

Honolulu, Hawaii

MAR 20 2013

RE: H.B. No. 25
H.D. 2
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred H.B. No. 25, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO SUSPENSION OF FORECLOSURE ACTIONS BY JUNIOR LIENHOLDERS,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Allow a planned community association and condominium association, as junior lienholders, to initiate or continue a nonjudicial foreclosure action on a property subject to judicial foreclosure; and
- (2) Repeal the requirement to stay the power of sale foreclosure process pending a circuit court foreclosure action.

Your Committee received testimony in support of this measure from the Hawaii Bankers Association; Hawaii Financial Services Association; Mortgage Bankers Association of Hawaii; Community Associations Institute, Hawaii Chapter; Hawaii Council of Association of Apartment Owners; Hawaiiana Management Company, Ltd.; Valley Isle Resort Association of Apartment Owners; and eight individuals. Your Committee received comments on this measure from the Office of Consumer Protection of the Department of Commerce and Consumer Affairs.



Your Committee finds that under Hawaii's current foreclosure law, an association cannot foreclose nonjudicially if a lender is foreclosing. Even if an association has already begun a nonjudicial foreclosure before the lender begins the foreclosure, that association's nonjudicial foreclosure must be put on hold or converted to a judicial foreclosure. The judicial foreclosure process can incur significant delays, during which time a property can fall into a state of disrepair, which negatively affects neighboring properties and the community as a whole. This measure provides associations and their surrounding communities with a mechanism to mitigate the damage, neglect, and loss of revenue or value that results during the extended time that is currently required for a mortgagee to judicially foreclose on a property.

Your Committee further finds that this measure may have the unintended consequence of accelerating foreclosures by mortgagees. The removal of an owner-occupant may make the nonjudicial foreclosure process under part II of chapter 667, Hawaii Revised Statutes, more attractive to mortgagees who are currently foreclosing by action via part IA of chapter 667, Hawaii Revised Statutes. Because there would be no owner-occupant resident at the time the foreclosing mortgagee initiated a foreclosure pursuant to section 667-22, Hawaii Revised Statutes, the foreclosure would not be subject to the dispute resolution provisions in part V of chapter 667, Hawaii Revised Statutes.

Your Committee notes that the Senate companion to this measure, S.B. No. 508, S.D. 1, which was previously heard by your Committee, preserves the right of owner-occupants to require a foreclosing mortgagee to participate in the mortgage foreclosure dispute resolution process when an association forecloses on residential real property occupied by owner-occupant mortgagors and the mortgagee subsequently forecloses its lien on the same property. The language in S.B. No. 508, S.D. 1, is preferable because it ensures that a mortgagor's right to opt in to the mortgage foreclosure dispute resolution program is not circumvented.

Your Committee has heard testimony relating to the ability of an owner-occupant mortgagor to participate in the mortgage foreclosure dispute resolution program. Your Committee also finds that even if an association has the ability to take possession of a unit and rent it out, the original owner-occupant mortgagor is still liable for the mortgage debt. Your Committee additionally finds that when a mortgagee forecloses on a unit, the mortgagee



forecloses on the mortgagor's interest, and it is therefore appropriate to preserve the mortgagor's right to participate in the mortgage dispute resolution program. Nevertheless, your Committee concludes that amendments to the language in S.B. No. 508, S.D. 1, are necessary to clarify that the remedies provided are only available in situations where an association forecloses on residential real property occupied by one or more owner-occupant mortgagors for whom the unit is and has been the person's primary residence.

Accordingly, your Committee has amended this measure by:

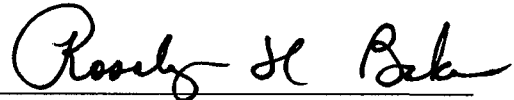
- (1) Deleting its contents and replacing them with the contents of S.B. No. 508, S.D. 1, a substantively similar measure, which:
 - (A) Allows a condominium association, as a junior lienholder, to commence or continue a nonjudicial foreclosure action on a property subject to a judicial foreclosure even if the lender has filed for foreclosure;
 - (B) Preserves the right of owner-occupants to require the foreclosing mortgagee to participate in the dispute resolution process in situations where an association forecloses on residential real property occupied by owner-occupant mortgagors and the mortgagee subsequently forecloses its lien on the same property; and
 - (C) Inserts an effective date of upon approval; and
- (2) Further amending this measure by:
 - (A) Clarifying that the right of owner-occupants to require the foreclosing mortgagee to participate in the dispute resolution process is preserved in situations where an association forecloses on residential real property occupied by one or more owner-occupant mortgagors for whom the unit is and has been the person's primary residence for a continuous period of not less than two hundred days immediately preceding the date on which the notice is served and the mortgagee subsequently forecloses its lien on the same property;



- (B) Amending the purpose section for clarity; and
- (C) 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 H.B. No. 25, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 25, H.D. 2, 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



The Senate
Twenty-Seventh Legislature
State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:* HB 25, HD2	Committee Referral: CPN, JDL	Date: 3/14/13		
<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)	✓			
GALUTERIA, Brickwood (VC)	✓			
NISHIHARA, Clarence K.	✓			
SOLOMON, Malama	✓			
TANIGUCHI, Brian T.				✓
WAKAI, Glenn	✓			
SLOM, Sam				✓
TOTAL	5			2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution:	Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy

*Only one measure per Record of Votes