

STAND. COM. REP. NO.

705

Honolulu, Hawaii

FEB 17 , 2021

RE: H.B. No. 641
H.D. 1

Honorable Scott K. Saiki
Speaker, House of Representatives
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.B. No. 641 entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUMS,"

begs leave to report as follows:

The purpose of this measure is to:

- (1) Specify a process for condominium associations to incorporate power of sale language into their governing documents; and
- (2) Clarify that liens may be foreclosed upon if the power of sale language is contained within an association's governing documents or within some other agreement with the owner of the unit subject to foreclosure.

Your Committee received testimony in support of this measure from the Community Associations Institute - Hawaii Legislative Action Committee, Associa, Hawaii Council for Associations of Apartment Owners, and two individuals. Your Committee received testimony in opposition to this measure from Hui Oiaio and two individuals.



Your Committee finds that Act 282, Session Laws of Hawaii 2019 (Act 282), was passed to confirm the legislative intent that condominium associations have the authority to use a nonjudicial foreclosure process to collect delinquencies regardless of the presence or absence of power of sale language in an association's governing documents. Your Committee further finds that the recent court decisions have nonetheless insisted that power of sale language must be contained within the governing documents of a condominium association before a nonjudicial foreclosure process can be used. Recent decisions by the Hawaii Supreme Court and the United States District Court of the District of Hawaii continue to cast doubt on prior legislative action and intent.

Your Committee notes that Act 282 reflected the Legislature's longstanding position that condominium law enables an association to exercise a nonjudicial foreclosure remedy. As courts have not shown a willingness to honor longstanding legislative intent, your Committee finds that this measure is necessary to clear up and confirm the intent of the Legislature regarding the right of condominium associations to conduct nonjudicial foreclosures.

Accordingly, this measure explicitly reiterates and declares that it is the intent of the Legislature for condominium associations to have the authority to use a nonjudicial foreclosure process to enforce association liens.

Your Committee has amended this measure by:

- (1) Inserting a clear purpose statement to reiterate and declare the intent of the Legislature;
- (2) Amending the definition of "power of sale" in the foreclosures laws;
- (3) Changing the effective date to January 1, 2050, to encourage further discussion; and
- (4) Making technical, nonsubstantive amendments for the purposes of 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. 641, as amended herein, and recommends that it



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pass Second Reading in the form attached hereto as H.B. No. 641,
H.D. 1, and be referred to your Committee on Finance.

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



AARON LING JOHANSON, Chair



