

Honolulu, Hawaii

FEB 19 2016

RE: S.B. No. 2661

S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred S.B. No. 2661 entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUMS,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Clarify that when a unit owner and association reach a payment plan to cure a nonjudicial foreclosure, completion of the payment plan is required to cure the default;
- (2) Prohibit an association from converting unpaid fines into fees that may cause a unit owner to default; and
- (3) Require mediation by a unit owner and association over disputed fines before a foreclosure can be commenced.

Your Committee received testimony in support of this measure from two individuals. Your Committee received testimony in opposition to this measure from Associa. Your Committee received comments on this measure from the Community Associations Institute.

Your Committee finds that under existing law, if an association of apartment owners starts a nonjudicial foreclosure against a unit owner and the owner pays off the delinquency or proposes a payment plan that the association accepts, the



association is supposed to rescind the notice of foreclosure and not proceed. However, proposing a payment plan is not sufficient on its own to cure a default. This measure clarifies that if an owner merely proposes a payment plan, the notice of nonjudicial foreclosure is not rescinded, but rather put on hold until the owner completes the payment plan.

Your Committee has heard the concerns regarding language in this measure that requires any dispute over fines owed by a unit owner to an association to be resolved through mediation before foreclosure proceedings are commenced. Your Committee understands that this requirement may conflict with the pay first, dispute later provision in Hawaii's condominium laws, which prohibits unit owners from withholding any assessment claimed by an association. Therefore, your Committee concludes that clarifying the pay first, dispute later provision is appropriate at this time.

Your Committee notes that existing law states that an association cannot pursue nonjudicial foreclosure against any unit solely due to fines, penalties, legal fees, or late fees. Encouraging mediation when association assessments other than common expense assessments are in dispute, and prior to any foreclosure process being initiated, would be beneficial to associations and condominium owners.

Your Committee also notes that interested stakeholders have been in discussions and have come to an agreement on consensus language for this measure. The consensus language is intended to assist condominium owners and associations when there are issues regarding nonpayment or disputes regarding penalties or fines, late fees, late filing fees, or other charges in an assessment, including common expense assessments. Your Committee further finds that the consensus language is intended to amend Hawaii's pay first, dispute later provisions within the State's condominium code, to make it clear that common area maintenance fees, also known as common expense assessments, are the only fees that must be paid prior to initiating a dispute. All other penalties or fines, late fees, lien filing fees, or other charges in an assessment can be submitted to mediation prior to payment.

Accordingly, your Committee has amended this measure by:

- (1) Specifying that if a unit owner and an association have agreed on a payment plan to prevent a nonjudicial foreclosure from proceeding, any fines the association



imposes on the unit owner while the payment plan is in effect shall not be deemed a default under the payment plan;

- (2) Clarifying the obligations of a unit owner and an association while a unit owner is not otherwise in default under a payment plan;
- (3) Clarifying that a condominium owner who receives a demand for payment from an association may request a written statement about the assessment from the association, which shall include certain information, including the amount of any penalty or fine, late fee, lien filing fee, or other charge included in the assessment that is not imposed on all apartment owners as a common expense;
- (4) Clarifying that the pay first, dispute later provisions in Hawaii's condominium law apply only to common expense assessments claimed by an association of apartment owners;
- (5) Clarifying that a unit or apartment owner who receives a demand for payment from an association and disputes the amount of an assessment may request a written statement about the assessment from the association, which shall include certain information, including that a unit or apartment owner:
 - (A) Has no right to withhold common expense assessments for any reason;
 - (B) May demand mediation or arbitration regarding common expense assessments; provided that the common expense assessment is paid in full; and provided further that payment in full of a common expense assessment shall not prevent an owner from contesting the common expense assessment or receiving a refund of amounts not owed; and
 - (C) Who contests any penalty or fine, late fee, lien filing fee, or other charges in an assessment, except for a common expense assessment, may demand mediation prior to paying those charges;



- (6) Specifying that a unit or apartment owner may file in small claims court or require mediation to resolve disputes concerning the amount or validity of an association's common expense claim, if certain conditions are met;
- (7) Specifying the time frame in which a demand for mediation on contested charges, except for common expense assessments, must be brought and completed and prohibiting an association from attempting to collect disputed charges until the association has participated in the mediation;
- (8) Repealing language that allowed associations to convert delinquent fines and late fees into delinquent common expense assessments, if certain conditions were met;
- (9) Making conforming amendments; and
- (10) Making other 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, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2661, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2661, S.D. 1, and be referred to your Committee on Judiciary and Labor.

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



ROSALYN H. BAKER, Chair



