

STAND. COM. REP. NO.

165

Honolulu, Hawaii

FEB 11 2013

RE: S.B. No. 508
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 S.B. No. 508 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 allow a condominium or homeowner association, as a junior lienholder, to commence or continue a nonjudicial foreclosure action on a property subject to a judicial foreclosure until a foreclosure commissioner is appointed by the Circuit Court.

Your Committee received testimony in support of this measure from the Community Associations Institute, Hawaii Council of Associations of Apartment Owners, and one individual. 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 experience 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 from 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 concludes that amendments to address this unintended consequence are necessary.

Your Committee additionally finds that this measure seeks to prevent anyone conducting a nonjudicial foreclosure from continuing once a foreclosure commissioner is appointed. However, your Committee notes that proposed amendments are unnecessary. Because a judicial foreclosure is a judicial proceeding, there will be a judge available at all times to prevent a nonjudicial foreclosure from interfering in the judicial foreclosure proceeding. Your Committee concludes that amendments to address this language are also necessary.

Accordingly, your Committee has amended this measure by:

- (1) Removing unnecessary existing language and proposed amendments about staying the foreclosure process during the pendency of a circuit court foreclosure action;
- (2) Clarifying that if an association forecloses on residential real property that is occupied by owner-occupants mortgagors and the mortgagee subsequently forecloses its lien on the same property, then the owner-occupants shall retain their right to require the foreclosing mortgagee to participate in the dispute resolution process under part V, chapter 667, Hawaii Revised Statutes;



- (3) Amending the purpose section for clarity; 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. 508, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 508, 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



