

Richard Emery
Vice President of Government Affairs
Associa

Opposition to HB 1802

Associa is America's largest association management company representing approximately 550 Hawaii associations. Associa is OPPOSED to HB 1802.

Approximately 360,000 persons live in 135,000 homes in nearly 2,000 Hawaii community associations. These residents pay \$400 million a year to maintain their communities. These costs would otherwise fall to the local government. 13,000 Hawaiians are elected to their community association boards each year, providing over \$400,000 in estimated service.

Community associations are private entities, not governments. Residents vote for fellow homeowners to provide leadership—making decisions about operation, administration and governance of the community.

Assessments paid by association members cover the costs of conducting association business—such as common area maintenance, repair and replacement, essential services, routine operations, insurance, landscaping, facilities maintenance as well as savings for future needs.

Public Opinion Strategies, a nonprofit neutral survey company, says about Hawaii:

- 90% of residents rate their overall community association experience as positive (64%) or neutral (26%).
- 90% of residents say association board members "absolutely" or "for the most part" serve the best interests of their communities.
- 83% say they get along well with their immediate neighbors. 90% of residents rate their overall community association experience as positive (64%) or neutral (26%).
- 90% of residents say association board members "absolutely" or "for the most part" serve the best interests of their communities.
- 83% say they get along well with their immediate neighbors.
- 86% percent of residents oppose additional regulation of community associations.

The question is how to effectively deal with those concerned owners who may disagree or dispute a board's actions.

Within the last few years, the legislature attempted to resolve such differences by enacting a law that provided for a "condominium court" with an administrative law judge under the DCCA. The law was allowed to sunset as the "condo court" was little utilized and not cost effective.

The industry promoted the use of evaluative mediation, the next generation of mediation, which was recently enacted into law under ACT 187. Evaluative mediation is paid for by the real estate education fund. In order to promote the use of evaluative mediation by owners and

board members, the fees paid by condominium units was increased from \$1.50 per unit to \$3.00 per unit. The DCCA website announced in June 2015 the following:

“NEWS RELEASE: State Adds New Services to Assist Hawaii Condominium Owners

Posted on Jun 30, 2015 in News Releases

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

DAVID Y. IGE, GOVERNOR

CATHERINE P. AWAKUNI COLÓN, DIRECTOR

NEIL K. FUJITANI, SUPERVISING EXECUTIVE OFFICER, REAL ESTATE COMMISSION

FOR IMMEDIATE RELEASE

June 30, 2015

State Adds New Services to Assist Hawaii Condominium Owners

As passed in Act 187 by the 2013 Legislature, REC is also promoting the start of its evaluative mediation service as a means of dispute resolution available to condominium owners. While the REC has been supporting and subsidizing facilitative mediation since 1992, the addition of evaluative mediation gives condominium owners a stronger tool for resolving disputes, while supporting the underlying philosophy of the Hawaii condominium law, Hawaii Revised Statutes, Chapter 514B, of self-enforcement by the condominium owners.

Evaluative mediation is a style of mediation that employs trained mediators who possess subject matter expertise in various areas of the law (e.g. condominium law, construction or contract law). Additionally, the mediators are familiar with the relevant case law and may make recommendations regarding the strength of each party's position and the likelihood of either party prevailing in court or in an administrative hearing. The evaluative mediators facilitate discussion between the parties and assist in the parties' attempts to reach an agreement. Many of the practitioners of evaluative mediation are active attorneys and retired judges.

Evaluative mediation is open to any condominium owner of a registered condominium association. In anticipation of the July 1, 2015 start-up date, REC has entered into agreements with four providers of evaluative mediation:

- The Mediation Center of the Pacific, Inc. (MCP)

- Dispute Prevention and Resolution, Inc. (DPR)
- Crumpton Collaborative Solutions, LLC (Charles "Chuck" Crumpton)
- Lou Chang, Esq., A Law Corporation

All four providers have extensive experience in mediation and arbitration.

The cost to users, except for a one hour payment by all parties, is subsidized by funds from the Condominium Education Trust Fund. The maximum amount per mediation is set at \$3,000 unless the mediator determines the parties would benefit with additional mediation time. Under this program, each party would be responsible for the first hour of mediation, which is \$375.

"The evaluative approach to mediation provides a mediator with enhanced tools to help the parties reach a resolution," explained Fujitani. "The evaluative mediators may be chosen for their skills as a mediator, as well as for their knowledge of the relevant case law, and subject matter expertise of the laws governing condominium associations."

