

# HB61 HD1

Measure Title: RELATING TO CONDOMINIUMS.  
Report Title: Condominium Associations; Common Expense Payments  
Description: Authorizes condominium boards of directors to establish application schedules for excess amounts received. Specifies that the excess amounts shall be applied to fines, legal fees, late fees, and interest last. (HB61 HD1)  
Companion:  
Package: None  
Current Referral: CPH  
Introducer(s): TAKUMI, ICHIYAMA

**HB-61-HD-1**

Submitted on: 3/9/2019 11:20:24 AM

Testimony for CPH on 3/12/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard Emery	Testifying for Community Associations Institute	Support	Yes

Comments:

This Bill clarifies the board;s right to establish allocation of payments AFTER application first to common expenses. It does not alter the intent of Act 195. It also insures that the last application is to legal and late fees.

The Bill is very important as we live in an electronic world where typically a single check is mailed to the association's bank lock box and payments electronically applied to an owner's ledger in a specific order. Owners today pay for many fees that are not common expenses to include ground lease rent, utility sub-metering, storage lockers, parking stalls, boat slips, insurance deductibles, HO6 policies, among many others.

This Bill allows a board of directors to establish an application of payment policy for non common expenses after mandatory application to common expenses first. Industry attorneys have opined that currently Act 195 is vague with respect to non common expenses and without such clarification the association could be subject to dispute.

This Bill is very important to the industry.

**HB-61-HD-1**

Submitted on: 3/8/2019 1:49:07 PM

Testimony for CPH on 3/12/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jane Sugimura	Testifying for HI Council of Assoc. of Apt. Owners	Support	No

Comments:



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# HONOLULU TOWER

60 N. Beretania Street • Honolulu, HI 96817  
Phone (808) 531-9090 • Fax (808) 534-1870  
<http://www.honolulutower.org> • [htmanager01@gmail.com](mailto:htmanager01@gmail.com)

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March 11, 2019

## **TESTIMONY ON HB61, HD1, RELATING TO CONDOMINIUMS, SENATE COMMITTEE ON CPH, MARCH 12, 2019**

Honolulu Tower is a 396 unit condominium, built in 1982. The Board of Directors of the Honolulu Tower Association of Apartment Owners voted unanimously at its February 4, 2019 meeting to support this bill.

There were unintended consequences when priority of payments were ended in 2018. Electricity is submetered in our condominium, whereby each unit is billed for actual usage. This means that the electric bill is not based on assessments or maintenance fees. Bills range from forty or fifty dollars a month to the hundreds, based on the unit's usage. By eliminating the priority of payments scheme from HRS 514B, Act 195 impairs the ability of AOAOs to collect submetered utility bills. Submetering has been promoted as a means to promote resource conservation, by giving individual residents responsibility to pay for their own utility consumption. In order to collect utility costs, AOAOs may be forced to abandon utility submetering and go back to collecting the utility costs as common expenses.

We appreciate that the HD1 now mentions on page 3, line 3, “ (4) Metered utilities assessed to all owners.” However, that does not address our situation, and that of other associations that submeter utilities to save owners money. We respectfully request that you amend the language to read “Metered and submetered utilities. (New language is underlined.) Without this additional language we will be unable to collect the funds.

We need the relief this bill would provide.

Honolulu Tower Association of Apartment Owners Board of Directors

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**HB-61-HD-1**

Submitted on: 3/9/2019 12:02:53 PM

Testimony for CPH on 3/12/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Robert Godbey	Individual	Support	No

Comments:

I write in support of HB61, which has been passed by the House and is now before your committee in the Senate. HB61 corrects an unintended consequence of Hawaii Act 195-2018.

Hawaii Act 195-2018 was enacted last year for the stated purpose of facilitating clear and effective rules related to association foreclosures on condominiums. Unfortunately, one surprising result of that act was to create some confusion with regard to the general payment of association maintenance fees and sub-metered utility fees by the great majority of association members who pay their bills on time. I am on the board of directors of our condominium and we have been advised by counsel of this problem.

HB61, which has passed the House and is now going to the Senate, corrects this. (It adds to Section 514B-105 subsection (c) and lays out the order payments to an association will be applied.)

I respectfully urge your favorable consideration of HB61.

Very truly yours,  
Robert Carson Godbey  
Director  
Association of Apartment Owners of the  
Queen Victoria Residences, Inc.

**HB-61-HD-1**

Submitted on: 3/9/2019 10:39:48 AM

Testimony for CPH on 3/12/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
lynne matusow	Individual	Support	No

Comments:

Please accept this testimony as strong support for HB61, HD1. I live in a condominium with 396 units. Our electricity has been submetered since the mid 1980s. We buy electricity in bulk from Hawaiian Electric and then bill the units based on their individual consumption. This results in a savings on the electric rate. However, the current law prohibits us from collecting these fees causing us to lose out on funds. These are not a common expense. If the unit owner were paying Hawaiian Electric and they were in default, they could lose service. We cannot do anything because these are not common expenses. We have units where the electric bill, based on their consumption, runs into the hundreds of dollars. It is important that the law be revised, to allow us to collect these as well as other fees.

However, I believe line 3 on page 3 needs further clarification. It says metered utilities assessed to owners. We have submetering, and under it each owner pays their share of the electricity they have actually used. Some pay less than \$50, others pay in the hundreds. The discrepancy is the actual usage. We have owners who use their air conditioning 24/7, owners with wine coolers which use a lot of energy, owners with other high use products. Submetering ensures each user pay its fair share instead of penalizing those consuming little energy by having them subsidize the high users. An easy fix would be to say Metered and submetered utilities assessed to owners, adding the words and submetered. Without this change we would be in the same pickle.

Attorneys are not united as to whether we can collect these fees as the law is now written. Please clarify the language and do it sooner rather than later. If this bill can be enacted into law before end of session that would really help us out.

Lynne Matusow

**HB-61-HD-1**

Submitted on: 3/11/2019 3:43:31 AM

Testimony for CPH on 3/12/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leimomi Khan	Individual	Support	No

Comments:

**HB-61-HD-1**

Submitted on: 3/11/2019 8:45:16 AM

Testimony for CPH on 3/12/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Anne Anderson	Individual	Support	No

Comments:

Dear Senator Baker, Chair, Senator Stanley Chang, Vice Chair, and Members of the Committee:

I am submitting this testimony in SUPPORT of H.B. 61. The intent of this measure is to resolve confusion caused by Act 195 of the 2018 Hawaii Session Laws by confirming that condominium associations are allowed to apply payments to unpaid amounts which associations are legally entitled to collect under their project documents and Hawaii Revised Statutes.

While I support this measure, it should be revised as follows:

A problem with this bill is that it purports to classify the items listed in subparagraphs (1) - (6) as common expenses. This new definition of common expenses appears to include items that would not normally be considered common expenses. Per HRS Section 514B-41, common expenses shall be charged to the unit owners in proportion to the common interest appurtenant to their units, except as provided in the declaration or bylaws. Not all of the charges in subparagraphs (1) - (6) would typically be charged based on common interest. For example, many metered utilities are submetered and charged based on actual usage. Ground lease rent would seldom be a common expense, and is often merely a "pass thru" charge collected by the association and paid to the ground lessor. Master association dues are sometimes defined in the declaration as common expenses, but other times these are merely pass thru charges where the association pays to the master association only the funds that it collects. Accordingly, the reference to the items in subparagraphs (1) - (6) as common expenses would in some instances be in conflict with HRS Section 514B-41. Inconsistent definitions in the same statutory chapter should be avoided.

I suggest that the committee reword this bill to do away with the complicated language and replace it with a simplified provision that should accomplish the intended purpose of the section. Suggested language is as follows:

(c) Any payments made by or on behalf of a unit owner shall first be applied to outstanding common expenses which are assessed to all unit owners in proportion to the common interest appurtenant to their respective units and, only after said outstanding common expenses have been paid in full, may the payments be applied to



other charges owed to the Association, including unpaid late fees, legal fees, fines, and interest in accordance with an application of payment policy adopted by the board; provided, however, that if an owner has designated that any payment is for a specific charge that is not a common expense as described above, the payment may be applied in accordance with the owner's designation even if common expenses remain outstanding.

Respectfully submitted,

M. Anne Anderson

**HB-61-HD-1**

Submitted on: 3/11/2019 8:46:33 AM

Testimony for CPH on 3/12/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lance S. Fujisaki	Individual	Support	No

Comments:

Dear Senator Baker, Chair, Senator Stanley Chang, Vice Chair, and Members of the Committee:

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I would suggest that the committee reword this bill to do away with the complicated language and replace it with a simplified provision that should accomplish the intended purpose of the section. Suggested language is as follows:

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other charges owed to the Association, including unpaid late fees, legal fees, fines, and interest in accordance with an application of payment policy adopted by the board; provided, however, that if an owner has designated that any payment is for a specific charge that is not a common expense as described above, the payment may be applied in accordance with the owner's designation even if common expenses remain outstanding.

Respectfully submitted,

Lance Fujisaki

Dear Senator Baker, Chair, Senator Stanley Chang, Vice Chair, and Members of the Committee:

I am submitting this testimony in SUPPORT of H.B. 61. The intent of this measure is to resolve confusion caused by Act 195 of the 2018 Hawaii Session Laws by confirming that condominium associations are allowed to apply payments to unpaid amounts which associations are legally entitled to collect under their project documents and Hawaii Revised Statutes.

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I would suggest that the committee reword this bill to do away with the complicated language and replace it with a simplified provision that should accomplish the intended purpose of the section. Suggested language is as follows:

(c) Any payments made by or on behalf of a unit owner shall first be applied to the unit owner's share of outstanding common expenses which are assessed to all unit owners in proportion to the common interest appurtenant to their respective units and, only after the unit owner's share of outstanding common expenses have been paid in full, may the payments be applied to other charges owed to the Association, including unpaid late fees, legal fees, fines, and interest in accordance with an application of payment policy adopted by the board; provided, however, that if an owner has designated that any payment is for a specific charge that is not a common expense as described above, the payment may be applied in accordance with the owner's designation even if common expenses remain outstanding.

Respectfully submitted,

/s / *Pamela J. Schell*

**HB-61-HD-1**

Submitted on: 3/11/2019 8:55:35 AM

Testimony for CPH on 3/12/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Paul A. Ireland Koftinow	Individual	Support	Yes

Comments:

Dear Senator Baker, Chair, Senator Stanley Chang, Vice Chair, and Members of the Committee:

I am submitting this testimony in SUPPORT of H.B. 61. The intent of this measure is to resolve confusion caused by Act 195 of the 2018 Hawaii Session Laws by confirming that condominium associations are allowed to apply payments to unpaid amounts which associations are legally entitled to collect under their project documents and Hawaii Revised Statutes.

While I support this measure, it should be revised as follows:

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I would suggest that the committee reword this bill to do away with the complicated language and replace it with a simplified provision that should accomplish the intended purpose of the section. **Suggested language is as follows:**

**(c) Any payments made by or on behalf of a unit owner shall first be applied to *the unit owner's share* of outstanding common expenses which are assessed to all unit owners in proportion to the common interest appurtenant to their**

**respective units and, only after *the unit owner's share* of outstanding common expenses have been paid in full, may the payments be applied to other charges owed to the Association, including unpaid late fees, legal fees, fines, and interest in accordance with an application of payment policy adopted by the board; provided, however, that if an owner has designated that any payment is for a specific charge that is not a common expense as described above, the payment may be applied in accordance with the owner's designation even if common expenses remain outstanding.**

Please note: The above language is different from what others have suggested, in that it clarifies that the payments received from a unit owner will first be applied to *the unit owner's share* of common expense assessments.

Respectfully submitted,

Paul A. Ireland Koftinow

**HB-61-HD-1**

Submitted on: 3/11/2019 8:46:18 AM

Testimony for CPH on 3/12/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Philip L. Lahne	Individual	Support	No

Comments:

Dear Senator Baker, Chair, Senator Stanley Chang, Vice Chair, and Members of the Committee:

I am submitting this testimony in SUPPORT of H.B. 61. The intent of this measure is to resolve confusion caused by Act 195 of the 2018 Hawaii Session Laws by confirming that condominium associations are allowed to apply payments to unpaid amounts which associations are legally entitled to collect under their project documents and Hawaii Revised Statutes.

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Respectfully submitted,

Philip L. Lahne



**HB-61-HD-1**

Submitted on: 3/11/2019 10:09:50 AM

Testimony for CPH on 3/12/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
R Laree McGuire	Individual	Support	No

Comments:

**HB-61-HD-1**

Submitted on: 3/11/2019 12:17:58 PM

Testimony for CPH on 3/12/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jonathan Billings	Individual	Support	No

Comments:

**HB-61-HD-1**

Submitted on: 3/11/2019 10:02:13 PM

Testimony for CPH on 3/12/2019 9:00:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tim Aplcella	Individual	Support	No

Comments:

Please support HD61 HD1 to reverse the unintended problems Act 195 (2018) created for condominium associations.

Thank you for your consideration.

Tim Apicella

Condo Owner/Board Director