

HB1499 HD1

Measure Title: RELATING TO CONDOMINIUM ASSOCIATIONS.
Report Title: Condominium Associations; Dispute Resolution
Description: Authorizes use of the condominium education trust fund to pay for arbitration of condominium disputes. Provides that use of trust fund moneys to pay arbitrator's fees shall only be allowed if parties agree to binding arbitration and rescind their rights to trial de novo. Provides penalties for noncompliance. (HB1499 HD1)
Companion:
Package: None
Current Referral: CPH, JDL/WAM
Introducer(s): ICHIYAMA, MCKELVEY, OHNO

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Tuesday, March 21, 2017
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 1499, H.D. 1, PROPOSED S.D. 1,
RELATING TO CONDOMINIUM ASSOCIATIONS.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nikki Senter, Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission thanks you for the opportunity to present testimony on House Bill No. 1499, H.D. 1, Proposed S.D. 1. The Commission takes no position on this bill, however requests an amendment, and submits comments on Part V of this measure.

The partial purpose of this bill is to permit annual condominium trust fund fees designated for educational purposes to be used to pay arbitrator's fees by amending sections 514B-71 and 514B-161, Hawaii Revised Statutes ("HRS"). The bill also creates a new section to allow permitted parties to enter into voluntary binding arbitration if a mediation fails to resolve a dispute.

The Commission supports the concept of alternative dispute resolution as an avenue for handling condominium disputes. Arbitration, however, can be more costly than mediation. Thus, should this bill pass, the Commission requests that it retain discretion regarding allocation of funds to each program.

The Commission requests that the language of the bill be amended to include new bill sections to address the strictures of Act 187, Session Laws of Hawaii 2013, to read:

Section 514B-72, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each project or association with more than five units, including any project or association with more than five units subject to chapter 514A, shall pay to the department of commerce and consumer affairs:

(1) A condominium education trust fund fee within one year after the recordation of the purchase of the first unit or within thirty days of the association's first meeting, and thereafter, on or before June 30 of every odd-numbered year, as prescribed by rules adopted pursuant to chapter 91; and

(2) Beginning with the July 1, 2015, biennium registration, an additional annual condominium education trust fund fee in an amount equal to the product of \$1.50 times the number of condominium units included in the registered project or association to be dedicated to supporting mediation or voluntary binding arbitration of condominium related disputes. The additional condominium education trust fund fee shall total \$3 per unit until the commission adopts rules pursuant to chapter 91. On June 30 of every odd-numbered year, any unexpended additional amounts paid into the condominium education trust fund and initially dedicated to supporting mediation or voluntary binding arbitration of

condominium related disputes, as required by this paragraph, shall be used for educational purposes as provided in section 514B-71(a)(2) , and (3)."

Act 187, Session Laws of Hawaii 2013, is amended by amending section 5 to read as follows:

"SECTION 5. The department of commerce and consumer affairs professional and vocational licensing division's budget ceiling shall be amended to reflect the additional annual condominium education trust fund fee required by section 514B-72(a)(2), Hawaii Revised Statutes, and paid into the condominium education trust fund, established by section 514B-71, Hawaii Revised Statutes. On June 30 of every odd-numbered year, any unexpended additional amounts paid into the condominium education trust fund and initially dedicated to supporting mediation or voluntary binding arbitration of condominium related disputes, as required by section 514B-72(a)(2), Hawaii Revised Statutes, shall be used for educational purposes as provided in section 514B-71(a) (1) (2) and (3), Hawaii Revised Statutes."

SECTION 16 of House Bill No. 1499 H.D. 1, Proposed S.D. 1, includes removal of a section of the current law that encourages mediation by providing that an owner who did not prevail in a court of law but who attempted mediation prior to the court action is not necessarily responsible for all reasonable costs and attorneys' fees. The elimination of the language from the measure removes any incentive for owners to attempt mediation as a first resort.

This measure expands those subjects permissible for mediation to include "This Chapter". This is overbroad and unnecessarily expands the scope of permissible topics to be mediated to subject areas historically not intended to be the subject of mediated disputes, for example, disputes regarding common interest ownership, common elements, unit size, etc.

