



**STATE OF HAWAII**  
**DEPARTMENT OF TAXATION**  
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To: The Honorable Chris Lee, Chair  
and Members of the House Committee on Judiciary

Date: Wednesday, February 13, 2019  
Time: 2:01 P.M.  
Place: Conference Room 325, State Capitol

From: Linda Chu Takayama, Director  
Department of Taxation

Re: H.B. 287, Relating to Vacant and Abandoned Residential Property

The Department of Taxation (Department) offers the following comments on H.B. 287 for the Committee's consideration.

H.B. 287 makes several significant changes to Hawaii property and foreclosure law. A summary of key provisions are as follows:

- Adds a new section to chapter 46, Hawaii Revised Statutes (HRS), directing each county to establish an expedited procedure to approve permits for the demolition of vacant residential structures located within the county;
- Sets forth procedures for the owner of a residential structure to establish that the residential structure is vacant, sets limitations on when a residential structure may be deemed vacant, and provides statutory definitions for "parcel" and "residential structure";
- Adds a new section to chapter 667, HRS, providing that a state tax lien on a parcel upon which a residential structure exists may be foreclosed by nonjudicial or power of sale foreclosure procedures set forth in chapter 667 by the State Tax Collector, provided that the State Tax Collector has established its lien and that a residential structure is vacant and abandoned as provided in subsection 231-63(b), HRS;
- Amends section 231-62, HRS, by adding language to subsection (b) stating that liens on vacant and abandoned residential real property may be enforced by foreclosure without suit as provided in section 231-63 and chapter 667, HRS;
- Amends section 231-63, HRS, by adding a new subsection which states that a state tax lien on a parcel upon which a vacant and abandoned residential structure exists may be foreclosed by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, HRS, at any time; provided that the state tax collector has established that the parcel and residential structure is vacant and abandoned in accordance with subsection 231-62(b), HRS, and the following additional requirements:
  - The Department must establish that a residential structure is vacant and

abandoned by mailing to the structure's owner by certified mail with return receipt a sworn statement establishing that the Department has conducted an unspecified minimum number of inspections, each at least an unspecified number of days apart and at different times of day, and that at each inspection no occupant was present and there was no evidence of occupancy;

- The Department must maintain a copy of the statement and return receipt on file for the owner's inspection and review;
- *Prima facie* evidence that a residential structure is not vacant and abandoned shall include but is not limited to delivery of certified U.S. mail and ongoing and current utility usage;
- A residential structure shall not be deemed vacant and abandoned where the structure is:
  - Undergoing construction, renovation, or rehabilitation that is proceeding diligently;
  - Used on a seasonable basis but is otherwise secure;
  - The subject of any ongoing probate action, action to quiet title, or other ownership dispute;
  - Damaged by natural disaster but the owner intends to repair and reoccupy; or
  - Occupied by a mortgagor, relative, or lawful tenant;
- Adds statutory definitions for "parcel" and "residential structure" to subsection 231-63(b), HRS; and
- Effective July 1, 2019.

First, the Department notes that the existing language of section 231-63, HRS, allows nonjudicial foreclosure by the State Tax Collector (i.e., the Oahu Collection Branch Chief) only on real property which has been subject to a state tax lien for three years. Section 5 of this measure would add a new provision to section 231-63, HRS, allowing the State Tax Collector to foreclose a state tax lien *at any time* on a parcel upon which a vacant and abandoned residential structure exists, using the nonjudicial/"power of sale" foreclosure procedures set forth by chapter 667, HRS. Before exercising this power, the State Tax Collector must establish that the parcel and residential structure is vacant and abandoned by following a set of prescribed requirements within the measure's new statutory language.

The new provision added to section 231-63 also appears to require the State Tax Collector to establish vacancy and abandonment "in accordance with subsection 231-62(b)[,]" which this measure amends in its Section 4. However, a review of Section 4's change to section 231-62(b), which governs tax liens in judicial foreclosure actions, only seems to be the addition of a cross-reference to the other changes made by this measure. The amendment to 231-62(b) is an added clause stating that liens may be enforced by action in the circuit court of the judicial circuit in which the property is situated, "provided that liens that have existed for three or more years and liens on vacant and abandoned residential real property may be enforced by the state tax collector by foreclosure without suit as provided in section 231-63 and chapter 667." Because this language is slightly vague and the new clause refers to a different statute and legal concept, there is a danger it may be construed to permit nonjudicial foreclosure only for those properties which have had a lien for three or more years *and* are both vacant and abandoned.

