

STAND. COM. REP. NO.

1261

Honolulu, Hawaii

APR 08 2011

RE: H.B. No. 879
H.D. 1
S.D. 2

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
H.B. No. 879, H.D. 1, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO MORTGAGE FORECLOSURES,"

begs leave to report as follows:

The purpose and intent of this measure is to clarify the
process by which a homeowners association may foreclose on an
outstanding lien by:

- (1) Authorizing a planned community association, a
condominium association, or an association of apartment
owners to pursue nonjudicial foreclosure for outstanding
liens;
- (2) Authorizing an association to acquire a foreclosed unit
through credit bidding at public auction;
- (3) Specifying allocation of excess rental income from a
foreclosed unit;
- (4) Authorizing a planned community association to resolve
disputes involving liens subject to foreclosure through
alternative dispute resolution procedures;
- (5) Specifying notice requirements for foreclosure on a
lien; and



- (6) Prohibiting foreclosure of a junior lien during the pendency of foreclosure of a mortgage.

Your Committee finds that protection of consumers in the foreclosure process is of paramount importance, particularly in consideration of the sharp increase in the number of foreclosures due to the current economic recession. Your Committee also finds that although the lien foreclosure process is an important tool that associations use to collect amounts that would otherwise be borne by homeowners in the association, the process as it currently exists contains the potential for abuse.

Your Committee has amended this measure by:

- (1) Adding a definition of "owner-occupied" to new sections created in chapters 514A and 514B, Hawaii Revised Statutes;
- (2) Specifying that the nonjudicial foreclosure of a lien by a planned community association or a condominium association subject to chapter 514B, Hawaii Revised Statutes, shall be subject to a single forty-five day stay upon receipt of written request of an owner-occupant;
- (3) Specifying that the board of directors shall reasonably consider a reasonable payment plan proposed by an owner at risk of lien foreclosure subject to certain conditions unless the owner has been delinquent in payment of assessments to the association within the previous twenty-four months;
- (4) Deleting provisions that authorized resolution of disputes involving foreclosure of liens through the alternative dispute resolution process created pursuant to section 514B-161, Hawaii Revised Statutes;
- (5) Deleting provisions specifying the allocation of excess rental income of a foreclosed unit;
- (6) Specifying that foreclosures of an association lien that arises under a declaration filed pursuant to chapter 421J or 514B, Hawaii Revised Statutes, shall not be suspended during the pendency of a mortgage foreclosure pursuant to chapter 667, Hawaii Revised Statutes;



- (7) Specifying that a lien for assessments of a condominium association subject to chapter 514B, Hawaii Revised Statutes, shall not take priority over liens for real property taxes and assessments by a governmental authority;
- (8) Amending section 5 of Act 205, Session Laws of Hawaii 2009, to remove the sunset provision of section 1 of that Act, which amended section 514A-121.5, Hawaii Revised Statutes, and to reenact section 514B-161, Hawaii Revised Statutes, as it read on the day before the effective date of Act 205; and
- (9) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

Your Committee notes that this measure, as amended, contains some provisions that raise concerns regarding protection for homeowners at risk of or in foreclosure. Your Committee cautions that while this measure merits advancement through the legislative process for purposes of continued discussion, issues of protection for homeowners and access to adequate process must be addressed before this measure is made effective.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 879, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 879, H.D. 1, S.D. 2.

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




CLAYTON HEE, Chair



The Senate
Twenty-Sixth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* HB 879, HDI, SDI	Committee Referral: JDL	Date: 4/8/11		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between;"> <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313 </div>				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)		✓		
GABBARD, Mike	✓			
IHARA, Jr., Les	✓			
SLOM, Sam				✓
TOTAL	3	1	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: <div style="display: flex; justify-content: space-around; font-size: small;"> Original File with Committee Report Yellow Clerk's Office Pink Drafting Agency Goldenrod Committee File Copy </div>				

*Only one measure per Record of Votes