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February 1, 2021

TO: Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection

FROM: Alice L. Lee
Council Chair 

DATE: February 3, 2021

SUBJECT: **SUPPORT OF SB 606, RELATING TO HOUSING**

Thank you for the opportunity to testify in SUPPORT of this important measure. The purpose of this measure is to temporarily halt nonjudicial foreclosures by condominium associations until June 30, 2023.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I SUPPORT this measure for the following reasons:

1. The COVID-19 pandemic and the governmental responses to contain its spread have ravaged the State's tourism-centric economy.
2. This negative economic effect exacerbated Hawaii's pre-pandemic housing crisis.
3. To ensure that everyone has adequate housing during these uncertain times, it is necessary to temporarily halt certain types of foreclosure proceedings.

For the foregoing reasons, I SUPPORT this measure.

SB-606

Submitted on: 1/31/2021 4:54:02 PM

Testimony for CPN on 2/3/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Testifying for Associa	Comments	No

Comments:

Both local and national data reflects that the rate of owner delinquencies in a condominium remain unchanged at approximately 10%. Condominium budgets are based on break even. When one owner does not pay, all the other owners who too might be struggling must cover the difference. Today Boards are routinely working with delinquent owners without legislation. This Bill creates an unnecessary road block to protect the Association.

SB-606

Submitted on: 1/29/2021 5:37:58 PM

Testimony for CPN on 2/3/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch, Sr.	Testifying for Palehua Townhouse Association	Comments	No

Comments:

Chair Baker, Vice-Chair Chang, and Committee Members,

Our association agrees that a temporary halt to nonjudicial foreclosures by condominium associations should be allowed. However, we believe the sunshine date should be 12/31/2021 or no later than 06/30/2022.

As an association board, we have been able to work out individual plans with homeowners who are experiencing financial difficulties.

A 12/31/2022 date seems to be excessive.

Mike Golojuch, Sr., President

Palehua Townhouse Association



SB 606, RELATING TO HOUSING

FEBRUARY 3, 2021 · SENATE COMMERCE AND
CONSUMER PROTECTION COMMITTEE · CHAIR
SEN. ROSALYN H. BAKER

POSITION: Support.

RATIONALE: Imua Alliance supports SB 606, relating to housing, which temporarily halts nonjudicial foreclosures by condominium associations until 6/30/23

Hawai'i is facing a looming eviction crisis. During COVID-19, unemployment skyrocketed to levels not seen since the Great Depression. A recent study found that our state is experiencing the slowest unemployment rate recovery in the nation, moreover, with our rate hovering at approximately 9 percent in December. Thousands of people who haven't lost their jobs have instead seen their employment hours and earnings slashed, as the economic downturn lingered throughout 2020 and into the new year.

Financial precarity has become the norm for many families, who are unable to pay their full mortgages or rent and have accumulated housing debts. Currently, the state's eviction moratorium protects these families from being removed from their homes. Yet, the eviction moratorium will eventually expire as the public health emergency passes, leaving thousands of people at risk of losing their housing. Halting nonjudicial condominium foreclosures would extend a substantial benefit to owners and renters who've been harmed by the recession and are navigating a path back to financial and housing security, especially working families who are relying on expiring housing subsidies to survive. **It is entirely plausible, though heartbreaking,**

that landlords may try to increase rental and other housing costs to recover economic losses that they incurred during the pandemic, which would take a huge toll on tenants who are still struggling to get back on their feet.

Today, **our state's ongoing lack of affordable housing exacerbates the economic insecurity suffered by local families, which sex traffickers use to prey upon potential victims with false promises of financial stability and prosperity.** Hawai'i residents face the highest housing costs in the nation, at more than twice the national average. Researchers who authored the National Low Income Housing Coalition's *Out of Reach 2020* report found that a full-time worker would need to earn \$38.76/hour to afford a two-bedroom apartment at fair market value in our state, with Honolulu experiencing a 67 percent increase in fair market rent between 2005 and 2015. Average rent for a two-bedroom unit surpassed \$2,000 in recent years, with minimum wage workers needing to log 117 hours per week to afford a modest one-bedroom apartment at fair market value and 153 hours per week to afford a two-bedroom—a number that is equivalent to working over 20 hours a day with no days off year-round. In the past five years alone, Honolulu rent has increased by more than 25 percent. While 42 percent of Hawai'i residents are renters (a number that does not include individuals and families renting outside of the regulated rental market), they earn an average wage of \$17.17/hour, according to NLIHC, scarcely enough to meet their basic needs.

One out of every four households in Hawai'i report that they are “doubling up” or are three paychecks or less away from being homeless, per the Hawai'i Appleseed Center for Law and Economic Justice. Additionally, over 60 percent of households are severely cost-burdened, following NLIHC data, meaning that they pay more than 30 percent of their income for housing costs, a number that rises to over 80 percent of extremely low-income households, with only 74 homes available for every 100 households earning 80 percent of their respective area's median income.

Unsurprisingly, our state is now experiencing population decline. Hawai'i saw domestic out-migration increase for a third consecutive year in 2019, as the state's high cost of living continued to push people to the mainland. Census estimates show that our state's population dropped by 8,866 people from July 2019 to July 2020, when births, deaths, and migration were accounted for.

That population drop is nearly double the loss seen in 201, when Hawai'i one of just ten states in the country to lose population, according to the U.S. Census Bureau. People are simply being priced out of paradise.

Without question, Hawai'i's lack of affordable housing exacerbates our state's homelessness crisis. In a recently released report, Chief Medical Examiner Dr. Masahiko Kobayashi said that 127 people who were considered homeless at the time of their deaths died on O'ahu in 2019, up from 120 deaths in 2018 and an increase of 46 percent from 2017 (87 deaths).

Furthermore, over 30 percent of juvenile arrests in Hawai'i are for running away from home, the highest proportion in the nation. Nationally, one in seven young people between the ages of 10 and 18 will run away. Approximately 75 percent of runaways are female, while 46 percent of runaway and homeless youth report being physically abused, 38 percent report being emotionally abused, and 17 percent report being forced into unwanted sexual activity by a family or household member, according to the National Conference of State Legislatures.

Roughly 30 percent of runaway children will be approached for sexual exploitation within 48 hours of being on the run, according to the National Center for Missing and Exploited Children, with over 80 percent being approached for the commercial sex trade during the course of their time on streets. A federal study found that an estimated 38,600 runaway youth have been sexually assaulted, in the company of someone known to be sexually abusive, or engaged in sexual activity in exchange for money, food, or shelter.

Runaways are perceived as easy targets for sex traffickers because they lack stable shelter, a supportive environment, and financial resources, placing them at greater risk of forced prostitution and sexual servitude. Traffickers exploit our limited number of available shelter beds to lure young people into exploitation. As the homeless childcare provider Covenant House observes, traffickers tell homeless youth that shelters are full and ask, "Where are you going to go? Why don't you come with me? I'll take care of you." Coupled with threats of and actual physical and sexual violence against the victims or their families, these coercive techniques compel runaway youth to remain enslaved.

LGBTQ youth, who comprise an estimated 40 percent of the runaway and homeless youth population in the United States, are exponentially more likely to fall prey to human traffickers because of discrimination, family and community trauma, and a longing for comfort and acceptance (an estimated 26 percent of LGBTQ adolescents are rejected by their families and put out of their homes simply for being open and honest about who they are). In providing care for victims of human trafficking, we have heard their stories hundreds of times.

We cannot continue to allow the islands to be used as a private Monopoly board for real estate speculators. To ensure that our islands are affordable for ourselves and future generations, we must take bold action **now** to guarantee access to affordable housing for working families and ensure that people who are participating in our state's housing market do not face price gouging as they strive to achieve a successful financial recovery.

Kris Coffield · Executive Director, Imua Alliance · (808) 679-7454 · kris@imuaalliance.org

SB-606

Submitted on: 2/1/2021 7:27:10 AM

Testimony for CPN on 2/3/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lila Mower	Testifying for Hui `Oia`i`o, Condo Owners Coalition of Hawaii	Support	No

Comments:

Nonjudicial foreclosures should be discontinued permanently.



