removed.

3. Trial De Novo After Arbitration.

Section 2 modifies HRS § 514B-163(d) to impose mandatory cost-shifting if a party demanding a trial de novo fails to improve its position on the arbitration award by thirty percent or more. This provision ignores the fact that not all arbitration awards are monetary in nature. In reality, many condominium arbitrations involve injunctive or declaratory relief, not monetary awards. In those cases, the concept of "improving" one's position by thirty percent is meaningless and unworkable.

The proposed language is ambiguous as to how courts should allocate fees in trial de novo proceedings involving non-monetary claims and departs from the well-understood prevailing party standard, which already provides courts with discretion to achieve equitable outcomes. There is no compelling justification for replacing the existing framework with a rigid percentage-based test that does not fit the nature of many condominium disputes.

4. Conclusion.

S.B. 2037 would impose vague standards, arbitrary fee caps, and rigid cost-shifting rules that unfairly burden condominium associations and, ultimately, their members. Rather than reducing conflict or costs, the bill is likely to increase disputes, discourage compliance, and shift enforcement expenses onto compliant owners.

For the reasons stated above, this measure should be deferred. Thank you for considering this testimony.

Sincerely,

/s/ Christopher Shea Goodwin

/s/ Paul A. Ireland Koftinow

Christopher Shea Goodwin
Paul A. Ireland Koftinow
The Collection Law Section

SB-2037

Submitted on: 2/6/2026 1:01:17 PM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|-------------------------------|---------------------------|------------------------|
| Idor Harris | Testifying for Honolulu Tower | Oppose | Written Testimony Only |

Comments:

Honolulu Tower is a fee simple sprinklered 396 unit condominium located at Maunakea and Beretania Streets. At its meeting on February 2, 2026, the Board of Directors of the Association of Apartment Owners of Honolulu Tower unanimously voted its opposition to this bill.

Among the reasons for its opposition are Page 3, lines 11-14 could be construed as prohibiting an association from recovering attorney's fees when it has 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. There can still be a violation.

The Board recommends you defer this bill.

Idor Harris
Resident Manager

SB-2037

Submitted on: 2/9/2026 7:14:33 AM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|--|---------------------------|---------------------------|
| Mark McKellar | Testifying for Law Offices of Mark K. McKellar, LLLC | Oppose | Written Testimony Only |

Comments:

I oppose SB 2037 for the reasons stated in the testimony of M. Anne Anderson.

Sincerely,

Mark McKellar

SB-2037

Submitted on: 2/9/2026 3:08:39 PM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|--------------------------------------|---------------------------|---------------------------|
| Rachel Glanstein | Testifying for AOA Lakeview Sands | Oppose | Written Testimony Only |

Comments:

Aloha,

I oppose SB 2037 for the reasons stated below:

Section 1 - The word "collectible" as applied to fines and charging attorney's fees is ambiguous and lacks context. It would need clarifying language if this is to be used and enforced. The 25% cap on legal fees makes no sense and unfairly punishes all other owners in that condominium by making them pay 75%, just because of the actions of one owner.

Section 2 - This doesn't make sense, and is unnecessary.

Mahalo,

Rachel Glanstein

SB-2037

Submitted on: 2/10/2026 9:18:55 PM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|----------------|
| Jeff Sadino | Individual | Support | In Person |

Comments:

Committee on Commerce and Consumer Protection

SB 2037 – Attorney Fees For Fines

Friday, February 13, 2026 @ 9:30 AM

My name is Jeff Sadino and I **SUPPORT** this Bill.

Limiting the attorney fee reimbursement for fines to 25% will reduce a demonstrated pattern of overly-aggressive and unnecessary attorney behavior that results in a disproportionate amount of harm compared to the problems they are trying to solve.