The Real Estate Branch, as part of the Professional and Vocational Licensing Division, assists the Real Estate Commission in carrying out its responsibility for the education, licensure and discipline of real estate licensees; registration of condominium projects, condominium associations, condominium managing agents, and condominium hotel operators; and intervening in court cases involving the real estate recovery fund."

HB 1802 adds an unnecessary layer of dispute resolution as in the end the ombudsman is really acting as a mediator. The ombudsman may be a lawyer but not have specific experience on the many issues that may come to dispute resolution. If the parties do not agree, the ombudsman will simply help facilitate arranging the evaluative mediation contemplated in Act 187; something a board or owner can do now with a simple mediation request. Importantly under ACT 187, the parties agree to the mediator who is normally a retired judge. The process will be faster.

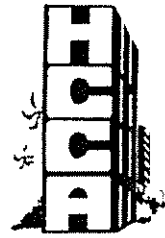
ACT 187 is a new law and should be afforded an opportunity to work before any new legislation is contemplated. Initial results show very positive results though evaluative mediation under Act 187. The industry's support of increased fees was based on the premise to support independent evaluative mediation to resolve disputes.

The industry is actively promoting information on options for dispute resolution to encourage owners and boards to use evaluative mediation. It should be noted that the current law also provides for regular mediation and nonbinding arbitration as other alternative methods to

resolve disputes. HB 1802 will slow the process and not result in any improved dispute resolution and add unnecessary cost. For these reason we request that HB 1802 be deferred.



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



February 6, 2016

Rep. Angus McKelvey, Chair
Rep. Justin Woodson, Vice-Chair
House Committee on Consumer Protection & Commerce

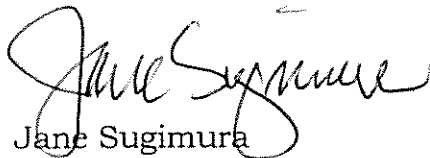
Re: Testimony in Opposition to
HB1802 RELATING TO CONDOMIMUMS
Hearing: Mon., February 8, 2016, 2:05 p.m., Conf. Rm. #325

Chair McKelvey, Vice-Chair Woodson 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 opposes this bill for the reasons stated in Richard Emery's testimony on behalf of Associa Hawaii, which comments and position are incorporated by reference in this testimony. We agree with Mr. Emery's statements that the mediation program recently implemented by the Real Estate Commission should be given an chance to address the concerns that appear to be the reason for this bill.

For the reasons set forth, HCCA respectfully requests that you defer action on this bill. If you have any questions, please feel free to contact me. Thank you for the opportunity to testify on this matter.


Jane Sugimura
President



February 6, 2016

VIA WEB TRANSMITTAL

Hearing Date: Monday, February 8, 2016

Time: 2:05 p.m.

Place: Conference Room 325

Committee on Consumer Protection & Commerce
House of Representatives, the 28th Legislature
Regular Session of 2016

Re: Community Associations Institute's **Testimony opposing** HB 1802

Dear Chair McKelvey, Vice Chair Woodson and Committee members:

I am the Chair of the Community Associations Legislative Action Committee ("CAI"). We represent the condominium and community association industry.

HB 1802 attempts to create an office of the condominium ombudsman to resolve or attempt to resolve condominium disputes. This is unnecessary as ACT 187 – which provides for evaluative mediations for condominium disputes – is working. It allows parties in condominiums to retain through Dispute Prevention & Resolution, Inc., a retired judge or someone else that has experience in mediating condominium disputes between owners, and/or owners and their boards. The nice part of this program is that it costs the parties about \$300 to participate and the rest of the mediator's or neutral's fees collected from condominium owners by the Real Estate Commission.

In addition, ACT 187 works in resolving condominium disputes. My law firm has successfully utilized this program to resolve a number of disputes through the assistance of retired judges that give their evaluation of the dispute. This assists the

House Committee on Consumer Protection & Commerce

February 6, 2016

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parties to then make a reasoned decision in coming to a resolution of the dispute short of arbitration or litigation.

Therefore, we respectfully submit that HB 1802 be held, and that ACT 187 be given a chance at accomplishing the same goals. Thank you for your consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'C. Porter', written in a cursive style.

Christian P. Porter, Chair of CAI LAC Hawaii

As the ad hoc spokesperson for Hui 'Oia 'i'o, I am proud to say that we support HB1802.

A home is for most people the most significant asset they have. In mid-2015, the DCCA reported that there are 169,842 condominium units in associations with more than five units in Hawaii. That number indicates the many homes and families who will be protected by this amendment.

