

March 14, 2016

**The Honorable Angus McKelvey, Chair**

House Committee on Consumer Protection and Commerce  
State Capitol, Room 325  
Honolulu, Hawaii 96813

**RE: H.C.R. 63 / H.R. 28, REQUESTING THE CONVENING OF A TASK  
FORCE TO CONDUCT A STUDY ON IMPOSING MANDATORY  
ALTERNATIVE DISPUTE RESOLUTION TO RESOLVE  
HOMEOWNERS ASSOCIATIONS DISPUTES.**

**HEARING: Monday, March 14, 2016 at 2:00 p.m.**

Aloha Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its 8,800 members. HAR **offers comments** on H.C.R. 63/H.R. 28.

Mediation and dispute resolution is a voluntary and confidential process in which two or more parties involved in a dispute work with an impartial party, the mediator, to generate their own solution to settling a conflict. One of the benefits of mediation is that it empowers the parties to reach an agreement that they can both live with. Furthermore, it can serve as a better alternative to expensive litigation.

Litigation for homeowner associations is expensive and often affects other homeowners through subsidizing the cost for litigation through increases in the Association fees or affects the reserves, so anticipated projects or repairs are unable to be conducted while litigation is pending. As such, this Task Force will be valuable in exploring solutions, such as mediation and dispute resolution, as a means to avoid the added costs associated with litigation.

Furthermore, REALTOR® Boards throughout the State, offer consumers, buyers, sellers, or tenants, the ability to resolve their dispute through mediation. HAR appreciates being included in this Task Force and looks forward in providing valuable expertise on this issue.



P.O. Box 976  
Honolulu, Hawaii 96808

March 12, 2016

Honorable Angus L.K. McKelvey  
Honorable Justin H. Woodson  
Committee on Consumer Protection & Commerce  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: HCR 63

Dear Chair McKelvey, Vice-Chair Woodson and Committee Members:

I am a member of the Community Associations Institute Legislative Action Committee. CAI opposes HCR 63.

CAI supports mediation. CAI favors consideration of appropriate mechanisms to enlarge opportunities for mediation of disputes within planned community associations.

CAI notes, however, that the "whereas" clauses in HCR 63 contain unsupported and inaccurate assertions. Empirical data, showing high levels of satisfaction with the association experience, are attached and are incorporated herein by reference. Levels of dissatisfaction are expressed only by a small minority of owners, in multiple surveys over time.

CAI also notes that the proposed task force is to contain a single representative of one homeowners association, and that representative is to be picked by a government entity. No task force so constituted could reasonably be regarded as credible.

Finally, it should be kept in view that "planned community associations are primarily creatures of the common law." Lee v. Puamana Community Association, 109 Hawaii 561, 128 P.3d 874 (2006). The legislature may, therefore, wish to carefully consider the extent to which legislation is appropriate.

Honorable Angus L.K. McKelvey  
Honorable Justin H. Woodson  
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CAI, therefore, respectfully requests that the Committee hold  
HCR 63.

Very truly yours,

*Philip Nerney*

Philip Nerney

Enclosures

- 1) 2014 Community Association Fact Book for Hawaii
- 2) Hawaii Community Associations Facts and Figures
- 3) Verdict: Americans Grade Their Associations, Board Members  
and Community Managers

**LATE**

Testimony in Support of:  
HR 28 and HCR 63

Committee on Consumer Protection and Commerce  
March 13, 2016

Testimony in favor of HR28 – REQUESTING THE CONVENING OF A TASK FORCE TO CONDUCT A STUDY ON IMPOSING MANDATORY ALTERNATIVE DISPUTE RESOLUTION TO RESOLVE HOMEOWNERS ASSOCIATIONS DISPUTES.

LATE TESTIMONY

My name is Ralph Boyea. I am a resident of Orchidland Estates in Kea'au HI.

I have lived in this subdivision since 1976. I have served on the Orchidland Estates Board of Directors several times between 1976 and the present. I have held the offices of Director, Secretary and President.

I am very familiar with the conflict between lot owners and between lots owners and the "elected" Board of Directors. I was President when the original Orchidland Community Association [OLCA] lawsuit was initiated to require payment of mandatory road maintenance fees in the 1990's; I was a Director and Secretary during settlement discussions on a foreclosure suit filed against OLCA and discussions on another suit filed against OLCA to prohibit the settlement of the foreclosure suit. I am currently off the Board and working with a group of lot owners who are attempting to put OLCA under receivership.

Lot owners in communities such as ours have been placed in a very difficult position. The roads are owned by all lot owners in their entirety. Many of the roads are nothing more than bulldozed paths across the lava. Some of those paths end up being riverbeds during heavy rains. Yet, other than the responsibility of common ownership, no provisions were made to require common maintenance and upkeep when the subdivision was created. That omission was a major failure by the State and County when the subdivision was created. That failure to clearly establish lot owner responsibility and lot owner payments to maintain and improve their roads has led to a great deal of conflict.

OLCA, for example has been in conflict over the roads from at least 1976 to present. The current level of conflict is the worst it has ever been. OLCA currently has two very different groups claiming to be the official Board of Directors.

Orchidland and similarly situated communities NEED to have an adult in the room. We NEED to have a Mandatory process for resolving the lot owner disputes over the maintenance of our roads and any other obligations imposed on those lot owners by virtue of their owning lots in the subdivision.

I ask that you pass House Resolution 28.

I volunteer to be a part of the task force to research this issue; or in the alternative, I offer my services to be consulted by that task force.