Collection Law Section

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Reply to: **STEVEN GUTTMAN, CHAIR**

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Re: S.B. 606 (Relating to Housing)

Hearing Date/Time: February 3, 2021 9:30 a.m.

This testimony is submitted on behalf of the Collection Law Section (“CLS”) of the Hawaii State Bar Association. The CLS is a division of the Hawaii State Bar Association and is comprised of attorneys who handle, among other things, summary possession and eviction proceedings for both commercial and residential properties.

The CLS **opposes** this Bill.

Although the stated intention of SB 606 is noble, this proposed legislation goes much too far in outright banning the use of a notice of default and intention to foreclose (commonly referred to a non-judicial foreclosure proceedings) by condominium associations. One of the most important tools belonging to a condominium association in the collection of delinquent common expense assessments is found in Hawaii Revised Statutes §667-92(f)(3), which states, in pertinent part:

If the association is **unable to serve the notice of default and intention to foreclose on the unit owner or any other party listed in subsection (e)(2) to (5) within sixty days**, the association may:...

(3) **Take control of the unit if the unit is unoccupied**, after giving notice to the unit owner at the unit owner's last known address as shown on the records of the association or as determined by the association as part of its due diligence to serve notice to the owner. The association's authority to take control of the unit pursuant to this paragraph shall be exercised **solely for the purpose of renting the unit to generate rental income to pay the unit owner's delinquency, and the association shall acquire no legal title to the unit**. In addition, the association shall credit the net rental proceeds generated from the rental of the unit to the owner's delinquency...[emphasis added]

By prohibiting the right of a condominium association to file a notice of default and intention to foreclose in the case where the **unit that has been abandoned**, the Legislature is depriving condominium associations of the ability to make more housing available to people living in Hawaii, and further exacerbating the housing crisis by unnecessarily constricting the housing supply. Further, these abandoned units, if **required to remain unoccupied**, not only impose an economic burden on all other unit owners in the condominium association but promote a potential influx of crime and a decrease in property values in communities.

In the event the Legislature decides that it would be in the public interest to impose such a moratorium, CLS requests that the Legislature consider moving the provisions of Hawaii Revised Statutes §667-92(f)(3) to another portion of the Hawaii Revised Statutes so that the **use of an abandoned unit for rental purposes to pay a unit owner's delinquency** will still be permitted without use of a notice of default and intention to foreclose. This would allow condominium associations to productively continue residential use of abandoned property that would otherwise remain vacant.

In addition, proposed S.B. 606 as currently drafted is too broadly applied to meet its stated purpose to ensure that persons have adequate housing during uncertain times. If the real purpose of this Bill is to prevent tenants (including owners and renters) from losing their homes, then S.B. 606 could accomplish the same goals by **restricting the use of non-judicial foreclosure procedures to rental or abandoned units only**, while limiting the moratorium only to owner-occupied units which serve as the owner's **primary residence**. Tenants of a unit would not suffer if an association were able to take possession from a defaulting landlord. Often when a condominium association forecloses on a unit, it seeks a tenant who can immediately begin paying rent to reduce the prior owner's delinquency to the association. Associations have a strong incentive for tenants to remain in the property in order to collect rent to offset the delinquency and

pay maintenance fees and assessments as they continue to accrue. Further, as stated above, allowing the foreclosure or repossession of abandoned units would only serve to maintain, as opposed to reduce the supply of housing in Hawaii.

Finally, CLS opposes the term of the proposed moratorium. With the progress made in the rollout of multiple COVID-19 vaccines and the anticipated eventual reopening of the local tourism industry, perhaps a shorter moratorium with the option to evaluate this issue in the future would be a better solution than to simply impose a two year moratorium.

Therefore, CLS requests that the Legislature more narrowly tailor any desired prohibition on non-judicial foreclosure procedures, and/or in the alternative, consider moving the provisions of Hawaii Revised Statutes §667-92(f)(3) to another, separate provision in the Hawaii Revised Statutes so that condominium associations are not required to record a notice of default and intention to foreclose in order to utilize its provisions allowing them to take possession of abandoned units.

Accordingly, we ask that your Committee amend the Bill to more narrowly tailor it to meet its stated purpose.

Thank you for considering our testimony.