A Condominium Ombudsman will provide help to outmatched, overwhelmed condominium Owners who are fighting for their basic rights under our condominium laws. Many concerns reflect failures by association boards of directors to follow basic governance principles such as holding fair elections or fairly obtaining consent, providing key financial information about the association, and fairly imposing association fines. Some complaints are based on deliberate indifference by association boards to association bylaws or state condominium laws or a lack of full understanding of condominium association responsibilities, some of which may occur without hesitancy because boards and their condo lawyers know that Owners' rights and statutory obligations placed on boards are largely not enforced or enforceable by the State.

The current law also fails to address the costliest aspect for parties seeking justice, the "condo lawyers." The current law imposes certain "rights" for Owners, including that the Owners must hire, at their own expense, a lawyer to enforce their rights and responsibilities while the association boards of directors can defend themselves using association funds, raised through assessments on the Owners. Thus, Owners' funds are used to defend lawsuits brought by Owners themselves. We recognize that a board must have access to legal counsel in order to discharge its duties however, too often boards seek the costly services of a lawyer for matters which simply do not warrant the cost, such as to block an Owner who seeks to exercise his/her right to a copy of the Minutes of Board meetings.

It is our experience that the majority of Owners are not able to expend the large amounts of money and time required to assert their rights or to enforce compliance by their boards. The average minimum retainer a condominium lawyer requires from an Owner wishing legal representation is \$3,000 to \$5,000 for the simplest of matters. At an average cost of over \$250 per hour, that retainer will not provide much assistance to an Owner.

On the other hand, boards have access to unlimited funds contributed by Owners. Condominium lawyers have an abundance of experience and skill at prolonging matters to the point where a unit Owner can simply no longer afford to continue his/her action or claim. A board could even assess its association for more money if its lawyer needed more. Simply put, a board can out-lawyer and out-money most any unit Owner.

Further, under the current law, many boards have passed a "priority of payments" such as the following:

At any time there are unpaid Legal Fees, Late Fees, Fines, Bad Check Charges, Agreement of Sale Payments, or Special Assessment Fees on an Association Member's account ledger, the next Association/Maintenance Fee payment received from that Association Member will be first applied to liquidating these fees in the order as stated above. After these fees are paid, the remaining amount, if any, will be credited to the Association's Association/Maintenance Fee assessment account. This procedure is sometimes referred to as "Priority of Payments".

This order of payments, with HRS514B-104, "if the fine is paid, the unit owner shall have the right to initiate a dispute resolution process," makes it difficult for an Owner as swelling legal fees must be paid before the fine is even paid, thus forestalling dispute resolution. In one association alone, Owners' legal fees are claimed to be in the tens of thousands of dollars, all which started as \$100, \$200, and \$300 fines over alleged violations, and which continue to balloon as the attorneys prolong resolution and add more attorneys to inflate their ranks. Some of these cases have been going on for years.

Hui 'Oia 'i'o supports the passage of HB1802. Equal access to the resources of the State, funded by Owners' own contributions into the Condominium Education Trust Fund, would encourage parties to diligently work on reaching agreements satisfactory to all and encourage voluntary compliance with the Statutes and associations' Declaration, By-laws and Rules. This amendment would discourage boards from engaging the services of condominium lawyers to harass and intimidate Owners through letter writing campaigns which bury those Owners in unnecessary legal fees. It would encourage transparency and ethical governance, cause boards to grant access to records, seek Owners' approval for expenditures on repairs, replacements and improvements to the common elements or assets, and return integrity to the election process including the use of proxies.

Finally, perhaps provisions of HRS514A and 514B would not be as ambiguous or as skewed if Owners had the legal means and resources equal to those of their board of directors.

Respectfully,

Lila Mower

From: Kathy Lau <kathy.lau@gmail.com>
Sent: Thursday, February 04, 2016 5:34 PM
To: CPCtestimony
Subject: Support of condo rights bill

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Legislators,

Please support Condo Owners Rights. For too long management who influence BOD have worked to weaken owners rights. The management are hired Professionals who should not advocate against Condo Owners. Poor communication and unprofessional business practices such as hiding/withholding documents and interference with the voting process, cause owners (especially off island, including Japanese owners) to be at a huge disadvantage and cannot participate nor monitor their financial health. This impacts other areas of their health and well being. Professional Management cannot use excuses such as "it is too difficult etc" to do their work. If Management cannot or will not use the most common technology such as email (in the era of facebook) and electronic collection of maintenance fees, and communicating with the owners, they should get out of the business or upgrade their skills.

We join together with Condo Owners Coalition of Hawaii, Hui Oia'i'o Collation, Hui O Malama Hale the Kapolei Hui and, many individuals who are working tirelessly in volunteer capacity for Owners Rights to support any and all legislation to protect Condo Owners Rights.

