

Honolulu, Hawaii

Feb 20, 2009

RE: H.B. No. 874
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.B. No. 874 entitled:

"A BILL FOR AN ACT RELATING TO RESIDENTIAL REAL PROPERTY,"

begs leave to report as follows:

The purpose of this bill is to prohibit residential real property deed restrictions or other covenants running with the land (covenants) requiring the payment of fees for the future transfer of the property, except fees payable to the government.

The Hawaii Legislative Action Committee of the Community Associations Institute and Hawaii Association of REALTORS supported the intent of this bill. The Mortgage Bankers Association of Hawaii opposed this measure.

This bill seeks to prohibit deed restrictions or covenants imposing fees on transferees every time the property is transferred. These restrictions run with the land and are not always disclosed to buyers until the closing of a property sale. Moreover, these fees may be used to generate income on recurring transfers of homes long after their initial sale.

Your Committee received testimony expressing concerns over the apparent lack of regulation over the imposition of such fees. While this bill seeks to address this issue by prohibiting these fees altogether, there are concerns that the broad language of this bill may inadvertently encompass various types of real



property transactions that trigger usual and customary fees, such as those collected upon the conveyance of homes and apartments within common interest communities.

Furthermore, your Committee finds that the provisions of this bill, as amended, are more suitably placed in Chapter 501, Hawaii Revised Statutes (HRS) (relating to Land Court registration) and Chapter 502, HRS (relating to Bureau of Conveyances recordation). Accordingly, your Committee has amended this bill by replacing its entire contents with similar provisions amending chapters 501 and 502, HRS, to prohibit residential real property deed restrictions or other covenants requiring the payment of fees for the future transfer of the property, but allowing such fees or charges for certain residential real property transactions relating to:

- (1) Payments to a lender on a mortgage loan secured by the property;
- (2) Payments to homeowners', condominium, cooperative, or property owners' associations pursuant to a declaration, covenant, or law applicable to the association;
- (3) Lease payments and charges to landlords;
- (4) Payments to the holder of an option to purchase an interest in residential real property or holder of a right of first refusal or first offer to purchase such an interest, for waiving the option or right upon transfer of the property to another person; and
- (5) Payments to a government entity.

Your Committee has incorporated these changes with the understanding that further amendments may be necessary as this bill moves forward and the various stakeholders work to reconcile their concerns.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 874, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 874, H.D. 1, and be referred to the Committee on Judiciary.



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



ROBERT N. HERKES, Chair



