

STAND. COM. REP. NO.

3425

Honolulu, Hawaii

APR 04 2018

RE: H.B. No. 1873
H.D. 1
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred H.B. No. 1873, H.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) Require annual distribution of any policy stating that an association of apartment owners may deduct and apply portions of common expense assessments to unpaid late fees, legal fees, fines, and interest and require such policy be included in any agreement by a condominium owner that allows the association to automatically withdraw assessments from an owner's bank account; and
- (2) Require an association to disclose certain information upon demand for payment of an assessment.

Your Committee received testimony in support of this measure from Associa; Board of Directors of the Association of Apartment Owners, Country Club Village, Phase 2; and six individuals. Your Committee received testimony in opposition to this measure from the Hawaii Council of Associations of Apartment Owners, Hui 'Oia'i'o, and five individuals. Your Committee received comments on this measure from one individual.



Your Committee finds that this measure requires condominium associations to distribute their priority of payment policies to members on an annual basis and disclose certain information upon demand for payment of an assessment. However, your Committee has heard concerns that this measure does not address the non-essential condominium expenses, unrelated to common assessments, that a condominium owner must pay, regardless of whether the condominium owner disputes such amounts.

Your Committee notes that the companion to this measure, S.B. No. 2054, which was previously passed by your Committee, amends Hawaii's existing pay first, dispute later requirement, which specifies that owners are not permitted to withhold any assessment claimed by their association, but must first pay the disputed amounts and then exercise their right to mediation, arbitration, or small claims court. Your Committee acknowledges that condominium associations in Hawaii would be unable to function if owners were able to withhold payments of common expense assessments. Therefore, the language in S.B. No. 2054 is preferable because it makes a narrowly-tailored exception to the pay first, dispute later requirement by clarifying that common expense assessments are the only fees that must be paid prior to initiating a dispute. Under the language in S.B. No. 2054, if the unit owner contests any penalties or fines, late fees, lien filing fees, or other charges in an assessment, the unit owner may, under certain circumstances, then proceed to mediation prior to paying those charges.

Your Committee further finds that under existing law, if an association of apartment owners starts a nonjudicial foreclosure against a condominium owner and the owner pays off the delinquency or proposes a payment plan that the association accepts, the association must rescind the notice of foreclosure and not proceed. However, proposing a payment plan is not sufficient on its own to cure a default. Therefore, the language in S.B. No. 2054 is preferable, as it clarifies the process once a condominium owner and association agree on a payment plan to resolve a nonjudicial foreclosure on a condominium.

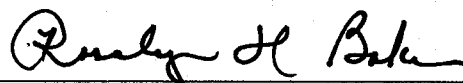
Accordingly, your Committee has amended this measure by deleting its contents and inserting the contents of S.B. No. 2054, a measure which:



- (1) Clarifies the process, including payment obligations, mediation requirements, and triggers for further default, where a condominium owner and association reach a payment plan to resolve a nonjudicial foreclosure;
- (2) Establishes procedures that provide condominium owners with the right to submit disputed legal fees, penalties or fines, late fees, lien filing fees, or other charges, except for common expense assessments, to the mediation process prior to payment; and
- (3) Inserts an effective date of July 1, 2018.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1873, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1873, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

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



ROSALYN H. BAKER, Chair



