

STAND. COM. REP. NO.

1058

Honolulu, Hawaii

MARCH 3, 2017

RE: H.B. No. 218
H.D. 1

Honorable Joseph M. Souki
Speaker, House of Representatives
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.B. No. 218 entitled:

"A BILL FOR AN ACT RELATING TO FORECLOSURES,"

begs leave to report as follows:

The purpose of this measure is to increase transparency in the foreclosure process by requiring that notice of public sales, including postponed or cancelled sales, be published both electronically and once in each of three consecutive weeks in a newspaper of general circulation in the affected county.

Two concerned individuals testified in support of this measure. The Hawaii Council of Associations of Apartment Owners dba Hawaii Council of Community Associations, Mililani Town Association, and Porter McGuire Kiakona & Chow, LLP, testified in opposition to this measure.

Concerns were raised by proponents of this measure regarding the adequacy of notification requirements in the current foreclosure process, specifically situations where a dispute arises as to whether a notice was actually seen or received by the owner of a mortgaged property. While your Committee understands these concerns, simply requiring additional publications of the notice in a newspaper may not address these specific concerns,

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especially in the foreclosure by action process where due notice is given as part of the judicial process. However, your Committee finds that in nonjudicial foreclosure actions, the issue of whether actual notice is given is still of concern. While additional publication in a newspaper may help remedy this notice issue, your Committee finds that since many homeowners may not read the newspaper, or at least the public notice section of the newspaper, stronger consumer protections are needed.

Your Committee has amended this measure by:

- (1) Deleting amendments made to public notice requirements under the judicial foreclosure process;
- (2) Requiring, rather than allowing, the publishing of a public notice in the nonjudicial foreclosure process via specified means;
- (3) Including posting of a public notice in a conspicuous location of the mortgaged property or unit as part of the notice requirements under the nonjudicial foreclosure process;
- (4) Changing its effective date to July 1, 2112, to facilitate further discussion; and
- (5) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Your Committee finds that including physical notification requirements for nonjudicial foreclosures, in addition to either publication in the newspaper or posting on a state website, is a more prudent course of action. Your Committee finds that this issue is important and warrants further discussion to determine if the concerns raised are addressed by the amendments made to this measure.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 218, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 218, H.D. 1.



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



ANGUS L.K. MCKELVEY, Chair



