

JAN 23 2009

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# A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Act 244, Session Laws of Hawaii 2007, is  
2 amended by amending section 12 to read as follows:

3 "SECTION 12. This Act shall take effect upon its approval;  
4 provided that sections 2, 3, and 4 shall take effect retroactive  
5 to July 1, 2006; provided further that section 514A-121.5(b) to  
6 (j), Hawaii Revised Statutes in section 2 of this Act shall be  
7 repealed on June 30, [~~2009;~~] 2011; provided further that cases  
8 pending before the office of administrative hearings of the  
9 department of commerce and consumer affairs as part of the  
10 condominium dispute resolution pilot project established by  
11 section 28 of Act 164, Session Laws of Hawaii 2004, on June 30,  
12 2006, that may have been dismissed due to the repeal of part VII  
13 of chapter 514A, Hawaii Revised Statutes, shall be reinstated  
14 and subject to section 514A-121.5, Hawaii Revised Statutes, in  
15 section 2 of this Act."

16 SECTION 2. Act 205, Session Laws of Hawaii 2008, is  
17 amended by amending section 5 to read as follows:



1 "SECTION 5. This Act shall take effect upon its approval,  
2 and shall be repealed on June 30, [~~2009.~~] 2011."

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 Statutory material to be repealed is bracketed  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

5 SECTION 4. This Act shall take effect on June 29, 2009.

6

INTRODUCED BY:

Will Engus  
Carol Johnson  
Rosely A. Bell  
Josh M.  
Fred Manning



**Report Title:**

Condominiums; Dispute Resolution Pilot Project

**Description:**

Extends the condominium dispute resolution pilot project until 6/30/11.





LINDA LINGLE  
GOVERNOR  
JAMES R. AIONA, JR.  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
335 MERCHANT STREET, ROOM 310  
P.O. Box 541  
HONOLULU, HAWAII 96809  
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LAWRENCE M. REIFURTH  
DIRECTOR  
RONALD BOYER  
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

February 24, 2009  
8:30 a.m.

**TESTIMONY ON SENATE BILL NO. 574, RELATING TO CONDOMINIUMS**

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

My name is Rod Maile, and I am the Senior Hearings Officer for the Office of Administrative Hearings, Department and Commerce and Consumer Affairs ("DCCA"). Thank you for the opportunity to present testimony on Senate Bill No. 574 Relating to Condominiums.

Although DCCA does not believe that the number of requests for hearings filed with the Condominium Dispute Resolution Pilot Program ("CDR") Pilot Program pursuant to Hawai'i Revised Statutes ("HRS") §514A-121.5, as well as the Condominium Management Dispute Resolution ("CMDR") Pilot Program

Testimony on Senate Bill No. 574  
February 24, 2009  
Page 2

pursuant to HRS §514B-161, would up to this juncture warrant the establishment of a permanent condominium dispute resolution contested case process, if there is significant support for the extension of the present CDR and CMDR Pilot Programs, DCCA would not oppose an extension of these Pilot Programs until June 30, 2011.

Thank you for the opportunity to testify on this bill.



SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION,  
REGARDING SENATE BILL 574

Hearing Date : Tuesday, February 24, 2009  
Time : 8:30 a.m.  
Place : Conference Room 229

Chair Baker and Committee Members,

My name is John Morris, and I am testifying against SB 574 on behalf of the Community Associations Institute Hawaii Chapter Legislative Action Committee ("CAI"). CAI Hawaii is the local chapter of a national organization dedicated to improving the management and operation of community associations nationwide. CAI has over 200 members in Hawaii and over 14,000 nationwide.

CAI opposes SB 574 to the extent that it proposes to extend the condominium management dispute resolution administrative hearing program conducted through the Department of Commerce and Consumer Affairs ("condo court") for two more years. Unfortunately, although CAI has supported the condo court program since its inception, the record confirms that the program has not been effective. While the purpose of condo court -- simple and effective dispute resolution for condominium owners -- is worthwhile, condo court is not the answer.

Despite last year's efforts (and the efforts of prior years) by the Legislature to broaden the jurisdiction of condo court and make it more useful, the records of the Department of Commerce and Consumer Affairs indicate that few, if any, owners use condo court. Instead, just a very few cases have been filed.

I have personally participated in a number of condo court hearings. From my perspective, the program was conducted appropriately by the Department of Commerce and Consumer Affairs Hearings Office. Moreover, each side had an opportunity to present its case. Nevertheless, given the small number of cases, large resources should not be devoted to this program any longer.

Other, more effective processes are available for owners. For example, mediation in front of a mediator who is qualified to advise the parties on the merits of their dispute -- often called "evaluative" mediation -- seems to be a more effective means of resolving condominium disputes. Money spent on condo court could be better spent on that process, and result in a more effective dispute resolution procedure.

CAI Testimony Regarding SB 574  
February 23, 2009  
Page 2

Regardless, authorizing two more years of the pilot program for a condo court that has not worked in the past five years seems to be a poor use of resources.

Thank you for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "John A. Morris", written over a horizontal line.

John A. Morris  
Hawaii Legislative Action Committee  
of the Community Associations Institute

JAM:alt



**H.I.C.C.O.**

**HAWAII INDEPENDENT CONDOMINIUM & COOPERATIVE OWNERS**  
1600 ALA MOANA BLVD. - APT. 3100 - HONOLULU - HAWAII 96815

February 24, 2009

Senator Rosalyn H. Baker, Chair  
Committee on Commerce and  
Consumer Protection

**Testimony on SB 574 Relating to Condominiums**

Dear Senator Baker:

Thank you for this opportunity to testify in strong support of SB 574 on behalf of the Hawaii Independent Condominium and Co-op Owners (HICCO).

SB 574 ensures that the Alternative Dispute Resolution Process will continue as a pilot for two more years.

We are currently exploring other alternatives to the Alternative Dispute Resolution process with other interested parties. One suggestion presented in meetings this past summer has been an Evaluative Mediation process. However, until this process has been tried successfully with condominium disputes, it is essential that the current process remain in place.

The members of our organization urge that you approve SB 574.

Mahalo,

*Richard Port*

Richard Port, Chair  
Legislative Committee





## Hawaii Council of Associations of Apartment Owners

P.O. Box 726, Aiea, HI, 96701  
Phone: 485-8282 Fax: 485-8282  
Email: HCAA@hawaii.rr.com

February 21, 2009

Sen. Rosalyn Baker, Chair  
Sen. David Ige, Vice-Chair  
Senate Committee on Commerce and Consumer Protection

RE: TESTIMONY IN SUPPORT OF SB 574 RE CONDOMINIUMS  
Hearing: Tuesday, Feb. 24, 2009, 8:30 a.m. Conf. Rm. #229

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

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAA).

HCAA strongly supports this bill and requests that you pass it out.

When this program was initially adopted, it was a two-year pilot program; however, because of the problems associated with enacting HRS 514B and the corrections that had to be made to that law in the 2 years following its passage, this program has never had the benefit of the full 2 years. For that reason, we ask that the sunset on this program be extended to June 30, 2011.

Thank you for the opportunity to testify.

A handwritten signature in cursive script that reads 'Jane Sugimura'.

Jane Sugimura  
President

**LAW OFFICES OF PHILIP S. NERNEY, LLLC**

A LIMITED LIABILITY LAW COMPANY  
201 MERCHANT STREET, SUITE 1500, HONOLULU, HAWAII 96813  
PHONE: 808 537-1777  
FACSIMILE: 808 537-1776

February 20, 2009

Senator Rosalyn H. Baker  
Chair, Committee on Commerce  
and Consumer Protection  
415 S. Beretania Street  
Honolulu, Hawaii 96813

Re: SB 574/Oppose-2/24 @ 8:30 a.m.  
Commerce and Consumer Protection

Dear Senator Baker:

I am an attorney in private practice. I have represented condominium and community associations full time since 1990.<sup>1</sup>

SB 574 should not be enacted. It would continue a failed program of no value.

What began as a well-intentioned, but ill-conceived, experiment, is now simply a quixotic quest. The evidence is in. Condo court has been a complete failure.<sup>2</sup>

That was as predicted. The condominium dispute resolution pilot project ("condo court") was doomed from the start, because it is based on a misapprehension of the problem to be solved.

There is no need for a special adjudicative forum. Existing courts are more than sufficient for handling any claim significant enough to be *adjudicated*.

What is needed is an inexpensive means to enable consumers to address relatively minor matters in a *non-adjudicative* setting. That is why SB 195 was introduced. SB 195 would enable the use of condominium education trust fund resources "to subsidize the cost of mediations using an evaluative method."

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<sup>1</sup> In the interest of fuller disclosure, I should mention that I am a member of the CAI Legislative Action Committee. I also volunteer at the Mediation Center of the Pacific as chair and trainer for the condominium specialty area. I mediate there and for the Family Court of the First Circuit (in child abuse and neglect cases). The latter service relates to the fact that I have a master's degree in counseling psychology (with a marriage and family emphasis).

<sup>2</sup> The attached November 19, 2008 email from the Office of Administrative Hearings ("OAH") shows that exactly one owner prevailed in the entire time the program has been in existence, which covered five fiscal years.

Senator Rosalyn H. Baker  
February 20, 2009  
Page two

Some background is in order. The fate of condo court was carefully considered by an ad hoc group of interested persons<sup>3</sup> over the summer and fall of 2008.

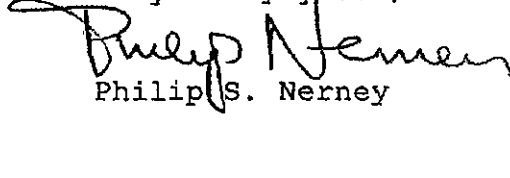
The focus of much attention was on how non-adjudicative methods of dispute resolution were appropriate in the condominium context. The emphasis on evaluative mediation related to the fact that mediators qualified to use that method of mediation would enable consumers to understand how an expert might view the merits of their dispute.<sup>4</sup>

Cost is the barrier to having consumers access evaluative mediation services, since subject matter experts must provide the service. Community mediation centers rely on volunteers, of varying backgrounds, to provide primarily facilitative mediation services. Facilitative mediation emphasizes enabling parties to come to their own agreements without advice, judgment or counseling by the mediators.

The notion is that the less tractable condominium disputes could be referred to a process with an evaluative component. Consumers could then choose to resolve disputes in mediation or proceed through normal channels with a better understanding of the strengths and weaknesses of their position.

If the Legislature is interested in promoting a useful mechanism to resolve condominium-related disputes, then SB 195 should be heard. Condo court hasn't worked, it will never work and it is an instrument of positive harm.

Very truly yours,

  
Philip S. Nerney

Enclosure

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<sup>3</sup> Parts or all of the group met at least six times and included Richard Port (HCAAO), Jane Sugimura, Esq. (HCAAO), John Morris, Esq. (CAI), Steve Glanstein (Parliamentarian), Tracey Wiltgen, Esq. (Executive Director of Mediation Center of the Pacific), myself, and various representatives from DCCA (including Cynthia Yee, Esq. (REB), Bendyne Stone, Esq. (REB) and Rod Maile, Esq. (OAH)).

<sup>4</sup> It was also noted that Sections 16-201-85, et. seq., of the Hawaii Administrative Rules, enable the Real Estate Commission to provide informal interpretations of the condominium law to consumers upon request. This is another readily available and low cost means for consumers to obtain helpful information.

Print

Page 1 of 2

From: oah\_efiling@dcca.hawaii.gov (oah\_efiling@dcca.hawaii.gov)

To: YJS

Date: Wednesday, November 19, 2008 12:27:10 PM

Cc: [REDACTED]

Subject: Re: Condo Dispute Resolution Alternatives

Jane,

Here's the information you requested:

The following table reflects the number of cases filed with each of the Pilot Programs as of November 13, 2008\*:

	CDR Pilot Program	CMDR Pilot Program
FY 04-05	0	N/A
FY05-06	7	N/A
FY 06-07	Repealed*	0
FY07-08	11	3
FY08-09	2	0
Total Cases	20	3

\*During FY 06-07, 14 cases were filed with the CDR Pilot Program, however, because Act 164 was repealed on June 30, 2006, after Act 277 was passed on July 2, 2007, these cases were dismissed without prejudice. The majority of cases were not subsequently refiled with the CDR Pilot Program

The following table reflects the disposition of all of the cases filed with the CDR and CMDR Pilot Programs:

DISPOSITION	No. of Cases
Dismissed by Hearings Officer	5
Pending	2
Apartment owner prevailed	1
Association of Apartment Owners prevailed	3

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Page 2 of 2

Settled, resolved by parties	2
Stipulation to Dismiss Without Prejudice	4
Withdrawn and Dismissed Without Prejudice	4
Grand Total	20

Rod

"YJS"  
 <YJS@bfsi.com>

11/17/2008 06:30  
 PM

To  
 <oah\_efiling@dcca.hawaii.gov>  
 cc

Subject  
 Condo Dispute Resolution  
 Alternatives

Rod:

Can you provide us with statistics as to how many cases have complete the administrative hearings procedure and the outcomes of those case, e.g., how many times did the unit owner prevail and how many times did the Board prevail.

This would really help in finalizing a legislative proposal. Thanks.

Jane Sugimura