At the end of the day, the important thing is that the behavior was corrected, not that the fine (which is just imaginary Association income) was collected. **Importantly, this Bill does not limit other Association remedies (or 100% attorney reimbursement) if the behavior was not corrected.**

NEEDED IMPROVEMENT:

All attorney fees that the Association desires to be paid for by the Owner should be made available to the Owner for review. I think this is how attorney reimbursement works in the regular court system.

Oftentimes, attorneys will co-mingle their charges for fine collection with their charges for correcting the underlying violation. Furthermore, attorney bills are considered “attorney-client” communications and not reviewable by the condo Owner. As such, an Owner has no way to independently verify if the attorney fees that are being claimed for reimbursement will be following the 25% cap imposed by this Bill.

As a real-world example, Hawaiiana and Porter McGuire posted between \$5,000 - \$10,000 of erroneous attorney charges to my account, which they later admitted to and removed after I forced a review of the invoices after they initially refused to provide me the invoices due to “attorney-client” privilege.

Wishlist:

1. It seems like bad faith for Associations to use attorneys charging \$300+/hr to collect a fine when most other fines are collected by a debt collection agency, which retains a portion of the recovered amount as their fee instead of charging an hourly rate.

1. Attorney fees should need a signature from a supervisor at the Managing Agent (or Board President) before being applied to a unit owner. This would increase accountability, reduce disputes from escalating due to poorly-trained Managing Agent employees, and encourage resolution of disputes before involving the attorneys.

Thank you for your work and interest in these issues,

Jeff Sadino

JSadino@gmail.com

TESTIMONY IN OPPOSITION TO SB2037

Being heard by the Senate Committee on Commerce and Consumer Protection on Friday, February 13, 2026 in Room 229.

Aloha Chair Keohokalole, Vice Chair Fukunaga, and Committee Members:

I am a long-time condo owner and am on the Board of my current condo. I am **opposed** to SB2037 because the proposed language would limit the attorneys' fees that an AOAO could charge to an owner that has been found to have violated the condo rules to Twenty-Five percent ("25%"). This would result in the remaining Seventy-Five Percent ("75%") being absorbed by the rest of the condo owners.

This is blatantly unfair! Basically, if this bill passes, the owners who are following the condo rules are made to pay for the actions of a bad actor owner.

Some may argue that the AOAO shouldn't incur these attorneys' fees in the first place. However, sometimes the only way to have a bad actor condo owner to cease and desist his bad behavior, the AOAO needs to get the attorneys involved. I am not saying that the attorneys are the first remedy. Like employment issues, there should be progressive discipline for bad actor condo owners. However, if the behavior does not cease and desist, sometimes the AOAO has no other choice than to get the attorneys involved.

If the Legislature takes away the ability of an AOAO to ensure that all owners are following the rules of the condo, it may result in discord at the condo which would create a uncomfortable environment for all condo owners.

Condos are mini municipalities that need rules to ensure that all are treated fairly and get to enjoy their home in peace. **To make condo owners that are following the rules pay for the bad acts of a few owners is not fair. Therefore, I respectfully request that you defer SB2037.**

Sincerely,

Sandie Wong

SB-2037

Submitted on: 2/5/2026 2:25:47 PM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Julie Sparks | Individual | Oppose | Written Testimony Only |

Comments:

I strongly oppose this measure.

SB-2037

Submitted on: 2/6/2026 11:18:41 AM

Testimony for CPN on 2/13/2026 9:30:00 AM

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

Comments:

I am an owner occupant of a high rise condominium in Honolulu. I respectfully ask that you kill this bill.

Honolulu Tower is a fee simple sprinklered 396 unit condominium located at Maunakea and Beretania Streets. At its meeting on February 2, 2026, the Board of Directors of the Association of Apartment Owners of Honolulu Tower unanimously voted its opposition to this bill.

I oppose Page 3, lines 11-14 which could be construed as prohibiting an association from recovering attorney's fees when it has 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. There can still be a violation even if it is waived. This provision would prohibit the association from recovering attorney's fees that it is entitled to and could lead to an increase in maintenance fees.

