

Honolulu, Hawaii

FEB 13 2017

RE: S.B. No. 391

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committees on Commerce, Consumer Protection, and Health and Judiciary and Labor, to which was referred S.B. No. 391 entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUMS,"

beg leave to report as follows:

The purpose and intent of this measure is to:

- (1) Clarify the process, including payment obligations, mediation requirements, and triggers for further default, where a condominium owner and association reach a payment plan to resolve a nonjudicial foreclosure; and
- (2) Establish procedures that provide condominium owners with the right to submit disputed legal fees, penalties or fines, late fees, lien filing fees, or other charges, except for common expense assessments, to the mediation process prior to payment.

Your Committees received testimony in support of this measure from the Hawaii Council of Associations of Apartment Owners; Community Associations Institute, Hawaii Chapter; Community Associations Institute, Legislative Action Committee; Hui 'Oia'i'o; Associa; and four individuals.

Your Committees find 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. Accordingly, this measure clarifies the process once a condominium owner and association agree on a payment plan to resolve a nonjudicial foreclosure.

Your Committees further find that Hawaii's existing condominium law contains a "pay first, dispute later" requirement, under which owners are not permitted to withhold any assessment claimed by their association, but must first pay the disputed amounts and then exercise their right to mediation, arbitration, or small claims court. Since common area maintenance fees, also known as common expense assessments, are vital to an association, any exception to the pay first, dispute later principle must be narrowly tailored and carefully crafted. Accordingly, this measure amends the pay first, dispute later requirement to make it clear that 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 may be submitted to mediation prior to payment.

As affirmed by the records of votes of the members of your Committees on Commerce, Consumer Protection, and Health and Judiciary and Labor that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 391 and recommend that it pass Second Reading and be referred to your Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committees on Commerce,
Consumer Protection, and Health
and Judiciary and Labor,



GILBERT S.C. KEITH-AGARAN, Chair



ROSALYN H. BAKER, Chair



The Senate
Twenty-Ninth Legislature
State of Hawai'i

Record of Votes
Committee on Commerce, Consumer Protection, and Health
CPH

Bill / Resolution No.:*	Committee Referral:	Date:		
SB391	CPH/JDL, WAM	2/3/17		
<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 checked="" type="checkbox"/> Pass, unamended 2312 <input 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)	/			
NISHIHARA, Clarence K. (VC)	/			
CHANG, Stanley	/			
ESPERO, Will	/			
IHARA, Jr., Les	/			
KIDANI, Michelle N.				/
RUDERMAN, Russell E.				/
TOTAL	5			2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>Clarence K. Nishihara</i>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes

