

STAND. COM. REP. NO.

1405

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:

- (1) 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, LLC; Hawaii Council for Associations of Apartment Owners; and eight individuals. Your Committee received comments on this measure from two individuals.

2021-2615 SB191 HD1 HSCR HMSO



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:

- (1) 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



- (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