Lynne Matusow

SB-2037

Submitted on: 2/7/2026 11:05:13 AM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Lila Mower | Individual | Support | Written Testimony Only |

Comments:

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SB-2037

Submitted on: 2/7/2026 2:46:34 PM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Richard Emery | Individual | Oppose | Written Testimony Only |

Comments:

I am an industry veteran and primarily serve as an expert of association litigation matters for both associations and owners individually.

Most cases do not have monetary damages and address violations of the governing documents. Examples include:

- Owner removal of a load bearing wall in a high rise condominium without approval.
- Owner adding a second illegal kitchen, modifications by an unlicensed contractor that created two units where the second tenant used the guest parking for their unit's use and to the objection of other owners.

The question is who is responsible for the legal fees for enforcement fo the governing documents that is a contract between the association and owners. It should not be the other compliant owners.

Limits of legal fees on fines should be considered in a narrow form. Boards must enforce its documents.

Oppose.

SB-2037

Submitted on: 2/7/2026 4:35:30 PM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Kyra Bronson | Individual | Oppose | Written Testimony Only |

Comments:

I am a board member on a condo association board. I oppose SB 2037 for the reasons stated in the testimony of M. Anne Anderson.

SB-2037

Submitted on: 2/7/2026 5:36:50 PM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Laurence Chapman | Individual | Oppose | Written Testimony Only |

Comments:

I oppose SB 2037 for the reasons stated in the testimony of M. Anne Anderson.

SB-2037

Submitted on: 2/7/2026 5:43:27 PM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|--------------|--------------|--------------------|---------------------------|
| Joe M Taylor | Individual | Oppose | Written Testimony Only |

Comments:

I oppose SB 2037 for the reasons stated below:

1. SECTION 1.

1. HRS Section 514B-157, New Subsection (c).

The new subsection (c) to HRS Section 514B-157 prohibits an association from charging attorneys' fees against a unit owner or tenant with respect to a fine unless the fine is deemed collectible. It states that a fine shall be deemed collectible if:

(1) The time to initiate an appeal has expired and an appeal has not been initiated; or

(2) The fine has been upheld following a timely appeal.

SB-2037

Submitted on: 2/8/2026 11:38:31 PM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Steve Glanstein | Individual | Oppose | Written Testimony Only |

Comments:

Aloha,

The bottom line is that some owners simply don't believe that the Declaration, Bylaws, and House Rules apply to them. The great majority of the owners don't experience any issue here. However, knee capping legal fees for enforcement hurts all owners, increases the unenforceability of rules, and pushes associations closer to simply suing an owner and asking a judge for a court order. There needs to be a balance. That should be a fair appeal process (already required) as well as the mediation and arbitration process which the legislature is currently refining. Suggest more focus on better dispute resolution rather than arbitrary limitations of attorneys' fees.

February 9, 2026

RE: S.B. No. 2037

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Member of the Committee:

I oppose S.B. No. 2037 for the reasons stated below:

A. SECTION 1.

1. HRS Section 514B-157, New Subsection (c).

The new subsection (c) to HRS Section 514B-157 prohibits an association from charging attorneys' fees against a unit owner or tenant with respect to a fine unless the fine is deemed collectible. It states that a fine shall be deemed collectible if:

- (1) The time to initiate an appeal has expired and an appeal has not been initiated; or
- (2) The fine has been upheld following a timely appeal.

This language is vague and ambiguous because it has no context to explain what it means. It appears to have been taken from past bills or other pending bills that reference a "thirty day" time period for appeal "to the board." As written, it offers no clarity on the time period to appeal or to whom the appeal is made. If a provision of this nature is to be adopted, the vague and ambiguous language should be clarified. One possible change would be:

(c) No attorneys' fees shall be charged by an association against any unit owner or tenant with respect to a fine unless the fine is deemed collectible. A fine shall be deemed collectible if:

- (1) The owner or tenant has failed to initiate an appeal of the fine to the board within thirty days; or
- (2) The fine has been upheld by the board following a timely appeal.

