

Honolulu, Hawaii

February 10, 2017

RE: H.B. No. 35

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. 35 entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUMS,"

begs leave to report as follows:

The purpose of this measure, as received by your Committee, is to assist condominium owners in resolving disputes with a condominium association by establishing an Office of Condominium Complaints and Enforcement (Office) within the Department of the Attorney General.

Hui Oia'i'o and numerous individuals testified in support of this measure. The Hawaii Real Estate Commission, Community Association Institute Legislative Action Committee Hawaii Chapter, Hawaiian Properties, Hawaii Council of Associations of Apartment Owners, Palehua Townhouse Association, Porter McGuire Kiakona & Chow, LLP, Cadmus Properties Corporation, Rosehill Properties LLC, Association of Apartment Owners Harbor View Plaza, Mauna Luan, Princeville at Hanalei Community Association, Waikoloa Beach Villas, and numerous individuals testified in opposition to this measure. The Department of the Attorney General and Legislative Reference Bureau provided comments.

Condominium associations, governed by a board of directors, have extraordinary power, including the establishment of policies governing a condominium project and collecting and allocating fees that each unit owner pays for building and community maintenance.



Although condominium self-governance through associations has been successful in Hawaii, concerns have been raised by unit owners about the amount of power and authority held by association boards, abuse of this power and authority, and a general lack of opportunity unit owners have to express their concerns or dissent regarding decisions of the board.

Although your Committee notes that condominium owners need assistance in circumstances involving abusive, overbearing, or rogue boards, your Committee finds that the establishment of an Office of Condominium Complaints and Enforcement within the Department of the Attorney General may not be the best solution to address the concerns raised. Your Committee also has concerns, as expressed by the Attorney General, that the tasks assigned to the Office under this measure would be inconsistent with the statutory responsibility of the Attorney General in that the Attorney General, through the Office, would be providing legal advice to individuals who are not officers of the State and who are involved in private disputes.

Your Committee also finds that many of the proposed responsibilities of the Office are already being carried out by the Real Estate Commission of the Department of Commerce and Consumer Affairs and therefore this effort would be duplicative.

While legitimate concerns have been raised by condominium owners, your Committee finds that the issues raised are complex and should be addressed in a more prudent and focused approach. Accordingly, your Committee has amended this measure by deleting its contents and replacing it with language that:

- (1) Clarifies that a condominium association does not have to rescind the notice of default and intention to foreclose or restart the foreclosure by filing a new notice of default and intent to foreclose if a unit owner defaults on a payment plan to cure a nonjudicial foreclosure agreed to by the parties;
- (2) Specifies that if a unit owner and an association have agreed on a payment plan to prevent a nonjudicial foreclosure from proceeding, any association fines imposed while the payment plan is in effect shall not be deemed a default under the payment plan;



- (3) Clarifies the obligations of a unit owner and an association while a unit owner is not otherwise in default under a payment plan;
- (4) Clarifies 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) Specifies that a unit or apartment owner who disputes the amount of an assessment may request a written statement about the assessment from the association, including that a unit or apartment owner may demand mediation prior to paying contested charges, other than common expense assessments;
- (6) Specifies requirements for mediation on contested charges, except for common expense assessments; and
- (7) Repeals provisions addressing the application of common expense payments and delinquent fees.

Your Committee has also amended this measure by:

- (1) Changing its effective date to July 1, 2112, to encourage further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

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. 35, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 35, H.D. 1, and be referred to your Committee on Judiciary.



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



ANGUS L.K. MCKELVEY, Chair



