

HB

61

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the changes made by
2 Act 195, Session Laws of Hawaii 2018, were designed to provide
3 greater clarity and certainty in the application of common
4 expense payments by condominium unit owners. Specifically, the
5 Act clarified that condominium associations must apply common
6 expense payments to common expenses owed first, or to fines or
7 fees if indicated by the payee.

8 However, the Act did not address situations that require
9 the application of funds beyond common expenses. This has
10 resulted in confusion by association boards of directors in
11 allocating the priority of payments paid in excess of common
12 expenses owed.

13 Therefore, the purpose of this Act is to standardize and
14 provide clarity to condominium boards and owners on how an
15 association shall allocate a payment that is made in excess of
16 common expenses owed.



1 SECTION 2. Section 514B-105, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) No association shall deduct and apply portions of
4 common expense payments received from a unit owner to unpaid
5 late fees, legal fees, fines, and interest (other than amounts
6 remitted by a unit in payment of late fees, legal fees, fines,
7 and interest) [-]; provided that if a unit owner is not
8 delinquent as to common expense payments or the payment made is
9 in excess of the amounts owed under this subsection, then the
10 funds received may be applied to the unit owner account in the
11 following priority:

- 12 (1) Sub-metered utilities, if any;
- 13 (2) Special assessments;
- 14 (3) Reserve contributions;
- 15 (4) Regular assessments;
- 16 (5) Locker, parking, or other fees, if any;
- 17 (6) H06 policy, if paid by the association;
- 18 (7) Insurance deductible assessment by the association;
- 19 (8) Legal fees;
- 20 (9) Fines; and
- 21 (10) Late fees."



H.B. NO. 61

1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect upon its approval.

4

INTRODUCED BY:

Beak

Linda L. Chizama

JAN 17 2019



H.B. NO. 61

Report Title:

Condominium Associations; Common Expense Payments; Priority of Payment Application

Description:

Establishes the priority to be applied to a common expense payment by a unit owner that is made in excess of common expense payments owed.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



HB-61

Submitted on: 1/31/2019 7:12:45 PM

Testimony for CPC on 2/5/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jane Sugimura	HI Council of Assoc. of Apt. Owners a	Support	No

Comments:

This bill clarifies the intent of Act 195 and need to be enacted to resolve confusion in the industry as to implementation of that law

HAWAII LEGISLATIVE
ACTION COMMITTEE


community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

January 31, 2019

Chair Roy M. Takumi
Vice Chair Linda Ichiyama
Committee on Consumer Protection & Commerce
415 South Beretania Street
Honolulu, Hawaii 96813

Re: HB61/SUPPORT

Dear Chair Takumi, Vice Chair Ichiyama, and Committee Members:

This testimony in favor of HB61 with amendments is submitted on behalf of the Community Associations Institute ("CAI") Legislative Action Committee.

Last year's Act 195 properly required that owner payments be first applied to common expenses. There were unintended consequences as to other payments more than common expenses made by owners. Most associations receive owner payments through a bank lock box and software allocates the payment in an "application of payment" order. Many associations have other potential unit assessment due by owners to include ground lease rent, insurance deductible, storage lockers, metered utilities and cable, purchase of an HO6 policy, etc. This Bill allows the board to apply payments more than common elements payments by establishing an application schedule.

There are many types of charges and a broader definition is appropriate. In all cases, fines, legal fees, and late fees will be the last application.

We suggest the following amendment to the Bill:

Section 3. Section 514B-105, Hawaii Revised Statutes, is amended by amending subsection (C) to read as follows:

"(C) No Association shall deduct and apply portions of common expense payments received from a unit owner to unpaid late fees, legal fees, fines, and interest (other than amounts remitted by a unit in payment of late fees, legal fees, fines and interest). Common expense assessments include but are not limited to:

(1) Maintenance and reserve contributions assessed to all owners

- based on each owner's percentage of common interest ("PCI");
- (2) Special assessments assessed to all owners;
 - (3) Bulk cable or Wi-Fi services assessed to all owners;
 - (4) Metered utilities assessed to owners based on PCI;
 - (5) Ground lease rent; and
 - (6) Master Association dues collected by a sub-association.

~~(1) If a unit owner is current or the payment made is more than the amounts owed in Section (C), then the funds received may be applied to the unit owner account under the following priority.~~

~~a. Sub-metered utilities, if any;~~

~~b. Special assessments that are not based on PCI and are not assessed to all owners, including assessments for damage caused to the common elements;~~

~~c. Locker, parking, and other similar fees, if any, assessed to an owner for renting a space within the condominium project;~~

~~d. HO6 policy payments, if paid by the association and to be reimbursed by the owner;~~

~~e. Insurance deductible assessment by the association;~~

~~f. Return check fees;~~

~~g. Legal fees;~~

~~h. Fines; and~~

~~i. Late fees;~~

If a unit owner is current or the payment made is more than the amounts owed in Section (C), then the funds received may be applied to the unit owner account based on a written application of payment policy adopted by the board of directors. In all cases, fines, legal fees, late fees, and interest shall be the last priority."

CAI represents the condominium industry, and respectfully requests the Committee to pass HB 61 as amended.

Very truly yours,

Richard Emery

Richard Emery
Co-Chair, CAI LAC

HB-61

Submitted on: 2/4/2019 11:55:49 AM

Testimony for CPC on 2/5/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mark McKellar	Law Offices of Mark K. McKellar, LLLC	Support	No

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, 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:

The meaning of “in excess of the amounts owed under this subsection” in line 9 of this measure is confusing. It should be amended to clarify that condominium associations may apply a payment made in excess of the unpaid balance of common expense assessments, such as maintenance fees (also known as regular common assessments), special assessments, and reserve contributions. The reference to special assessments (other than those that are not charged as a common expense), reserve assessments, and regular assessments should not be listed in paragraphs 2, 3, and 4 because they are common expenses.

The word “owner” in line 10 should be amended to say “owner’s.”

This measure lists several specific categories of balances which might be due to an association. There are likely to be other balances which are missing from this list, such as interest. As such, this measure should include an additional category of “all other unpaid balances” as a catch all category.

If an association obtains a judgment against an owner, the law should clarify that an association may apply payments received from an owner to the balances due on the judgment.

Please consider revising HRS Section 514B-105(c) to read as follows:

1. (c) No association shall deduct and apply portions of common expense payments received from a unit owner to unpaid late fees, legal fees, fines, and interest (other than amounts remitted by a unit in payment of late fees, legal fees, fines, and interest); *that if a unit owner is not delinquent as to common expense payments or the payment made is in excess of the unpaid balance of common expense assessments, such as maintenance fees (also known as regular common assessments), special assessments, and reserve contributions on the unit owner's account, then the funds received may be applied to the unit owner's account in the following priority, as applicable:*

(1) Amounts due under a judgment entered in favor of the association, including, without limitation, interest and principal;

(2) Sub-metered utilities;

(3) Special assessments that are not charged as common expenses;

(4) Locker, parking, or other fees;

(5) HO6 policy, if paid by the association;

(6) Insurance deductible assessment by the association;

(7) Legal fees;

(8) Fines;

(9) Late fees; and

(10) All other unpaid balances.

Respectfully submitted,

Mark McKellar

Testimony for
Committee on Consumer Protection & Commerce
Tuesday, February 05, 2019, 2:00 p.m. Room 329

Representative Roy M. Takumi, Chair
Representative Linda Ichiyama, Vice Chair

HB 61 Relating to Condominiums

Dear Chair Takumi and Members of the Committee:

This testimony is in SUPPORT of HB61 which establishes the priority to be applied beyond a common expense payment by a unit owner. When the law was changed that funds would go to the payment of maintenance fees first from a delinquent owner, this left the other common expenses or special expenses provided to owners without a standard for their payment. The law was unclear, and left many associations asking their attorneys how do we divide the payment from a delinquent owner.

I live in Honolulu Tower and am on the Board of Directors. The expenses that sometimes now take a period of time to pay are the sub-metered utilities, legal fees, and fines, as mostly likely the owner is delinquent on the maintenance fees also. With this bill, it will be possible for an option to not have the unpaid utilities, legal fees, and fines paid by the other owners as an additional expense while the association works with the delinquent owner to have everything paid. It will be clear as to what is applied when there are funds beyond the maintenance fees.

I humbly ask that you support HB61. Mahalo!

Me ke aloha pumehana
With warm aloha,

Lynn P. McCrory
60 N. Beretania Street #3203
Honolulu, HI 96817

HB-61

Submitted on: 1/31/2019 8:55:11 AM

Testimony for CPC on 2/5/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Support	No

Comments:

Please accept this testimony as strong support for HB61. 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.

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

Submitted on: 1/31/2019 12:48:24 PM

Testimony for CPC on 2/5/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Philip Nerney	Individual	Support	No

Comments:

Act 195 (2018) has caused substantial difficulty. HB61 addresses those difficulties.

HB-61

Submitted on: 1/31/2019 9:30:37 PM

Testimony for CPC on 2/5/2019 2:00:00 PM

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

Comments:

Sounds reasonable, from a consumer perspective.

HB-61

Submitted on: 2/2/2019 11:56:49 AM

Testimony for CPC on 2/5/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marcia Kimura	Individual	Oppose	No

Comments:

I am opposed to this measure. **THE ATTORNEYS SHOULD BE PAID LAST.** Moreover:

1. their fees should be capped at 25% of remaining debtors' balances, and
2. they should be required to explain and justify their fees **IN COURT, IN JUDICIAL PROCEEDINGS.**

HB-61

Submitted on: 2/2/2019 4:42:41 PM

Testimony for CPC on 2/5/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John Morris	Individual	Support	Yes

Comments:

I am submitting testimony in support of HB 61. It helps resolve a problem created by a change in the law last year which prohibited associations from following a priority of payment policy.

A priority of payment policy allows an association to apply payments received from an owner in a certain order. The law was changed last year to prohibit that practice and to say that the payments received from an owner must be applied first to any outstanding common expenses. The change did not say how the association could apply any payments received over and above the amount of common expenses owed. This created problems if an owner paid less than the full amount owed but more than the common expenses owed. Then, the association had no guidance from the statute on how to apply the surplus. This created a lot of unnecessary confusion.

Fortunately, HB 61 corrects this problem. It does so by providing an order for payment of any surplus payments received from an owner – i.e., any amounts received over and above the amount of common expenses owed by the owner. Thus, section HB 61 makes life much simpler and eliminates unnecessary confusion. Therefore, the committee would be doing everyone a favour by passing this bill.

John Morris

HB-61

Submitted on: 2/4/2019 10:53:01 AM

Testimony for CPC on 2/5/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Anne Anderson	Individual	Support	No

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, 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:

The meaning of “in excess of the amounts owed under this subsection” in line 9 of this measure is confusing. It should be amended to clarify that condominium associations may apply a payment made in excess of the unpaid balance of common expense assessments, such as maintenance fees (also known as regular common assessments), special assessments, and reserve contributions. The reference to special assessments (other than those that are not charged as a common expense), reserve assessments, and regular assessments should not be listed in paragraphs 2, 3, and 4 because they are common expenses.

The word “owner” in line 10 should be amended to say “owner’s.”

This measure lists several specific categories of balances which might be due to an association. There are likely to be other balances which are missing from this list, such as interest. As such, this measure should include an additional category of “all other unpaid balances” as a catch all category.

