

SB2661

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominium; Association Foreclosure; Cure of Default

Description: Clarifies 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. Prohibits an association from converting unpaid fines into fees that may cause a unit owner to default. Requires mediation by a unit owner and association over disputed fines before a foreclosure can be commenced.

Companion:

Package: None

Current Referral: CPH, JDL

Introducer(s): BAKER, INOUYE, Galuteria, Kidani



January 29, 2016

VIA WEB TRANSMITTAL

Hearing Date: Monday, February 1, 2016

Time: 9:00 a.m.

Place: Conference Room 229

Committee on Commerce, Consumer Protection & Health
The Senate, the 28th Legislature
Regular Session of 2016

Re: Community Associations Institute's Testimony on SB2661

Dear Chair Baker, Vice Chair Kidani and Committee members:

I am the Vice Chair of the Community Associations Legislative Action Committee ("CAI"). CAI supports the proposed amendment to HRS 667-94(a) & (b) on cure of default, but CAI opposes SB2662 in part as to the proposed insertion of subsection (c).

Subsection (c) states that any fines owed to the association by a unit owner shall not be converted into any additional fees that may cause the unit owner to default. Any dispute over fines owed by a unit owner to the association shall attempt to be resolved through mediation before foreclosure proceedings are commenced.

First of all, subsection (c) is contrary to HRS § 514B-146(c) which provides as follows:

(c) No unit owner shall withhold any assessment claimed by the association. A unit owner who disputes the amount of an assessment may request a written statement clearly indicating:

(1) The amount of common expenses included in the assessment, including the due date of each amount claimed;

(2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;

(3) The amount of attorneys' fees and costs, if any, included in the assessment;

(4) That under Hawaii law, a unit owner has no right to withhold assessments for any reason;

(5) That a unit owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association's assessment, **provided the unit owner immediately pays the assessment in full and keeps assessments current;** and

(6) That payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owed.

Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law.

Second, subsection (c) in SB2661 will seriously undermine the Association's power and rights to enforce project covenants and delay the Association's foreclosure process when the owners are not only delinquent on maintenance fees but also in covenant violation. Most Association Bylaws provide for owner's right to appeal the fines, subsection (c)'s mandate of using mediation to resolve any fine dispute will cause more expenditure of unnecessary legal fees and costs for both associations and unit owners.

The sound approach as set forth in HRS § 514B-146(c) is adequate to protect the owners' right to dispute the fines and get reimbursed on fines that are in dispute and should not be assessed.

Sincerely yours,

A handwritten signature in cursive script that reads "Na Lan".

Na Lan, Vice Chair of CAI LAC Hawaii

From: mailinglist@capitol.hawaii.gov
To: [CPH Testimony](#)
Cc: richard.emery@associa.us
Subject: Submitted testimony for SB2661 on Feb 1, 2016 09:00AM
Date: Saturday, January 30, 2016 4:56:36 PM

SB2661

Submitted on: 1/30/2016

Testimony for CPH on Feb 1, 2016 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Oppose	Yes

Comments: This Bill undermines the enforcement power of a board of directors to manage the association. Owners currently can pursue mediation for disputed fines, but must pay first. Furthermore, owners may dispute fines by appealing the board's decision to the board itself.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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January 30, 2016

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND HEALTH
REGARDING SENATE BILL 2661

Hearing Date: MONDAY, February 1, 2016
Time : 9:00 a.m.
Place : Conference Room 229

Chair Baker, Vice Chair Kidani, and Members of the Committee,

I am Arlette Harada and I am an attorney practicing in the area of collection and foreclosure on behalf condominium associations and homeowner associations. I ask that you vote in favor of Senate Bill 2661.

The current version of Section 667-94 of the Hawaii Revised Statutes, which Senate Bill 2661 seeks to modify, provides that when a homeowner is being foreclosed upon in a non-judicial foreclosure and makes a payment plan proposal which is accepted by the association, the association must rescind the notice of default and intention to foreclose. Once the rescission is issued, it appears that in order to proceed with a non-judicial foreclosure where the owner defaults on the payment plan, the association would have to essentially start over with serving the notice of default and intention to foreclose on the owners and other parties. This process adds unnecessary time and expense to the process. These costs are passed on to the defaulting owner, making the foreclosure process more expensive for them, or absorbed by the association where it cannot collect the cost of restarting the foreclosure such as where the owner files and is discharged in bankruptcy or the owner moves to the mainland. This increases the assessments which must be paid by other association members.

Other subsections of Section 667-94 provide adequate protections for owners who want to have and can complete a payment plan within one year or less. Unfortunately, there are owners who agree to a payment plan they are unable to pay or request a payment plan with no intention of making the payments for a year. In some instances, shortly after we rescind the notice of default and intention to foreclose, the owner defaults on the payment plan. Associations should not have to start at the beginning where the owner is given a fair opportunity for a payment plan and then fails to make the required payments.

When a payment plan is entered where a judicial foreclosure is pending, the foreclosure is simply put on hold pending completion of the payment plan. This saves

TESTIMONY REGARDING SENATE BILL **2661**

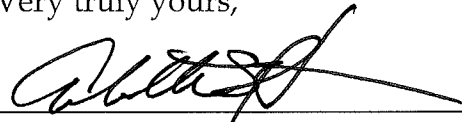
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the cost of refiling a foreclosure complaint and making service again on the parties. This bill seeks to have the non-judicial foreclosure payment plan treated the same as a judicial foreclosure payment plan.

Please contact me at 523-0702 if you have any questions. Thank you for this opportunity to testify.

Very truly yours,



Arlette S. Harada