

STAND. COM. REP. NO. 2688

Honolulu, Hawaii

MAR 04 2016

RE: S.B. No. 2661
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 2661, 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:

- (1) Amend section 667-94, Hawaii Revised Statutes (HRS), to:
 - (A) Clarify that when a unit owner and association reach a payment plan to cure a nonjudicial foreclosure, completion of the payment plan is required to cure the default;
 - (B) Specify that if a unit owner and an association have agreed on a payment plan to prevent a nonjudicial foreclosure from proceeding, any association fines imposed while the payment plan is in effect shall not be deemed a default under the payment plan; and
 - (C) Clarify the obligations of a unit owner and an association while a unit owner is not otherwise in default under a payment plan;
- (2) Make various amendments to chapters 514A and 514B, HRS, to:



- (A) Clarify that the pay first, dispute later provisions in Hawaii's condominium law apply only to common expense assessments claimed by an association of apartment owners;
 - (B) Specify that a unit or apartment owner who disputes the amount of an assessment may request a written statement about the assessment from the association, including that a unit or apartment owner may demand mediation prior to paying contested charges, other than common expense assessments;
 - (C) Specify requirements for mediation on contested charges, except for common expense assessments; and
 - (D) Repeal language that permitted associations to convert delinquent fines and late fees into delinquent common expense assessments, if certain conditions were met; and
- (3) Make conforming amendments to reflect the amendments made to chapters 514A and 514B, HRS.

Your Committee received testimony in support of this measure from two individuals.

Your Committee finds that under existing law, if an association of apartment owners starts a nonjudicial foreclosure against a unit owner and the owner pays off the delinquency or proposes a payment plan that the association accepts, the association is supposed to rescind the notice of foreclosure and not proceed. However, proposing a payment plan is not sufficient on its own to cure a default. This measure clarifies that if an owner merely proposes a payment plan, the notice of nonjudicial foreclosure is not rescinded, but rather put on hold until the owner completes the payment plan.

Your Committee further finds that existing law states that an association cannot pursue nonjudicial foreclosure against any unit solely due to fines, penalties, legal fees, or late fees. Encouraging mediation when association assessments other than common expense assessments are in dispute, and prior to any foreclosure process being initiated, would be beneficial to associations and condominium owners. This measure assists



condominium owners and associations when there are issues regarding nonpayment or disputes regarding penalties or fines, late fees, late filing fees, or other charges in an assessment, including common expense assessments. Your Committee further finds that this measure is intended to amend Hawaii's pay first, dispute later provisions within the State's condominium code, to make it clear that common area maintenance fees, also known as common expense assessments, are the only fees that must be paid prior to initiating a dispute. All other penalties or fines, late fees, lien filing fees, or other charges in an assessment can be submitted to mediation prior to payment.

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 S.B. No. 2661, S.D. 1, and recommends that it pass Third Reading.

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


GILBERT S.C. KEITH-AGARAN, Chair



The Senate
Twenty-Eighth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 2661 SD1	Committee Referral: CPH, JDL	Date: 3/1/16		
<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
KEITH-AGARAN, Gilbert S.C. (C)	/			
SHIMABUKURO, Maile S.L. (VC)	/			
GABBARD, Mike				/
KAHELE, Kaiali'i				/
KIM, Donna Mercado				/
THIELEN, Laura H.	/			
SLOM, Sam	/			
TOTAL	4			3
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