Please understand that the mgmt companies do not represent the owners, they represent themselves and the few BOD that they support. Owners have had enough and are very concerned at the decline of their rights. Please help us to preserve our rights as condo owners.

Mahalo

Kathy Lau and Hawaii Condo Hui

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 07, 2016 1:12 PM
To: CPCtestimony
Cc: celia.c.suzuki@dcca.hawaii.gov
Subject: *Submitted testimony for HB1802 on Feb 8, 2016 14:05PM*

HB1802

Submitted on: 2/7/2016

Testimony for CPC on Feb 8, 2016 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Celia Suzuki	Real Estate Commission	Oppose	Yes

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 07, 2016 11:46 AM
To: CPCtestimony
Cc: SherlBlod@aol.com
Subject: *Submitted testimony for HB1802 on Feb 8, 2016 14:05PM*

HB1802

Submitted on: 2/7/2016

Testimony for CPC on Feb 8, 2016 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Gladys Sherley Blodgett	Individual	Support	No

Comments:

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COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Testimony Regarding HB 1802

John Morris
888 Mililani Street
2nd Flr, Honolulu
(808) 523 0702

Chair McKelvey and Members of the Committee,

I work as an attorney representing condominiums and other homeowner associations and I am commenting on HB 1802. The bill seems to duplicate and overlap with the three condominium specialist positions already existing under the jurisdiction of the Hawaii Real Estate Commission.

Section 514B-63 states as follows:

- **§514B-63 Condominium specialists; appointment; duties** . The director of commerce and consumer affairs may appoint condominium specialists, not subject to chapter 76, ***to assist consumers with information, advice, and referral on any matter relating to this chapter or otherwise concerning condominiums.*** The director may also appoint secretaries, not subject to chapter 76, to provide assistance in carrying out these duties. The condominium specialists and secretaries shall be members of the employees' retirement system of the State and shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State. [L 2005, c 93, pt of §3]

In fact, the position has existed since 1988, and was subsequently expanded from one condominium specialists to three. The three condominium specialists already perform many of the functions outlined for the condominium ombudsman. Therefore, if a wider ranging position or authority is necessary, it might be more logical and effective to expand the authority and responsibility of the condominium specialists than to have them and the condominium ombudsman serving similar functions.

Moreover, if the condominium ombudsman is to act to resolve disputes or enforce the law as a state official, due process requirements will require that the ombudsman follow most of the same procedures of any other state official in conducting investigations and enforcing the law. This process would require a careful investigation to ensure that any action taken by a state official would be in full compliance with the law.

It might be better to allow existing programs an opportunity to succeed before creating the position of condominium ombudsman. Several years ago, the legislature created in

evaluative mediation program that allows an experienced attorney mediator to assist owners and boards in resolving their disputes. In June 2015, the real estate commission was finally able to get the evaluative mediation program up and running. It might be more worthwhile to give that program a chance to succeed before creating a whole new office of condominium ombudsman.

Thank you for this opportunity to testify.

John Morris

LATE

The establishment of a Hawaii state sponsored office of Ombudsmen or similarly empowered judicial state entity is not only necessary but is the just thing to do. It is impossible to think that of today's 1700 plus association boards and growing that some unjust and illegal fines, citations and other unlawful acts are not being experienced by innocent homeowners who presently have nowhere to go to seek relief or justice. Let me explain.

Some of you will say, it is just that the homeowner doesn't understand the rules when they buy into an association. Certain rights and decisions are delegated to the elected board. To you I say, "To Err Is Human." I am certain daily, weekly, or perhaps it is monthly, someone's rights have been trampled on. The point is one is too many and the state owes its citizens the right to due process.

Now others will say, yes, but condos or master planned community associations are self governed, free of City, State or Federal oversight. To you I say, "Must I purchase justice?" Self governance offers mediation, arbitration or civil litigation, each of which does not offer me my presumption of innocence.

1. I am not considered innocent before proven guilty. As a matter of fact, any fines or attorney fee's or any other fee's the board decides to levy against a homeowner arbitrarily or not are put in first position of monthly association fee's. This means even if I was to pay my proper monthly association assessment on time but had fines and fees that exceeded my monthly association payment, I would be recorded as non-payment of association fee and my record would continue to be recorded as unpaid or in arrears until all outstanding balances including fines and fees were brought current. This is one of the most abusive "collection agency tactics " that if investigated by regulators may not be even found as legal behavior under Hawaii state law, it certainly shouldn't be.
2. If I do want mediation or arbitration to prove they are wrong in assessing, fining or charging unfair fees to me, first it is a voluntary option for the boards to participate and based on DCCA records, the likelihood of either the board accepting mediation or having a successful resolution is less than 50%. The homeowner also needs to pay a fee out of their own pocket, a fee to have access for this option of due process available today, and if by chance the board decided to participate in mediation there could be an additional homeowner pocketbook issue as most if not every time the board would be represented by the association's attorney. Unless the homeowner has the available funds to hire his own attorney they are unfairly overmatched. There are NO pro bono attorneys for condo owners. I think the assumption is made that if you can manage a monthly mortgage payment even if you are working three jobs to do so you must be rich enough to hire an attorney.
3. So you see even though self governance works most of the time it does not relieve government from the responsibility of providing free and just access to a legal system to resolve the one in ten thousand case that do deserve a system where government