2. HRS Section 514B-157, New Subsection (d).

The new subsection (d) provides that no attorneys' fees charged or awarded under Section 514B-154 shall "exceed twenty-five per cent of the amount of the underlying claim." This provision should be deleted for a number of reasons.

First, a 25% cap on fees, without regard to the magnitude or importance of the issue or the impact that the cap will have on an association, is arbitrary. It is a random percentage rather than one based on a legitimate reason. The adoption of an arbitrary cap on fees will not serve any legitimate public

purpose. To the contrary, it will cause unnecessary and unwarranted financial harm to the condominium associations in this state.

Second, a 25% cap will require all owners to bear the cost of attorneys' fees over the 25% cap even though the necessity for incurring such fees lies with a single defaulting owner. The increased financial burden that this bill will place on condominium associations will likely result in increased maintenance fees for all owners. It is the owner who fails to pay assessments or violates the covenants who should bear the financial burden of reimbursing the association for its attorneys' fees. It is highly inequitable to shift the burden upon all owners. It also removes the incentive to owners to pay assessments in a timely manner or to comply with the covenants.

Third, in many cases, attorneys' fees are incurred in the enforcement of covenants that are not monetary in nature. For example, in an action against an owner to remove an unauthorized modification, the relief sought is injunctive relief. There would be no underlying monetary claim. A twenty-five per cent cap would be meaningless in those situations and might end up preventing an association from recovering any fees at all from the owner who breached the covenants. If that happens, then one-hundred per cent of the fees would have to be borne entirely by the association, which is wholly unfair.

The new subsection (d) is arbitrary and unjust. It will impose unnecessary and inequitable financial burdens on condominium associations and their members. It will undoubtedly lead to higher maintenance fees which will lead to widespread disharmony. I urge the committee to delete this change.

B. SECTION 2.

Section 2 modifies HRS Section 514B-163(d) to provide that if a party who demands trial de novo after an arbitration does not improve his position on the arbitration award by thirty per cent or more, then the party should be charged with all reasonable costs, expenses, and attorneys' fees. This presumes that the trial de novo will be on a monetary claim and ignores the fact that many condominium arbitrations involve injunctive relief claims, not monetary claims. The new language regarding improving a position on the arbitration award by thirty per cent or more would not only be meaningless in the context of an injunctive relief award, but it creates uncertainty to whom fees should be awarded in trial de novos of non-monetary claims. There is no compelling reason for the change to subsection (d). I urge the committee to delete this section altogether. At the very least, I urge the committee to keep the prevailing party standard for non-monetary claims and limit the application of the "thirty per cent or more" language to trial de novos on monetary judgments.

Respectfully submitted,



M. Anne Anderson

SB-2037

Submitted on: 2/9/2026 1:18:42 PM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| John Toalson | Individual | Oppose | Written Testimony Only |

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Member of the Committee:

I oppose SB 2037 for the reasons stated below:

A. SECTION 1.

1. HRS Section 514B-157, New Subsection (c).

The new subsection (c) to HRS Section 514B-157 prohibits an association from charging attorneys' fees against a unit owner or tenant with respect to a fine unless the fine is deemed collectible. It states that a fine shall be deemed collectible if:

- (1) The time to initiate an appeal has expired and an appeal has not been initiated; or
- (2) The fine has been upheld following a timely appeal.

This language is vague and ambiguous because it has no context to explain what it means. It appears to have been taken from past bills or other pending bills that reference a "thirty day" time period for appeal "to the board." As written, it offers no clarity on the time period to appeal or to whom the appeal is made. If a provision of this nature is to be adopted, the vague and ambiguous language should be clarified. One possible change would be:

(c) No attorneys' fees shall be charged by an association against any unit owner or tenant with respect to a fine unless the fine is deemed collectible. A fine shall be deemed collectible if:

- (1) The owner or tenant has failed to initiate an appeal of the fine to the board within thirty days; or
- (2) The fine has been upheld by the board following a timely appeal.