If an association obtains a judgment against an owner, the law should clarify that an association may apply payments received from an owner to the balances due on the judgment.

Please consider revising HRS Section 514B-105(c) to read as follows:

(c) No association shall deduct and apply portions of common expense payments received from a unit owner to unpaid late fees, legal fees, fines, and interest (other than

amounts remitted by a unit in payment of late fees, legal fees, fines, and interest); *that if a unit owner is not delinquent as to common expense payments or the payment made is in excess of the unpaid balance of common expense assessments, such as maintenance fees (also known as regular common assessments), special assessments, and reserve contributions on the unit owner's account, then the funds received may be applied to the unit owner's account in the following priority, as applicable:*

(1) Amounts due under a judgment entered in favor of the association, including, without limitation, interest and principal;

(2) Sub-metered utilities;

(3) Special assessments that are not charged as common expenses;

(4) Locker, parking, or other fees;

(5) HO6 policy, if paid by the association;

(6) Insurance deductible assessment by the association;

(7) Legal fees;

(8) Fines;

(9) Late fees; and

(10) All other unpaid balances.

Respectfully submitted,

Anne Anderson

HB-61

Submitted on: 2/4/2019 10:58:01 AM

Testimony for CPC on 2/5/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Paul A. Ireland Koftinow	Individual	Support	No

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, 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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The word “owner” in line 10 should be amended to say “owner’s.”

This measure lists several specific categories of balances which might be due to an association. There are likely to be other balances which are missing from this list, such as interest. As such, this measure should include an additional category of “all other unpaid balances” as a catch all category.

If an association obtains a judgment against an owner, the law should clarify that an association may apply payments received from an owner to the balances due on the judgment.

Please consider revising HRS Section 514B-105(c) to read as follows:

(c) No association shall deduct and apply portions of common expense payments received from a unit owner to unpaid late fees, legal fees, fines, and interest (other than amounts remitted by a unit in payment of late fees, legal fees, fines, and interest); provided that if a unit owner is not delinquent as to common expense payments or the payment made is in excess of the unpaid balance of common expense assessments, such as maintenance fees (also known as regular common assessments), special assessments, and reserve contributions on the unit owner's account, then the funds received may be applied to the unit owner's account in the following priority, as applicable:

- (1) Amounts due under a judgment entered in favor of the association, including, without limitation, interest and principal;
- (2) Sub-metered utilities;
- (3) Special assessments that are not charged as common expenses;
- (4) Locker, parking, or other fees;
- (5) HO6 policy, if paid by the association;
- (6) Insurance deductible assessment by the association;
- (7) Legal fees;
- (8) Fines;
- (9) Late fees; and
- (10) All other unpaid balances.

Respectfully submitted,

Paul A. Ireland Koftinow

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

I support HB 61, with additional clarification.

Paragraphs 2-4 are items of common expense (i.e. special assessments, reserve contributions, and regular assessments assessed to all owners) and should not be included in the list of items that will be satisfied by owner payments exceeding the amounts owed for common expenses. An additional category should be added to the list for special assessments not charged to all owners (but charged to recover costs incurred by the association due to an owner's conduct or neglect)

Additionally, the bill should add an 'other' category, to include other proper charges, such as interest on untimely payment of monthly common assessments.

Respectfully submitted -

/s/ Pamela J. Schell

Dear Representative Takumi, Chair, Representative Ichiyama, 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:

The meaning of “in excess of the amounts owed under this subsection” in line 9 of this measure is confusing. It should be amended to clarify that condominium associations may apply a payment made in excess of the unpaid balance of common expense assessments, such as maintenance fees (also known as regular common assessments), special assessments, and reserve contributions. The reference to special assessments (other than those that are not charged as a common expense), reserve assessments, and regular assessments should not be listed in paragraphs 2, 3, and 4 because they are common expenses.

The word “owner” in line 10 should be amended to say “owner’s.”

