

# HAWAII FINANCIAL SERVICES ASSOCIATION

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Senator Brian T. Taniguchi, Chair  
and members of the Senate Committee on Judiciary and Government Operations  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **Senate Bill 572, SD 1 (Condominiums)**  
**Hearing Date/Time: Monday, March 2, 2009, 10:30 A.M.**

I am the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is the trade association for Hawaii's financial services loan companies which are regulated by the Hawaii Commissioner of Financial Institutions under the Code of Financial Institutions (Chapter 412, Article 9 of the Hawaii Revised Statutes).

The HFSA wants to **comment** on this Bill.

The purpose of this Bill is to raise the maximum amount of the special assessment for delinquent monthly common assessments that can be charged against a person who purchases a condominium unit to \$3,600. It expands limitations on association liability for elderly unit owners aging in place to include handicapped and disabled persons.

We take no position on the part of this Bill that relates to elderly unit owners.

The other part of this Bill would increase the maximum amount of the special assessment. Currently the special assessment is the lesser of \$1,800 or the amount of 6 months of unpaid condominium common assessments (e.g. maintenance fees). This Bill would increase the amount from \$1,800 to \$3,600. The law regarding these special assessments was first enacted in 2000 as Act 39. This special assessments provision is in Hawaii Revised Statutes Sec. 514A-90 and 514B-146. This provision requires a third party buyer to pay a portion of the delinquent common assessments (e.g. maintenance fees) even if there is no lien recorded in the State Bureau of Conveyances.

These special assessments could affect the price that a buyer pays for the foreclosed property and the amount that a foreclosing lender will net from the sale. We understand that condominium associations need to get paid when there are delinquent maintenance fees. But lenders also need to get paid the amount owed on the mortgage loans especially if the value of the property is less than the mortgage balance. We realize that maintenance fees in general have increased over the past 9 years. But a permanent doubling of the special assessment from \$1,800 to \$3,600 appears to be too much of an increase.

In 2000 when this \$1,800 special assessment was first enacted, there was a sunset (expiration) date provision. After a few years, that sunset date was extended. The sunset date was later repealed so that the \$1,800 was made permanent. If your Committee is inclined to increase the special assessment cap, perhaps that increase could be temporary and subject to a sunset date, after which the \$3,600 would revert back to \$1,800.

Thank you for considering our comments.

  
MARVIN S.C. DANG  
Attorney for Hawaii Financial Services Association