

Honolulu, Hawaii MAR 25 , ²⁰²¹

RE: S.B. No. 191 S.D. 2 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 S.B. No. 191, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUMS,"

begs leave to report as follows:

The purpose of this measure is to:

- 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 Associa; Community Associations Institute; Palehua Townhouse Association; Hawaiian Properties, Ltd.; and four individuals. Your Committee received testimony in opposition to this measure from the Law Offices of Mark K. McKellar, LLLC; Hawaii Council for Associations of Apartment Owners; and eight individuals. Your Committee received comments on this measure from two individuals.



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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.

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 legislative action is necessary to clear up and confirm the intent of the Legislature regarding the right of condominium associations to conduct nonjudicial foreclosures.

Your Committee finds that H.B. 641, H.D. 1 (Regular Session of 2021), a substantially similar measure, was previously passed by your Committee. Your Committee finds that H.B. 641, H.D.1 is preferable because it includes a clear statement expressly reiterating and declaring that the intent of the Legislature is that condominium associations have the existing authority to use a nonjudicial foreclosure process to enforce association liens.

Your Committee has amended this measure by:

- Deleting its contents and inserting the contents of H.B. 641, H.D. 1, a measure that:
 - (A) Specifies a process for condominium associations to incorporate power of sale language into their governing documents;
 - (B) Clarifies 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; and
 - (C) Takes effect on January 1, 2050; and



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(2) 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 S.B. No. 191, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 191, S.D. 2, H.D. 1, and be referred to your Committee on Judiciary & Hawaiian Affairs.

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

AARON LING JOHANSON, Chair



State of Hawaii

House of Representatives The Thirty-first Legislature HSCE HOS

Record of Votes of the Committee on Consumer Protection & Commerce

	nmittee Referral: CPC,JHA	Date: 3 18 21		
The committee is reconsidering its previous decision on the measure.				
The recommendation is to: □ Pass, unamended (as is) □ Pass, with amendments (HD) □ Hold □ Pass short form bill with HD to recommit for future public hearing (recommit)				
CPC Members	Ayes	Ayes (WR)	Nays	Excused
1. JOHANSON, Aaron Ling (C)				
2. KITAGAWA, Lisa (VC)				같은 같은 것이 아닌 아닌 아는 것이 같은 것
3. AQUINO, Henry J.C.		<u></u>		<u>n invente obvite sel</u>
4. HAR, Sharon E.				
5 HASHEM Most I				
5. HASHEM, Mark J.				
6. KONG, Sam Satoru				
7. MIZUNO, John M.				
8. MORIKAWA, Dee			in the second	
9. ONISHI, Richard H.K.				
10 TADNAS D. 11 A				
10. TARNAS, David A.				
11. MATSUMOTO, Lauren			ang kanang ang kanang kanan Kanang kanang	2011. ETA LE TATION DAL ETA MELLOCIA
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TOTAL (11)		D	0	0
The recommendation is: Adopted Not Adopted If joint referral,				
Vice Chair's or designee's signature:				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				