

STAND. COM. REP. NO.

238

Honolulu, Hawaii

FEB 16 2011

RE: S.B. No. 1454  
S.D. 1

Honorable Shan S. Tsutsui  
President of the Senate  
Twenty-Sixth State Legislature  
Regular Session of 2011  
State of Hawaii

Sir:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 1454 entitled:

"A BILL FOR AN ACT RELATING TO FORECLOSURES,"

begs leave to report as follows:

The purpose and intent of this measure is to authorize a planned community association or a condominium association to pursue nonjudicial foreclosure on units within the association for outstanding liens.

Your Committee received testimony in support of this measure from the Hawaii Bankers Association, Hawaii First, Hawaii Financial Services Association, AOA Mauna Luan, Inc., the Hawaii Chapter of the Community Associations Institute, One Waterfront Towers AOA, the Waipuna Condominium, the Villages of Kapolei Association, Pearl Regency Home Owners Association, Wailuna AOA, Mililani Town Association, Ewa by Gentry Community Association, Ke Noho Kai Community Association, HKP AOA, Hawaii Credit Union League and sixteen individuals. Your Committee received testimony in opposition to this measure from Certified Management.

Your Committee finds that foreclosure on a lien by a planned community association or a condominium association is different in purpose from foreclosure on a mortgage by a lender. Foreclosure on an association lien is a procedure for an association to recoup expenditures incurred by the association on behalf of or because of a unit within the association, whereas foreclosure on a mortgage is a procedure for a lender to take possession of a



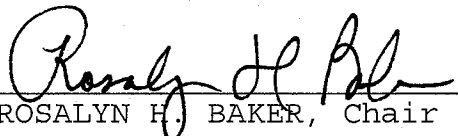
collateral property for recoupment of a debt to a lender incurred by the borrower and secured by the collateral property. Your Committee finds that conflation of the two processes due to their inclusion within the same general foreclosure statute leads to confusion in interpreting the law and administering each process. Your Committee further finds that codifying lien foreclosure language governing the administration of planned community associations and condominium property regimes will reduce confusion and contribute to the efficient administration of the laws governing planned community associations and condominiums.

Your Committee has amended this measure by:

- (1) Adding new provisions to include condominium projects governed under chapter 514A, Hawaii Revised Statutes, in this measure;
- (2) Clarifying that an association may satisfy the bid price of a unit at a foreclosure auction by credit bidding up to the lien amount;
- (3) Specifying the allocation of excess income from rent paid to an association on a foreclosed unit for which the association has acquired title; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

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 S.B. No. 1454, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1454, S.D. 1, and be referred to the Committee on Judiciary and Labor.

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

  
ROSALYN H. BAKER, Chair