dispenses justices for all. It is up to you to fund and empower a State of Hawaii Office of:
OMBUDSMAN.

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 07, 2016 10:38 PM
To: CPCtestimony
Cc: mkhan@hawaiiantel.net
Subject: Submitted testimony for HB1802 on Feb 8, 2016 14:05PM



HB1802

Submitted on: 2/7/2016

Testimony for CPC on Feb 8, 2016 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Marilyn Khan	Individual	Support	No

Comments: Aloha, The establishment of an Office of Condominium Ombudsman has merit. As of mid 2015, there were 1746 condo associations which represent 169,842 units registered with the State. The real estate value of those existing condos is estimated to be nearly \$62 billion. Unlike other professions/occupations, condominium property managers and general managers (aka resident managers) are not required by state law to meet educational, ethical, or licensing standards. There are roughly only a handful of property management firms of any size in Hawaii; the largest being Hawaiian Management Company and Associa that boast of managing from 500 to 600 associations in Hawaii, respectively. There is only one licensed Principal Broker at Hawaiiana Management and one Principal Broker at Associa, who are held responsible by the State of Hawaii for their entire company's actions. As of January 26, 2016, there are 134 "CAI credentialed professionals" in Hawaii. Association Board of Directors look to their property managers for advice. The limited number of those serving the condominium associations with any kind of certification makes it logical that errors will occur in interpreting condominium governing documents. Accordingly, urge your passage of HB 1802. If you are unable to do so, and given the value and impact of condominiums in Hawaii, strongly urge a task force consisting of homeowners, property managers, general managers, and the DCCA to review the need for licensure of property managers and general managers for this industry in Hawaii. This is critical to homeowners who are affected by decisions made by their Board of Directors on advice of these individuals. Respectfully, Marilyn Khan, condominium home owner

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Sent: Sunday, February 07, 2016 11:53 PM
To: CPCtestimony
Cc: alohaaclay@hawaii.rr.com
Subject: Submitted testimony for HB1802 on Feb 8, 2016 14:05PM



HB1802

Submitted on: 2/7/2016

Testimony for CPC on Feb 8, 2016 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Alice Clay	Hui Malama O Hale	Comments Only	Yes

Comments: Aloha Ka Kou, Our coalition support any type of process allowing homeowners to keep their homes/condos.. BOD's, management companies and attorneys should work with an ombudsman to find a way to settle disputes and not charge fines without a process to resolve the dispute. There should be mandatory mediation for BOD's to work with homeowners. Mahalo..Alice Clay for Hui Malamo O Hale coalition.

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Marcia Kimura

HB
1802

LATE

LATE

Chairman McKelvey, Vice Chairman Woodson and Committee Members:

Thank you for this hearing.

I believe that providing condo owners with an ombudsman is a powerful means of promoting management transparency, since initiating investigations with the ombudsman's office, the third party in disputes, opens up the issues for scrutiny, which discourages secrecy and intimidation of owners by management.

To achieve this, the bill will provide for : 1) *the opening of investigations restricted to condominium owners*, 2) *full investigative procedures by the ombudsman for complaints registered*, 3) *the suspension of legal charges and other assessments by management against owners until the ombudsman has completed investigations and rendered resolution recommendations*, 4) *the limitations on the purposes of legal consultation fees for which management can impose reimbursements on individual owners*, 5) *the requirement that voting results in the executive sessions (where many of these unjust selective enforcement decisions are made) of Board meetings be disclosed in their minutes*, 6) *funding for the ombudsman and staff provided by the condominium education trust fund already maintained by annual fees all owners pay and* 7) *educational opportunities on owner rights the ombudsman will make available to owners*

At this time I would add these to the above provisions: 1) indisputable evidence of Board allegations of violations by owners be required as submissions, and 2) eligibility for the ombudsman position be restricted to candidates who have demonstrated condo owner advocacy and to nonBoard or nonmanagement individuals.

I strongly urge the committee to support and promote passage of this measure.

TESTIMONY