SB-2765-SD-1
Submitted on: 2/26/2026 4:04:50 PM
Testimony for JDC on 3/3/2026 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Idor Harris	Testifying for Honolulu Tower	Support	Written Testimony Only

Comments:

Honolulu Tower is a fee simple sprinklered 396 unit condominium located at Maunakea and Beretania Streets. At its meeting on February 2, 2026, the Board of Directors of the Association of Apartment Owners of Honolulu Tower unanimously voted its support of this bill. This bill clarifies that associations that have obtained title through foreclosure may retain rental income received prior to appointment of a commissioner in subsequent foreclosure provided association may be required by a court to remit rental income received after appointment of a commissioner.

The association has in the past obtained title through foreclosure and understands the importance of this bill. When funds are not received, all the owners see increases in their maintenance bills. That is not fair or equitable.

The Board asks you to move this bill forward.

Idor Harris
Resident Manager

HAWAII LEGISLATIVE ACTION COMMITTEE
community ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

March 2, 2026

Honorable Senator Karl Rhoads
Honorable Senator Mike Gabbard
Committee on Judiciary
415 South Beretania Street
Honolulu, Hawaii 96813

Re: SB 2765 SD 1 (Support with Changes)

Dear Chair Rhoads, Vice Chair Gabbard and Committee Members:

The Community Associations Institute (CAI) is a national and statewide organization of individuals involved in the operation of community associations, including homeowners, directors, managers and business partners of community associations.

For the following reasons, CAI **supports** SB 2765 SD1 with a slight revision.

This bill clarifies the current confusion in the Circuit Courts regarding what constitutes "excess rental income" under HRS § 514B-146(n).

This bill upholds the plain language of the statute and the intent of the legislature and prevents large financial institutions from taking excessive amounts of money out of the pockets of non-profit condominium associations – funds that are meant to benefit condominium unit owners.

As explained in the example below, the way that the courts are interpreting the statute rewards banks that delay foreclosure for more than a decade, as they walk away with the property, a money judgment and a windfall from the condominium association.

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Brief Background

For background, HRS § 514B-146(n) applies where a condominium association forecloses on a unit, subject to the bank's superior mortgage. Then later, the bank forecloses.

This happens often, for example, where a unit owner is deceased and has no known heirs. Therefore, both the maintenance fees and the mortgage go unpaid (as in the example below).

Under the plain language of the statute, rental income received by the AOAO after the bank forecloses (the second foreclosure) is subject to disgorgement, if there is an excess after deductions.

The Circuit Courts' Confusion

The Circuit Courts are confused about at what point in the process the Court should start counting rental income in the "excess rental income" calculation pursuant to HRS § 514B-146(n).

The statute clearly states that it is rental income received after the bank obtains its foreclosure judgment and prior to the confirmation of the bank's foreclosure sale.

> For purposes of this subsection, excess rental income shall be any net income received by the association **after a court has issued a final judgment determining the priority of a senior mortgagee** and after paying, crediting, or reimbursing the association or a third party for: [list of deductions]

HRS § 514B-146(n).

However, the Circuit Courts have been counting income received prior to the bank's foreclosure. **In the case cited below, the Circuit Court counted an extra 13 years of income** – raising a slew of constitutional issues, taking $71,634.48 from the owners and giving it to the multi-billion dollar financial institution.

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Example Case:

An example case is Civil No. 1CC191000316. The following is public record:

- The unit owner passed away in or around 2007.
- The very small, 23-unit non-profit condominium association foreclosed in 2011.
- The bank (which is worth $304 Billion) did not file its foreclosure until 2019. It did not get its foreclosure judgment until 2024.
- Under the plain wording of the statute, as passed by the legislature, "excess rental income" would not be counted until starting in 2024.
- However, the Circuit Court counted the AOAO's rental income going back to 2011 – an extra 13 years of rental income.
- The court ordered the AOAO to pay the Bank $71,634.48, where at most it should have paid
- **At 23 units, this is over $3,100 per unit owner that had to be paid to the bank.**
- **Meanwhile, the bank received a complete windfall, including (a) the property, (b) a money judgment and (c) the $71,634.48.**
- **Furthermore, the bank was rewarded for delaying its foreclosure and doing nothing for 13 years.**

The case is now up on appeal, where it will be for the next five to seven years.

