

Honolulu, Hawaii

Feb. 14

, 2006

RE: S.B. No. 2763
S.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Housing,
to which was referred S.B. No. 2763 entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUM PROPERTY REGIMES,"

begs leave to report as follows:

The purpose of this measure is to require condominium
associations to send written notice of unpaid assessments,
maintenance fees, and attorneys' fees to unit owners.

Specifically, this measure requires:

- (1) Condominium associations to send written notice of delinquent assessments or maintenance fees to a unit owner before taking any action under chapter 514B, Hawaii Revised Statutes, to collect these assessments or maintenance fees;
- (2) Separate written notices be given to the unit owner on the tenth, thirtieth, and forty-fifth day from the initial date of delinquency;
- (3) Each notice to be sent by first class, certified mail, set forth the amount of assessments or fees owed to the association, and indicate the intent of the association to collect the delinquent amounts from the unit owner;
- (4) The notice mailed on the forty-fifth day to inform the unit owner that the association will assess reasonable



attorneys' fees attributable to the collection of the assessments or maintenance fee beginning on the sixty-first day from the initial date of delinquency; provided that the association may not collect attorneys' fees incurred by the association and relating to the delinquency from the initial date of delinquency through the subsequent sixty-day period;

- (5) In any action challenging or collecting delinquent assessments or maintenance fees, the association shall have the burden of proving that written notices required by this measure were mailed to the unit owner; and
- (6) Any late fees imposed by an association unit owner under this measure shall not be more than twenty per cent of the monthly maintenance fee in effect at the time of the delinquency.

Testimony in support of this measure was submitted by Hawaii Independent Condominium and Cooperative Owners and two individuals. The Community Associations Institute-Hawaii Chapter and one individual submitted testimony in opposition to this measure. Comments were also submitted by the Hawaii Council of Associations of Apartment Owners.

Your Committee finds that the collection of delinquent assessments and maintenance fees is an important function of condominium associations that impacts individual unit owners, management companies, and condominium associations.

Your Committee further finds that federal and state law currently protects unit owners by providing for fair debt collection procedures and the right to demand mediation or arbitration. For example, section 514A-90(c)(5), Hawaii Revised Statutes, provides an owner with the "right to demand mediation or arbitration to resolve disputes about the amount or validity of an association's assessment, provided that the apartment owner immediately pays the assessment in full and keeps assessments current," and section 514A-90(c)(6) provides that "payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of all amounts not owed."

Your Committee has amended this measure by requiring written notices to a unit owner include information about the unit owner's right to protection under federal and state law, including but not



limited to the right to demand mediation or arbitration or contest assessments under sections 514A-90(c)(5) and (6).

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2763, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2763, S.D. 1, and be referred to the Committee on Judiciary and Hawaiian Affairs.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Housing,



RON MENOR, Chair



