

STAND. COM. REP. NO.

994

Honolulu, Hawaii

MAR 27 2009

RE: H.B. No. 874
H.D. 2
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred H.B. No. 874, H.D. 2, entitled:

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

begs leave to report as follows:

The purpose of this measure is to prohibit a deed restriction or covenant that requires the payment of a transfer fee to a specified private party every time a property is sold or transferred.

Your Committee received testimony in support of this measure from Hawai'i Association of Realtors. Testimony in opposition to this measure was received from 1250 Oceansides Partners. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Your Committee finds that some real estate developers charge transfer fees that require a payment to the developer every time a property is sold or transferred from one owner to the next. Some of these fees are unrelated to any legitimate purpose and serve only to enrich the developer. Your Committee finds that there is presently no regulation of these fees, no limitation on their application, and no accountability or oversight of the recipients.

Your Committee notes the concerns expressed by testifiers that the exemptions from the prohibition on transfer fees contained in this measure do not account for currently existing,



judicially mandated or sanctioned transfer fees. It is not the intent of your Committee to place any individual in the untenable position of being forced to choose between complying with a court order and a legislative mandate. However, as a public policy, it is troublesome to allow a developer to settle private disputes by burdening future purchasers who were not party to the original dispute. Accordingly, your Committee has included an amendment that ameliorates this concern, but respectfully requests that the Committee on Judiciary and Government Operations further consider this issue, which lies properly in that Committee's jurisdiction.

Your Committee has amended this measure by:

- (1) Clarifying that the prohibition on transfer fees is prospective, and does not affect deed restrictions or other covenants running with the land made prior to July 1, 2009; and
- (2) Making technical, nonsubstantive changes for the purpose of clarity and accuracy in its language.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 874, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 874, H.D. 2, S.D. 1, and be referred to the Committee on Judiciary and Government Operations.

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

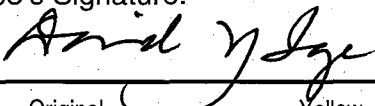


ROSALYN H. BAKER, Chair



The Senate
Twenty-Fifth Legislature
State of Hawaii

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:* HB 874 HD2	Committee Referral: CPN, JAO	Date: 3/23/2009		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312				
<input checked="" type="checkbox"/> Pass, with amendments 2311				
<input type="checkbox"/> Hold 2310				
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
IGE, David Y. (VC)	✓			
ESPERO, Will	✓			
GREEN, M.D., Josh	✓			
IHARA, Jr., Les	✓			
SAKAMOTO, Norman	✓			
HEMMINGS, Fred	✓			
TOTAL	7			
Recommendation:				
<input checked="" type="checkbox"/> Adopted				
<input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original	Yellow	Pink	Goldenrod	
File with Committee Report	Clerk's Office	Drafting Agency	Committee File Copy	

*Only one measure per Record of Votes