

STAND. COM. REP. NO.

961

Honolulu, Hawaii

MAR 24 2011

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

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

Sir:

Your Committee on Commerce and Consumer Protection, to which was referred H.B. No. 879, H.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 implement the recommendations of the Mortgage Foreclosure Task Force relating to service of notice, conversion from judicial to nonjudicial foreclosure, bar against deficiency judgments, notice of pendency of action, and extinguishment of a mortgagor's interest.

Your Committee received testimony in support of this measure from the Office of Consumer Protection of the Department of Commerce and Consumer Affairs, Legal Aid Society of Hawai'i, the Collection Law Section of the Hawaii State Bar Association, the Mortgage Bankers Association of Hawaii, Hawaii Credit Union League, Hawaii Council of Associations of Apartment Owners, and Hawaii Financial Services Association. Your Committee received testimony in support of the intent of this measure from the Hawai'i Association of REALTORS. Your Committee received comments on this measure from the Judiciary, Hawaii Chapter of the Community Associations Institute, Hawaii Bankers Association, and three private individuals.

Your Committee finds that this measure as received by your Committee, is meritorious, although duplicative of another measure that your Committee has recommended for passage of Second Reading.

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Your Committee has amended this measure by deleting its contents and replacing them with new language that:

- (1) Authorizes a planned community association or a condominium association to pursue nonjudicial foreclosure for liens for outstanding association assessments;
- (2) Allows a planned community association or a condominium association to acquire a foreclosed unit through credit bidding at public auction;
- (3) Specifies the allocation of excess rental income from a foreclosed unit;
- (4) Authorizes a planned community association or a condominium association and a homeowner to pursue alternative dispute resolution for resolution of disputes involving liens subject to foreclosure;
- (5) Specifies notice requirements for foreclosure of a lien for unpaid assessments;
- (6) Prohibits foreclosure of a junior lien during the pendency of foreclosure on a mortgage; and
- (7) Inserts an effective date of July 1, 2011.

Your Committee notes that this measure as amended contains the provisions of S.B. No. 1454, S.D. 1, which your Committee previously heard and recommended for passage of Second Reading, plus additional consumer protections that allow a homeowner who is in arrears on payment of association fees to cure the default through a reasonable payment plan.

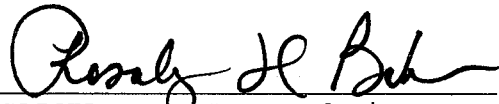
Your Committee finds that the process for foreclosure of liens for unpaid assessments by condominium and planned community associations is an important tool that associations use to collect amounts that would otherwise be borne by homeowners in the association. However, the process as it currently exists contains the potential for abuse. Your Committee finds that this measure increases transparency and fairness in the lien foreclosure process by requiring an association to accept a reasonable payment plan for delinquent fees in order to allow the homeowner a



meaningful opportunity to cure a default prior to a foreclosure action.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 879, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 879, H.D. 1, S.D. 1, and be referred to the Committee on Ways and Means.

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



ROSALYN H. BAKER, Chair