In sum, the way that the Circuit Courts are interpreting the law favors the $300 Billion banks over the small, non-profit AOAO's. The law needs to be clarified, because the Circuit Courts are wreaking havoc on small AOAO's and creating needless appellate litigation.

Proposed Revision

The wording "or the unit owner" on page 4, line 10 is ambiguous and therefore is likely to cause litigation from unit owners who wish to claim the rental income. This would defeat the purpose of the statute, which is to apply the rental income to the delinquency owed from the unit owner to the Association.

For this reason and the reasons set forth in the testimony of and M. Anne Anderson, the cleanest way to deal with this issue is to delete the words "or the unit owner."

The reality is that the monies would get applied to the unit owner's delinquency which is owed to the Association, and the Association would have to show it when the Circuit Court requests a rental accounting at the lender's confirmation of sale hearing.

This slight revision will ensure that the bill furthers the intent of the statute and it would still address the problem going on with the Courts.

Conclusion

This measure would uphold the plain wording of the statute intended by the legislature, and it would also stop the Circuit Courts from taking money out of the pockets of the small AOAO's and handing it to the large financial institutions.

Thank you for your time and consideration. If you have any questions, I will be available to answer them.

Very truly yours,

/s/ Dallas H. Walker

Dallas Walker, Esq.
The Hawaii Legislative
Action Committee of the
Community Associations
Institute

SB-2765-SD-1
Submitted on: 3/2/2026 8:54:54 AM
Testimony for JDC on 3/3/2026 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Mark McKellar	Testifying for Law Offices of Mark K. McKellar, LLLC	Oppose	Written Testimony Only

Comments:

Dear Chair Rhoads, Vice Chair Gabbard, and Member of the Committee:

While I support the intent of S.B. 2765 S.D.1 as stated in SECTION 1 of the bill, I oppose and strongly object to the words “or the unit owner” found on page 4, line 10 because they are ambiguous and could serve to undermine the very purpose of the bill. I join in the testimony of M. Anne Anderson and urge the committee to remove the words “or the unit owner” found on page 4, line 10.

Sincerely,

Mark McKellar

SB-2765-SD-1
Submitted on: 3/1/2026 1:08:08 PM
Testimony for JDC on 3/3/2026 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Testifying for Associa	Support	Written Testimony Only

Comments:

Support. Fair to condominiums and clarifies practice.

SB-2765-SD-1
Submitted on: 2/26/2026 3:19:03 PM
Testimony for JDC on 3/3/2026 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

I am an owner occupant of a high rise condominium in Honolulu. I respectfully ask that you support this bill.

Costs are increasing. My maintenance skyrocketed this year because of circumstances beyond our control, including rising insurance costs. Meanwhile, delinquent owners means the rest of us have to cover their fees. This bill would help an association recover funds and reduce the maintenance others have to pay.

Lynne Matusow

SB-2765-SD-1
Submitted on: 2/26/2026 3:46:30 PM
Testimony for JDC on 3/3/2026 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Philip Nerney	Individual	Support	Written Testimony Only

Comments:

SB 2765 SD1 provides needed clarification in law. Suggest deleting "or the unit owner" in section 2.

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

While I support the intent of S.B. 2765 S.D.1 as stated in SECTION 1 of the bill, ***I oppose and strongly object to the words "or the unit owner" found on page 4, line 10*** because they are ambiguous and could serve to undermine the very purpose of the bill. I urge the committee to delete those four words.

A. The Purpose of S.B. 2765.

SECTION 1 of the bill very clearly states the intent of the bill. Among other things, it recognizes that:

- "[I]ncreasing delinquencies, related enforcement expenses, and lengthy delays in the judicial foreclosure process exacerbate the financial burden on association owners." (Page 1, lines 14-17).

- Condominium "associations are treated differently from other parties that acquire title through foreclosure, and ... this treatment burdens association members who pay their share of common expense assessments on time. In particular, associations that have acquired title to a unit through a judicial or nonjudicial foreclosure face additional administrative and financial burdens of accounting for rental income." (Page 2, lines 1-8).

- "[M]any associations do not obtain "excess rental income" as defined by section 514B-146(n), Hawaii Revised Statutes. However, in cases where another lienholder is foreclosing on a unit acquired by an association, associations with excess rental income are also unfairly burdened by the requirement to disgorge "excess rental income" received prior to the appointment of a commissioner in a subsequent foreclosure." (Page 2, lines 9-16).

SECTION 1 states that "***the purpose of this Act is to clarify that condominium associations that have acquired title through foreclosure may retain rental income received prior to the appointment of a commissioner***, provided that the association may be required by a court to remit rental income received after the appointment of a commissioner to be held until an order of distribution is entered by the court." (Page 2, lines 17-21; page 3, lines 1-2) (Emphasis added). I support this purpose.

B. Objections to the Words "or the unit owner" Found on Page 4, Line 10.

The original draft of S.B. 2765 contained language consistent with its purpose as stated in SECTION 1. However, the addition of the words "or the unit owner" found on page 4, line 10 of S.B. 2765 S.D.1 deviates from that purpose. I object to the addition of the words "or the unit owner" on page 4, line 10 for the reasons set forth below.

First, the words "or the unit owner" are ambiguous and will likely lead to litigation. If the association purchased the unit at foreclosure and holds title via a deed, then the association is the unit owner. That being the case, it is not clear what the words "or the unit owner" mean. The word "or" between the reference to the "association" and the "unit owner" creates an ambiguity because it

implies that the unit owner is someone other than the association, thus leaving one to wonder what the words "unit owner" are intended to mean.

Second, if the words "or the unit owner" are intended to refer to the former owner, then they are at odds with the purpose of the bill which is to allow a condominium association to use rental proceeds, received on a unit owned by the association prior to the appointment of a commissioner, for the benefit of the association. If the words "or the unit owner" mean the former owner then this bill could be construed as requiring associations to use all rental proceeds for the benefit of the prior owner, who defaulted in the payment of assessments, without allowing the associations to apply even one cent of the rental proceeds to the delinquency caused by the defaulting owner. ***An owner who has defaulted in the payment of assessments, should not be rewarded for his default by reaping the benefit of the rental income received after he no longer owns the unit.*** In addition, ***it would be a misnomer*** to refer to the former owner as "the unit owner" when he no longer holds an interest in the unit.

Third, if the words "or the unit owner" are intended to refer to the former unit owner, then the wording will serve to deprive the association of a right of ownership (*i.e.*, the right to receive rents) if it is required to use the rental proceeds collected from the rental of its own property for the benefit of a former owner. Taking away the right of a property owner to receive rents is not only fundamentally unfair, but it constitutes an unlawful "taking" without just compensation.

Fourth, this bill leaves open the issue of what an association may do with rental proceeds collected on a unit owned by the association prior to the appointment of a commissioner because of the uncertainty for whose benefit the rental proceeds may be used. Lenders can sometimes take years to foreclose on their liens. What is an association to do after its takes title to a unit after foreclosure while it is waiting for the lender to foreclose its superior lien against the unit? Is it required to deposit the rental proceeds collected in a separate account for safe keeping until the lender finally gets around to foreclosing and a court decides what is to be done with the rental proceeds?

For the reasons stated herein, I urge the committee to remove the words "or the unit owners" found on page 4, line 10.

Sincerely,

M. Anne Anderson

SB-2765-SD-1
Submitted on: 2/28/2026 6:31:57 PM
Testimony for JDC on 3/3/2026 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Carol Walker	Individual	Comments	Written Testimony Only

Comments:

Dear Chair Rhoads, Vice Chair Gabbard, and Member of the Committee:

While I support the intent of S.B. 2765 S.D.1 as stated in SECTION 1 of the bill, I oppose and strongly object to the words “or the unit owner” found on page 4, line 10 because they are ambiguous and could serve to undermine the very purpose of the bill. I join in the testimony of M. Anne Anderson and urge the committee to remove the words “or the unit owner” found on page 4, line 10.

Carol Walker

SB-2765-SD-1
Submitted on: 2/28/2026 6:39:08 PM
Testimony for JDC on 3/3/2026 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
mary freeman	Individual	Support	Written Testimony Only

Comments:

Dear Chair Rhoads, Vice Chair Gabbard, and Member of the Committee:

I support the intent of S.B. 2765 S.D.1 as stated in SECTION 1 of the bill, however I am opposed to and strongly object to the wording of "or the unit owner" found on page 4, line 10 because they are ambiguous and could serve to undermine the very purpose of the bill. I join in the testimony of M. Anne Anderson and urge the committee to remove the words "or the unit owner" found on page 4, line 10.

Mary Freeman

Ewa Beach

SB-2765-SD-1
Submitted on: 2/28/2026 6:58:45 PM
Testimony for JDC on 3/3/2026 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
John Toalson	Individual	Support	Written Testimony Only

Comments:

Dear Chair Rhoads, Vice Chair Gabbard, and Member of the Committee:

While I support the intent of S.B. 2765 S.D.1 as stated in SECTION 1 of the bill, I oppose and strongly object to the words “or the unit owner” found on page 4, line 10 because they are ambiguous and could serve to undermine the very purpose of the bill. I join in the testimony of M. Anne Anderson and urge the committee to remove the words “or the unit owner” found on page 4, line 10.

John Toalson

SB-2765-SD-1
Submitted on: 3/1/2026 8:26:15 AM
Testimony for JDC on 3/3/2026 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Joe M Taylor	Individual	Comments	Written Testimony Only

Comments:

Dear Chair Rhoads, Vice Chair Gabbard, and Member of the Committee:

While I support the intent of S.B. 2765 S.D.1 as stated in SECTION 1 of the bill, I oppose and strongly object to the words “or the unit owner” found on page 4, line 10 because they are ambiguous and could serve to undermine the very purpose of the bill. I join in the testimony of M. Anne Anderson and urge the committee to remove the words “or the unit owner” found on page 4, line 10.

Joe Taylor

SB-2765-SD-1
Submitted on: 3/1/2026 9:00:30 PM
Testimony for JDC on 3/3/2026 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Lance S. Fujisaki	Individual	Support	Written Testimony Only

Comments:

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

While I support the intent of S.B. 2765 S.D.1 as stated in SECTION 1 of the bill, I oppose and strongly object to the words “or the unit owner” found on page 4, line 10 because they are ambiguous and could serve to undermine the very purpose of the bill. I join in the testimony of M. Anne Anderson and urge the committee to remove the words “or the unit owner” found on page 4, line 10.

Thank you,

Lance Fujisaki

SB-2765-SD-1
Submitted on: 3/2/2026 3:06:19 AM
Testimony for JDC on 3/3/2026 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Paul A Ireland Koftinow	Individual	Support	Written Testimony Only

Comments:

Senator Karl Rhoads, Chair, Senator Mike Gabbard, Vice Chair, and Members of the Committee:

Thank you for the opportunity to submit testimony **in support of S.B. 2765**, which addresses the treatment of rental income received by condominium associations that acquire title to units through foreclosure. While I support the intent of S.B. 2765, the words "or the unit owner" on page 4, line 10, should be stricken, as it undermines the stated purpose of the bill and perpetuates the very inequities that the bill seeks to correct.

1. The Words, "Or the Unit Owner", in page 4, line 10, are Problematic and Should be Deleted.

For the purposes of this measure, it is not completely clear whether the "unit owner" referenced is the association of the former unit owner. In cases where the association is collecting rent after foreclosing, the association would be the unit owner. This language should be removed to prevent confusion and unnecessary litigation. If "or the unit owner" refers to the former unit owner, then including the phrase **"or the unit owner"** could perpetuate the unjust treatment of associations under Section 514B-146(n), Hawaii Revised Statutes.

2. Associations Should Be Treated Like Any Other Landlord.

In limited but significant circumstances, condominium associations acquire title to units after foreclosing on an association lien. When this occurs, the association becomes the legal owner of the unit, holding title subject to any superior liens - no differently than a bank, investor, or other foreclosure purchaser.

Yet associations remain uniquely burdened by Section 514B-146(n), which requires associations to disgorge "excess rental income" to other parties. No other landlord in Hawai‘i is required to hold rental income for the benefit of another party – including a former owner who has already lost title through foreclosure.

3. Associations Should Not Be Uncompensated Receivers.

Section 514B-146(n) effectively forces associations to act as unpaid receivers, without court appointment, compensation, priority for expenses, or statutory immunity. That role typically

belongs exclusively to a court-appointed commissioner, whose authority begins only after appointment in a subsequent foreclosure. Until that point, the association is simply an owner mitigating losses, just like any other junior creditor who has foreclosed.

This measure should be passed to clarify that associations should not have to disgorge rental income to any other party - especially a former unit owner who did not pay their share of common expense assessments. It would be absurd to require associations to act as a receiver of funds for a former unit owner after foreclosing.

For the foregoing reasons, the words “or the unit owner” should be deleted.

Respectfully submitted,

Paul A. Ireland Koftinow