2. HRS Section 514B-157, New Subsection (d).

The new subsection (d) provides that attorneys' fees charged or awarded under Section 514B-154 "shall not exceed twenty-five per cent of the amount of the underlying claim." This provision should be deleted for a number of reasons.

First, a 25% cap on fees, without regard to the magnitude or importance of the issue or the impact that the cap will have on an association, is arbitrary. It is a random percentage rather than one based on a legitimate reason. The adoption of an arbitrary cap on fees will not serve any legitimate public purpose. To the contrary, it will cause unnecessary and unwarranted financial harm to condominiums associations in this state.

Second, a 25% cap will require all owners to bear the cost of attorneys' fees over the 25% cap even though the necessity for incurring such fees lies with a single defaulting owner. The increased financial burden that this bill will place on condominium associations will likely result in increased maintenance fees for all owners. It is the owner who fails to pay assessments or violates the covenants who should bear the financial burden of reimbursing the association for its attorneys' fees. It is highly inequitable to shift the burden upon all owners. It also removes the incentive to owners to pay assessments in a timely manner or to comply with the covenants.

Third, in many cases, attorneys' fees are incurred in the enforcement of covenants that are not monetary in nature. For example, in an action against an owner to remove an unauthorized modification, the relief sought is injunctive relief. There would be no underlying monetary claim. A twenty-five per cent cap would be meaningless in those situations and might end up preventing an association from recovering any fees at all from the owner who breached the covenants. If that happens, then one hundred per cent of the fees would have to be borne entirely by the association, which is wholly unfair.

The new subsection (d) is arbitrary and unjust. It will impose unnecessary and inequitable financial burdens on condominium associations and their members. It will undoubtedly lead to higher maintenance fees which will lead to widespread disharmony. I urge the committee to delete this change.

B. SECTION 2.

Section 2 modifies HRS Section 514B-163(d) to provide that if a party who demands trial de novo after an arbitration does not improve his position on the arbitration award by thirty per cent or more, then the party should be charged with all reasonable costs, expenses, and attorneys' fees. This presumes that the trial de novo will be on a monetary claim and ignores the fact that many condominium arbitrations involve injunctive relief claims, not monetary claims. The new language regarding improving a position on the arbitration award by thirty per cent or more would not only be meaningless with regard to awards of injunctive relief, but it creates uncertainty to whom fees should be awarded in trial de novos of non-monetary claims. There is no compelling reason for the change to subsection (d). I urge the committee to delete this section altogether. At the very least, I urge the committee to keep the prevailing party standard for non-monetary claims and limit the application of the "thirty per cent or more" language to trial de novos on monetary awards.

John Toalson

SB-2037

Submitted on: 2/10/2026 6:30:12 AM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Lance S. Fujisaki | Individual | Oppose | Written Testimony Only |

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Member of the Committee:

I oppose SB 2037 for the reasons stated in the testimony of M. Anne Anderson.

Thank you,

Lance Fujisaki

SB-2037

Submitted on: 2/10/2026 1:54:30 PM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Marcia Kimura | Individual | Support | Written Testimony Only |

Comments:

I support mostly the restriction of total legal fees to 25% of the original sums owed, but believe this lacks provisions against unwarranted legal fees that associations owe, and try to collect from owners, when boards representing their associations actually owe the fees resulting from their hiring the attorneys, for other than delinquent common dues collections.

SB-2037

Submitted on: 2/10/2026 3:40:33 PM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| mary freeman | Individual | Oppose | Written Testimony Only |

Comments:

I oppose this bill. In particular 514-157 (c) (d). This is not clearly written. Capping fees, vague references to '30 day periods' without clarifying who is declaring the time period. Etc...