CHRISTOPHER SHEA GOODWIN, ESQ.
Director
Collection Law Section

The comments and recommendations submitted reflect the position/viewpoint of the Collection Law Section of the Hawaii State Bar Association only and does not necessarily reflect the views of the Hawaii State Bar Association as a whole. The positions/viewpoints expressed herein have not been reviewed or approved by the HSBA Board of Directors.

SB-606

Submitted on: 2/1/2021 3:16:21 PM

Testimony for CPN on 2/3/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Individual	Oppose	No

Comments:

I am authorized to express the views of Community Associations Institute (CAI). As an industry we have not seen increases in delinquencies at condominiums as a result of the pandemic. Delinquencies hover around 10% statewide before and after the pandemic. What we do know, it that Condos operate with a break even budget. Thus and if one owner does not pay, the expenses still have to be paid; meaning the other owners pay extra or the association borrows from reserves. There are times Units are abandoned and nonjudicial foreclosure allows an affordable means to obtain possession of the Unit to rent it out to cover lost income. Boards today are cognizant of some owners personal financial problems and regularly work with owners to avoid foreclosure. This Bill will lead to unintended consequences should be deferred.

SB-606

Submitted on: 1/29/2021 7:32:42 PM

Testimony for CPN on 2/3/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dale	Individual	Support	No

Comments:

Aloha: This bill is good and deserves being passed. Regarding nonjudicial foreclosures, they have been suspended for a few years now due to decisions in both federal and state courts that they are unconstitutional. These matters should be in regular courts where lawyers would have to do some work to earn their monies, unlike NJFs which are 'easy money' for them, in my opinion.

In my more than a decade on a condo Board of Directors, time and again I have watched while peoples 'debt' to an HOA triples or more as multiple letters are put on them by condo attorneys. Never has happened that a Board would invite people in economic distress to a meeting to discuss their plight and offer to work out a structured payment plan. Also, the Board could take the issue to Small Claims Court rather than pay condo attorneys huges sums of money up front to write collection letters, then insist to the condo owners that their debt is owed 'legal fees' from the letters.

Attached here is a good letter previously shared in a public discussion forum which puts a good focus on the matter using a well focused arguement.

Please pass this consumer-friendly bill.

[Submitted 29 Jan 2021]

Respectfully, **Dale Head** (808) 696-4589 sunnymakaha@yahoo.com

PS - Having spent more than 33 years in a condo complex, was dismayed to see monthly fees skyrocket past the mortgage even before it could be paid off. Fair warning, any condo costs will exceed that of a detached home, over time, like, 20-30 years. This kills the idea of 'affordable housing'.

SB-606

Submitted on: 1/31/2021 12:55:52 PM

Testimony for CPN on 2/3/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Marcia Kimura	Individual	Support	No

Comments:

I support this measure, although it would be preferable to permanently abolish unconstitutional nonjudicial foreclosure.

SB-606

Submitted on: 2/1/2021 1:05:37 PM

Testimony for CPN on 2/3/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Larry Geller	Individual	Support	No

Comments:

Many condo owners have been harmed by non-judicial foreclosures. Particularly during this pandemic, and until this is resolved, NJFs should be put into abeyance

SB-606

Submitted on: 2/1/2021 4:52:03 PM

Testimony for CPN on 2/3/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeff Sadino	Individual	Support	No

Comments:

Non-judicial foreclosures have been thoroughly abused for many years for very small amounts that have been owed. I strongly support not only this Bill, but the repeal of non-judicial foreclosures as a whole.

SB-606

Submitted on: 2/1/2021 7:04:12 PM

Testimony for CPN on 2/3/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
R Laree McGuire	Individual	Oppose	No

Comments:

There is no evidentiary basis for placing a hold on nonjudicial foreclosures as national statistics reflect that collections have not increased due to COVID-19. Moreover, if there were evidence to support this hold, and there is not, the period at issue is too long.

SB-606

Submitted on: 2/2/2021 8:44:53 AM

Testimony for CPN on 2/3/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lourdes Scheibert	Individual	Support	No

Comments:

I support a halt to any kind of non-judicial foreclosures. Especially, without the written consent of the condominium owners regarding the 'power of sale' historically afforded to a mortgage lending institution.