This measure lists several specific categories of balances which might be due to an association. There are likely to be other balances which are missing from this list, such as interest. As such, this measure should include an additional category of “all other unpaid balances” as a catch all category.

If an association obtains a judgment against an owner, the law should clarify that an association may apply payments received from an owner to the balances due on the judgment.

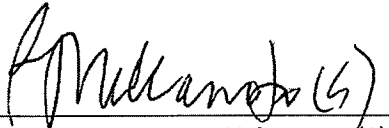
Please consider revising HRS Section 514B-105(c) to read as follows:

(c) No association shall deduct and apply portions of common expense payments received from a unit owner to unpaid late fees, legal fees, fines, and interest (other than amounts remitted by a unit in payment of late fees, legal fees, fines, and interest); provided that if a unit owner is not delinquent as to common expense payments or the payment made is in excess of the unpaid balance of common expense assessments, such as maintenance fees (also known as regular common assessments), special assessments, and reserve contributions on the unit owner’s account, then the funds received may be applied to the unit owner’s account in the following priority, as applicable:

- (1) Amounts due under a judgment entered in favor of the association, including, without limitation, interest and principal;
- (2) Sub-metered utilities;
- (3) Special assessments that are not charged as common expenses;

- (4) Locker, parking, or other fees;
- (5) HO6 policy, if paid by the association;
- (6) Insurance deductible assessment by the association;
- (7) Legal fees;
- (8) Fines;
- (9) Late fees; and
- (10) All other unpaid balances.

Respectfully submitted,



Primrose K. Leong-Nakamoto (S)

HB-61

Submitted on: 2/4/2019 4:54:16 PM

Testimony for CPC on 2/5/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dante K. Carpenter	Individual	Support	No

Comments:

Chair Rep. Takumi, Vice Chair Rep. Ichiyama and Members:

I am submitting testimony in support of HB 61. This Bill's intent is to resolve confusion caused by ACT 195 of 2018 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 HRS.

I support this measure, however, recommend revision as follows:

1. The meaning of "in excess of the amounts owed under this subsection" in line 9 of this measure is confusing. It should be amended to clarify that the condominium associations may apply a payment made in excess of the unpaid balance of common expense assessments, such as maintenance fees (also known as regular common assessments), special assessments, and reserve contributions. The reference to special assessments (other than those that are not charged as a common expense), reserve assessments, and regular assessments should not be listed in paragraphs 2, 3, and 4 because they are common expenses.
2. The word "owner" in line 10 should be amended to say "owner's."
3. This measure lists several specific categories of balances which might be due to an association. There are likely to be other balances which are missing from the list, such as interest. As such, this measure should include an additional category of "all other unpaid balances" as a catch-all category. If an association obtains a judgement against an owner, the law should clarify that an association may apply payments received from an owner to the balances due on the judgement.

Please consider revising HRS Section 514B-105(c) to read as follows: (c) No association shall deduct and apply portions of common expense payments received from a unit owner to unpaid late fees, legal fees, fines, and interest (other than amounts remitted by a unit in payment of late fees, legal fees, fines and interest); provided that if a unit owner is not delinquent as to common expense payments or the payment made is in excess of the unpaid balance of common expense assessments, such as maintenance fees (also known as regular common assessments), special assessments, and reserve contributions on the unit owner's account, then the funds received may be

applied to the unit owner's account in the following priority, as applicable: (1) Amounts due under a judgement entered in favor of the association, including, without limitation, interest and principal; (2) Sub-metered utilities; (3) Special assessments that are not charged as common expenses; (4) Locker, parking , or other fees; (5) HO6 policy, if paid by the association; (6) Insurance deductible assessment by the association; (7) Legal Fees; (8) Fines; (9) Late Fees; and (1) All other unpaid balances.

Respectfully submitted,

Dante
Carpenter
President, Country Club Village, Phase
2

Pre

2-20 story Bldgs - 469 Units