Currently, for evaluative mediation, each party to the mediation pays \$375, more than the \$150 proposed by House Bill No. 1499, H.D. 1, Proposed S.D. 1. The amount of \$375 was recommended by mediation providers consistent with the usual costs associated with evaluative mediation.

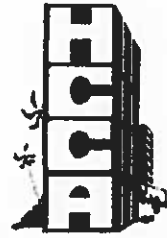
Paragraph (e) of SECTION 16 of the measure provides that a prevailing party shall be awarded attorneys' fees in an amount not to exceed \$1,500.

Paragraph (f) immediately after appears to conflict in that it states that each party to a mediation shall bear their own costs in the absence of certain conditions.

Thank you for the opportunity to provide testimony on House Bill No. 1499, H.D. 1, Proposed S.D. 1.



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



March 19, 2017

Sen. Rosalyn Baker, Chair
Sen. Clarence Nishihara Vice-Chair
Senate Committee on Commerce, Consumer Protection & Health

Re: Testimony in Support and Comments to
HB1499, HD1 RELATING TO CONDOMIMUMS
Hearing: Tues., March 21, 2017, 9 a.m., Conf. Rm. #229

Chair Baker, Vice-Chair Nishihara and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA). This organization represents the interests of condominium and community association members.

HCAAO supports the intent and purpose of the proposed SD1 to HB1499; however, we suggest the following amendment to Section 16, page 52 at line 15 of the proposed SD1 to amend HRS 514B-161 by expending the coverage of persons who would be allowed to mediate their disputes with the board to include "directors and managing agents."

Thank you for the opportunity to testify on this matter.

Jane Sugimura
President

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 19, 2017 3:40 PM
To: CPH Testimony
Cc: richard.emery@associa.us
Subject: Submitted testimony for HB1499 on Mar 21, 2017 09:00AM

HB1499

Submitted on: 3/19/2017

Testimony for CPH on Mar 21, 2017 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Support	Yes

Comments: Support.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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My name is John Morris and I am an attorney who works representing condominiums. I am testifying with some comments and suggestions about HB 1499, proposed SD1.

On page 19 of the bill, I would suggest leaving the following language (below) in section 514B-105 (c), so the legislative intent is clear.

[§514B-105] Association; limitations on powers.

(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). ~~unless the board adopts and distributes to all owners a policy stating that:~~

- ~~(1) Failure to pay late fees, legal fees, fines, and interest may result in the deduction of such late fees, legal fees, fines, and interest from future common expense payments, so long as a delinquency continues to exist; and~~
- ~~(2) Late fees may be imposed against any future common expense payment that is less than the full amount owed due to the deduction of unpaid late fees, legal fees, fines, and interest from the payment.~~

The problem is that many associations have the authority given by this section **already** written into their governing documents. If the legislature deletes the first sentence from the law, there will be confusion because arguably the association can still follow the procedure in its governing documents. A statement that the procedure is not permitted in Hawaii would be more effective. The same is true of the proposed change to section 514A-15.1 on page 34 of the bill.

On page 49 of the bill, realistically, the limit of \$3000 for arbitration support found on line 16 will not be sufficient to make any meaningful dent in the cost of arbitration. This section should provide at least \$6000, and even that may not be sufficient but will at least be a good start to try to resolve disputes through arbitration that cannot be resolved through mediation.

One way around this problem would require the new section on page 49 to make the parties first try mediation before they can obtain money from the education fund for arbitration

In contrast, on page 56 of the bill, the amount set aside to pay for mediation could reasonably be reduced to \$3000 from \$6000 because mediation is generally cheaper, and if agreement cannot be reached in the first five hours, or so, it probably will not be reached.

On page 54 of the bill, line 11, there should probably be some change. Essentially, this part of the bill would prohibit mediation from being mandatory

when it involves assessments. Nevertheless, earlier in the bill, it allows owners to demand mediation relating to assessments, both common expenses and fines, penalties, et cetera. Therefore, on page 54, line 11, there should probably be some reference to "*Assessments, except as indicated in* [whatever sections actually permit mediation over assessments] . . ."

Thank you for this opportunity to testify

John Morris