

Honolulu, Hawaii

APR 25 2019

RE: S.B. No. 551
S.D. 1
H.D. 2
C.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2019
State of Hawaii

Honorable Scott K. Saiki
Speaker, House of Representatives
Thirtieth State Legislature
Regular Session of 2019
State of Hawaii

Sirs:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 551, S.D. 1, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUMS,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to:

- (1) Clarify that the explicit grant of power of sale to condominium associations is required for the purposes of enforcing association liens under the association alternate power of sale foreclosure process;
- (2) Clarify available damages for violations of the association alternate power of sale foreclosure process; and
- (3) Establish an association foreclosure task force.



Your Committee on Conference finds that this measure requires the explicit grant of power of sale within a condominium association's documents, for purposes of enforcing association liens under the association alternate power of sale foreclosure process. This requirement is similar to a recent decision of the Intermediate Court of Appeals in Sakal v. Association of Apartment Owners of Hawaiian Monarch, 143 Haw. 219, 426 P.3d 443 (2018), which held that the Legislature intended that associations can only conduct nonjudicial foreclosures if the associations have specific authority to conduct nonjudicial foreclosures in their declaration or bylaws or in an agreement with the owner being foreclosed upon.

However, your Committee on Conference notes that condominium associations have relied for years on the remedy of nonjudicial foreclosure as a way of collecting delinquent maintenance fees, which are necessary for the basic operations of associations. Your Committee on Conference further finds that under the Sakal case, many associations have lost the benefit of the nonjudicial foreclosure process. As a result, there are concerns that an association's ability to conduct a nonjudicial foreclosure will no longer depend on legislative intent, but whether specific language in the declaration or bylaws was included when the project was first created. Your Committee on Conference notes that the extensive legislative history indicates this was not the intent of the Legislature.

Accordingly, amendments to this measure are necessary to clarify that condominium associations should be able to use nonjudicial foreclosure to collect delinquencies regardless of the presence or absence of power of sale language in an association's governing documents.

Your Committee on Conference has therefore amended this measure by:

- (1) Deleting language that would have permitted associations to foreclose by power of sale; provided that the association documents authorized a power of sale or nonjudicial foreclosure remedy;
- (2) Deleting language that would have made a foreclosing association that acquired a unit through a foreclosure proceeding in violation of the association alternate power of sale foreclosure process liable for reasonable damages and attorney's fees;



- (3) Deleting language that would have established an association foreclosure task force;
- (4) Inserting a purpose section;
- (5) Requiring a foreclosing association to provide a supplemental nonjudicial foreclosure notice along with any notice of default and intention to foreclose, specifying that a unit owner may request mediation, and specifying the procedures when mediation is chosen by the unit owner;
- (6) Clarifying when an association's power of sale may not be exercised;
- (7) Inserting language that clarifies the lien of an association may be foreclosed by action or by nonjudicial power of sale foreclosure regardless of the presence or absence of power of sale language in an association's governing documents;
- (8) Amending the definition of "power of sale" or "power of sale foreclosure" in chapter 667, Hawaii Revised Statutes, to include enforcement of an association lien, regardless of whether the association documents provide for a power of sale, a power of sale foreclosure, a power of sale remedy, or a nonjudicial foreclosure;
- (9) Inserting a retroactivity clause for certain provisions of this measure applicable to certain cases, actions, proceeding, or claims arising out of a nonjudicial foreclosure that arose before the effective date of this measure;
- (10) Clarifying that this measure shall not be applied so as to impair any existing contracts in a manner that violates the Hawaii State Constitution or United States Constitution;
- (11) Inserting a severability clause;
- (12) Changing its effective date to upon approval; and
- (13) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

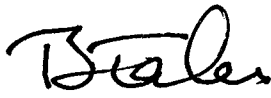


As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 551, S.D. 1, H.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 551, S.D. 1, H.D. 2, C.D. 1.

Respectfully submitted on behalf
of the managers:

ON THE PART OF THE HOUSE

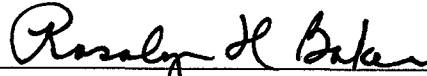
ON THE PART OF THE SENATE



ROY M. TAKUMI
Co-Chair



CHRIS LEE
Co-Chair



ROSALYN H. BAKER
Chair



KARL RHOADS
Co-Chair



Hawai'i State Legislature

Record of Votes of a
Conference Committee

CLR 65

Bill / Concurrent Resolution No.: SB 551, SD 1, HD 2	Date/Time: 2:35 PM 4-25-2019
--	--

The recommendation of the House and Senate managers is to pass with amendments (CD).

The Committee is reconsidering its previous decision.

<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure	<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.
---	---

Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
BAKER, Rosalyn H., Chr.	✓				TAKUMI, Roy M., Co-Chr.	✓			
RHOADS, Karl, Co-Chr.	✓				LEE, Chris, Co-Chr.	✓			
FEVELLA, Kurt				✓	MATSUMOTO, Lauren	✓			
TOTAL	2	-	-	1	TOTAL	3	-	-	-

A = Aye WR = Aye with Reservations N = Nay E = Excused

Senate Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted	House Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted
---	--

Senate Lead Chair's or Designee's Signature: 	House Lead Chair's or Designee's Signature:
--	---

Distribution: **Original** **Yellow** **Pink** **Goldenrod**
File with Conference Committee Report House Clerk's Office Senate Clerk's Office Drafting Agency