Try again!

Mary Freeman

Ewa Beach

SB-2037

Submitted on: 2/10/2026 5:54:38 PM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Pamela J. Schell | Individual | Oppose | Written Testimony Only |

Comments:

I oppose SB 2764 for the reasons stated in the testimony of M. Anne Anderson.

SB-2037

Submitted on: 2/10/2026 8:03:36 PM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|-----------------|--------------|--------------------|------------------------|
| Sheldon S Y Lee | Individual | Support | Written Testimony Only |

Comments:

TO: Hawaii State Legislators

FROM: Sheldon S Y Lee

Re: My testimony on SB2037

Hawaii Revised Statutes 514B-157 does not explicitly limit attorney’s fees in condominium cases to 25 percent of the original claim.

Here is an example. A condominium board takes an action without consulting the owners. An owner raises questions at a meeting. The association’s attorney, on behalf of the board, sends the owner a letter, assessing a fine for “aggressive behavior.”

Within two weeks, the owner writes a reply to the board and three weeks later, she receives a bill for the original amount plus thousands of dollars more in late fees. The owner is a senior on a fixed income. The longer she goes without paying, the more the fees increase.

Please see “Slam the Brakes on Runaway Legal Fees Charged by Condo Boards,” an op-ed in *Civil Beat*, January 26, 2024.

The board in that article acted as judge and jury in assessing thousands of dollars in fees for “aggressive behavior.” Any board could do that to any owner who questions its actions. Presumably, the fees would include attorney’s fees.

As the same owner wrote in another op-ed, “Condo Owners May Not Know They Have New Power,” *Civil Beat*, January 16, 2019,

“There is no justification whatsoever for allowing unlimited legal charges from condo debt collectors, when other collectors are bound by 25 percent limits. These runaway fees have cost some condo owners their homes, even when the original base amounts owed were just a small fraction of the legal fees alone!”

The bill would also prevent attorney’s fees from being charged to owners until appeals are over.

I do not know why the bill states that a party who requests a trial de novo must improve on an arbitration award by thirty percent or more, or be charged with all costs.

Thank you for your concern for condominium owners.

SB-2037

Submitted on: 2/10/2026 9:31:12 PM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|----------------|--------------|--------------------|------------------------|
| Jessica Herzog | Individual | Oppose | Written Testimony Only |

Comments:

Testimony in Opposition – S.B. 2037

Aloha Chair and Members of the Committee,

I respectfully oppose S.B. 2037 as currently drafted.

While I understand the intent to preserve associations’ ability to collect valid money judgments, this bill introduces language that could create unintended and harmful consequences for condominium owners who are actively attempting to pay down debt.

The proposed “notwithstanding any other provision” clause allows associations to apply payments to unpaid judgment interest and principal before curing current common expense assessments. This undermines the structured payment allocation system currently in statute.

Under this framework, an owner could make consistent payments in good faith, yet remain technically delinquent on current assessments because payments are diverted to older judgment interest. That creates a payment trap. Current assessments could continue to accrue late fees, interest, and enforcement costs even while the owner is paying.

This structure risks compounding delinquency rather than resolving it. It may also incentivize aggressive allocation practices that prolong enforcement instead of encouraging rehabilitation of the account.

Condominium law must protect paying owners from subsidizing chronic nonpayment. However, it must also ensure that payment allocation does not create artificial default conditions.

If the Legislature wishes to proceed, I strongly recommend amendments requiring that current common expenses be brought current before payments are applied to judgment principal, along with mandatory written disclosure of payment allocation.

Without such safeguards, S.B. 2037 shifts the balance too far toward punitive collection rather than financial stabilization.

For these reasons, I respectfully oppose the bill as drafted.

Mahalo for your consideration.

Jessica Herzog
Condo Owner, Waianae
aloha@localparliamentarian.com

SB-2037

Submitted on: 2/10/2026 11:08:47 PM

Testimony for CPN on 2/13/2026 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|-------------------------|---------------------|---------------------------|------------------------|
| Primrose Leong-Nakamoto | Individual | Oppose | Written Testimony Only |

Comments:

Dear Senator Keohokalole, Senator Fukunaga, and Committee Members:

I oppose SB 2037 for the following reasons:

A. Section 1

1. Subsection (c) The definition of when a fine becomes “collectable” is unclear. It does not specify the appeal deadline or who hears the appeal. If this language is kept, it must be clarified—for example, stating that an owner has 30 days to appeal to the board, or that the fine is collectable if upheld after a timely appeal.

2. Subsection (d) The proposed 25% cap on attorneys’ fees should be removed because:

- It is arbitrary and does not reflect the real cost or seriousness of enforcement.
- It shifts excess fees onto all owners, raising maintenance fees and reducing incentives to comply.
- Many enforcement actions involve non-monetary issues (e.g., unauthorized alterations), making a percentage cap unworkable and potentially preventing associations from recovering any fees.

This subsection is unfair and harmful to associations and should be deleted.

B. Section 2

The “30% improvement” rule for trial de novo assumes monetary claims. Many condominium disputes involve injunctive relief, where this standard does not apply and creates confusion about fee awards. There is no strong justification for this change. The section should be removed, or at minimum, the 30% rule should apply only to monetary claims, with the prevailing-party standard kept for non-monetary cases.

LATE

TESTIMONY - COMMENTS FOR SB2037

Committee on Commerce and Consumer Protection (CPN)

DATE: Friday, February 13, 2026
TIME: 9:30 AM
PLACE: Conference Room 229
& VIDEOCONFERENCE
State Capitol
415 South Beretania Street

From: Gregory Misakian (as an individual)

Submitted: 2/12/26

Aloha Chair, Vice Chair, and Members of the CPN Committee,

SB2037, as written, may or may not help condominium owners, but attorneys will still be profiting from the many condominium disputes that arise each year.

To address the real needs of condominium owners in Hawaii, without either side having to waste money on attorneys, please read on.

My Background

I currently serve as:

- ❖ President, Kokua Council
- ❖ Vice President, Hawaii Alliance for Retired Americans (HARA)
- ❖ Director, Keoni Ana AOA

I previously served on the Waikiki Neighborhood Board from Jan. 2023 to June 2025.

I have been advocating for condominium owners in Hawaii since 2021, when I realized how bad things were here as an owner and from speaking with many other owners. I have a good understanding of HRS 514B and associated laws that govern condominium associations and management companies that oversee them. I also have experience with condominium issues in California for many years as Power of Attorney

for a condominium owner in San Francisco, and have a good understanding of California's Davis-Stirling laws.

I have previously provided numerous testimony to the Legislature, along with others, that mediations in Hawaii for condominium disputes are not working. Mediations cost money, take time, and the majority of mediations from data reported by the DCCA have been unsuccessful. Many homeowners are also reluctant to engage in mediation knowing this, and also knowing that they may be retaliated against. And I also have first hand experience in Hawaii with a condominium related mediation, so I fully understand the process, the expense, and the wasted time with unsuccessful results.

The path forward, and the only path forward to properly address the problem facing Hawaii, is to enact an **Ombudsman's Office for Condominium Owners and Associations**.

**BACKGROUND INFO
AND
REQUEST I RECENTLY SENT TO EVERY STATE LEGISLATOR**

With the passing of Act 189 in 2023, the Hawaii State Legislature recognized that Hawaii has numerous unresolved issues related to disputes within condominium associations that require better laws to protect the public from unwarranted assessments, fines, legal fees, and retaliation.

Act 189 established a Condominium Property Regime (CPR) Task Force to study and make recommendations on issues within Hawaii's condominium laws, including disputes, board governance, and dispute resolution, with reports due to the legislature. The CPR Task Force published their formal findings and recommendations to the Legislature in December of 2023, and the Legislature passed on the baton to the Legislative Reference Bureau in the 2024 session with the passing of Act 43, which provided funding for a study and research report on condominium issues and how they are addressed in five pre-selected States (California, Delaware, Florida, Massachusetts, and Nevada). This report, at a cost of over \$300,000, was published in November 2025 and confirmed that some States have Ombudsman's Offices to assist the public with disputes, and some have additional enforcement elements. Ironically, this report did not include a review of Hawaii, which begs the question why not.

What is well known from years of testimony, numerous reports previously published, the December 2023 CPR Task Force report, and the Legislature via Act 189 (2023) and Act

43 (2024), is that the current structure in Hawaii to address condominium issues and disputes is not working. Hawaii urgently needs to shift to a better and more consumer friendly model, or face continuing discourse, more unnecessary condominium related litigation, and more homeowners at risk of losing their homes or facing unaffordable legal fees.

Better consumer protections are needed to ensure that condominium associations, their Boards, and their Managing Agents are compliant with the laws that govern condominium associations, including governing documents and HRS 514B statutes.

It is time for Hawaii to establish an Ombudsman's Office for Condominium Owners and Associations.

**RESULTS OF MY REACH OUT, WHICH WAS DONE IN JUST ONE WEEK
(From opening day of the 2026 session, Wed. 1/21, to Wed. 1/28.)**

Two Bills: HB2453 and SB3309

My draft preamble and proposed language was simple, and without impacting major changes to current statutes or requiring any State funding. Funding is via a small increase in the Condominium Education Trust Fund fee that all registered condominium associations pay into.

**MY CONCERNS AND REQUESTS TO THE CPR TASK FORCE
AND THE CPC COMMITTEE**

The CPR Task Force should be respectful of their duties, and also respectful to those legislators who enacted a law to convene the Task Force, representing thousands of condominium owners throughout Hawaii.

On agenda at the 1/30/26 CPR Task Force meeting, which I attended, were three draft meeting minutes from 2023 pending approval, and only placed online as a link to the drafts a short time prior to the meeting. This is unacceptable and does not give me or the public a good feeling regarding responsibilities of the Chair and others on the Task Force, and raises concerns regarding transparency. Not surprising, these three meeting minutes from over 2 years ago were still not approved at the 1/30/26 meeting. I am also unable to find a link to testimony I and others submitted to the Task Force.

To the Chair of the CPR Task Force, who did not convene a meeting of the Task Force prior to the start of the 2026 legislative session, and prior to the deadline to introduce legislation, the clear and obvious question is why not? This Task Force had an opportunity to meet and provide inputs prior to the 2026 session. You had the findings of the Legislative Reference Bureau's 5 State report since November of last year.

As we sadly watch the unrest in the State of Minnesota, where two sides disagree and there is conflict, it should be noted that **the State of Minnesota enacted legislation last year to create an Ombudsman's Office for condominium disputes.**

The Common Interest Community Ombudsperson is established under Minnesota Statutes, section 45.0137. This law creates the position within the Minnesota Department of Commerce to:

- 1. Assist unit owners, tenants, and associations in understanding their rights and responsibilities under Minnesota Statutes, Chapter 515B (the Minnesota Common Interest Ownership Act) and their governing documents.*
- 2. Facilitate informal resolution of disputes between unit owners and associations.*

I am requesting that the CPR Task Force, the CPN Committee, and our legislators please act, and with urgency, on the issues and concerns that need attention and the clear and correct legislation that is needed now.

The State of Hawaii urgently needs an Ombudsman's Office for condominium owners and associations, and numerous States with many condominiums and many complaints have recognized this and have Ombudsman's Offices.

Respectfully,

Gregory Misakian