In order to avoid confusion, the Department suggests amending this measure to explicitly differentiate between the two scenarios and remove any unintentional suggestion that these statutes are linked by dependent clauses or that fulfilling one is necessary to trigger the other. The second sentence of Section 5 could be amended to read as follows:

"b) A state tax lien on a parcel upon which a vacant and abandoned residential structure exists may be foreclosed by nonjudicial or power of sale foreclosure procedures set forth in chapter 667 by the state tax collector at any time; provided that the state tax collector has established that the parcel and residential structure is vacant and abandoned. ~~[in accordance with subsection 231-62(b) and this subsection; provided that:]~~"

Similarly, the first sentence of Section 4 could be amended to read as follows:

"(b) The liens may be enforced by action of the state tax collector in the circuit court of the judicial circuit in which the property is situated; provided that liens that have existed for three or more years, as well as ~~[and]~~ liens on vacant and abandoned residential real property which have existed for any length of time, may be enforced by the state tax collector by foreclosure without suit as provided in section 231-63 and chapter 667."

These revisions will help clarify the ambiguity in the measure's draft language, reduce Taxpayer confusion, and improve tax administration by clearly delineating the powers and responsibilities of both the State Tax Collector and the Department when dealing with tax liens in judicial and non-judicial foreclosure situations.

Thank you for the opportunity to provide comments.

# TAX FOUNDATION OF HAWAII

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SUBJECT: ADMINISTRATION, Restrict DOTAX Ability to Foreclose Tax Lien Property

BILL NUMBER: HB 287

INTRODUCED BY: SAN BUENAVENTURA

EXECUTIVE SUMMARY: Allows the Department of Taxation to utilize nonjudicial foreclosures on abandoned property on which there is a recorded tax lien. Such property already may be foreclosed under existing law. This measure may well constrain the Department's ability to use nonjudicial foreclosure on other properties.

SYNOPSIS: Adds a new section to chapter 46, HRS, directing the counties to establish an expedited procedure to approve permits for the demolition of vacant residential structures.

Adds a new section to chapter 667, HRS, providing that a state tax lien may be foreclosed by nonjudicial or power of sale foreclosure if the structure on the property is vacant and abandoned.

Amends section 231-62, HRS, which normally deals with judicial foreclosure, by providing that liens that have existed for three or more years on vacant and abandoned residential realty may be enforced without suit.

Amends section 231-63, HRS, which normally deals with nonjudicial foreclosure, to allow such foreclosure against residential realty provided that a number of conditions are met:

(1) The department of taxation shall establish that a residential structure is vacant and abandoned by mailing to the residential structure's owner by certified mail with return receipt a sworn statement establishing that the department of taxation has conducted at least \_\_\_\_\_ separate inspections, each at least \_\_\_\_\_ days apart and at different times of day, and at each inspection, no occupant was present and there was no evidence of occupancy. The department of taxation shall maintain a copy of the statement and return receipt on file for the owner's inspection and review.

(2) Prima facie evidence that a residential structure is not vacant and abandoned shall include but is not limited to delivery of certified U.S. mail and ongoing and current utility usage.

(3) A residential structure shall not be deemed vacant and abandoned where the structure is:

(A) Undergoing construction, renovation, or rehabilitation that is proceeding diligently;

(B) Used on a seasonable basis but is otherwise secure;

(C) The subject of any ongoing probate action, action to quiet title, or other ownership dispute;

- (D) Damaged by natural disaster but the owner intends to repair and reoccupy; or
- (E) Occupied by a mortgagor, relative, or lawful tenant.

EFFECTIVE DATE: July 1, 2019.

STAFF COMMENTS: The bill recites that its purpose is to allow DOTAX to seek nonjudicial foreclosure sale of vacant and abandoned property with an outstanding recorded state tax lien. That cannot be true because DOTAX already has this power in section 231-63, HRS. Rather, this bill imposes significant and burdensome conditions upon foreclosures of any kind.

To preserve the rights of our State to collect taxes due but unpaid, DOTAX has the right and duty to collect against all property and rights to property owned by the debtor. That includes the right, now in HRS sections 231-62 and 231-63, to foreclose against liened property using any procedure now allowed in law. The Department is allowed to foreclose against real property if it is occupied or not, if court action actuated by other owners or beneficiaries is ongoing or not, and whether or not relatives or tenants are living on it.

If those rights are significantly abridged as this bill contemplates, a significantly larger portion of the cost of government necessarily will need to be borne by law-abiding citizens to make up for the scofflaws, deadbeats, and tax dodgers that this bill coddles and protects.

Digested 2/11/2019

**HB-287**

Submitted on: 2/11/2019 9:33:53 PM

Testimony for JUD on 2/13/2019 2:01:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gerard Silva	Individual	Support	No

Comments: