

STAND. COM. REP. NO.

812

Honolulu, Hawaii

FEB 28 2019

RE: S.B. No. 551
S.D. 1

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

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 551, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUMS,"

begs leave to report as follows:

The purpose and intent of this measure is to clarify that a condominium association may exercise nonjudicial or power of sale foreclosure remedies regardless of the presence or absence of power of sale language in an association's governing documents.

Your Committee received testimony in support of this measure from the Palehua Townhouse Association; Law Offices of Mark K. McKellar, LLC; Kulana Knolls Association; Association of Apartment Owners of Kihei Bay Surf; The Maui Lani Community Association; Anderson Lahne and Fujisaki LLP; and nine individuals. Your Committee received testimony in opposition to this measure from one individual.

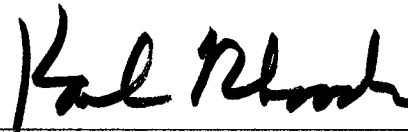
Your Committee finds that condominium associations have relied on the remedy of nonjudicial foreclosure for years as a way of collecting delinquent maintenance fees, which are necessary for the basic operations of associations. Judicial foreclosures alternatively can take far longer to resolve, create judicial backlog, and cost three to four times more than nonjudicial foreclosure actions, the fees for which are ultimately passed on to non-defaulting owners.



Your Committee further finds that under the decision of the recent Intermediate Court of Appeals case, Sakal v. Ass'n of Apartment Owners of Hawaiian Monarch, 426 P.3d 443 (Haw. Ct. App. 2018), many associations have lost the benefit of the nonjudicial foreclosure process. Concerns have been raised that, as a result, 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. This measure therefore clarifies that the governing documents of every association are deemed to include a power of sale provision, sufficient to enable the exercise of nonjudicial foreclosure remedy, regardless of the presence or absence of power of sale language in an association's documents.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 551, S.D. 1, and recommends that it pass Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,

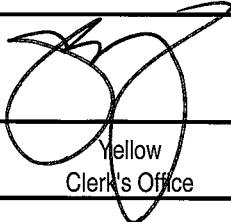


KARL RHOADS, Chair



The Senate
Thirtieth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary
JDC

Bill / Resolution No.:*	Committee Referral:	Date:		
S.B. 551, SD1	CPH, JDC	2-20-2019		
<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
RHOADS, Karl (C)	✓			
WAKAI, Glenn (VC)	✓			
GABBARD, Mike	✓			
KIM, Donna Mercado	✓			
FEVELLA, Kurt				✓
TOTAL	4	0	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes