

Honolulu, Hawaii

MAR 22 2013

RE: H.B. No. 21
H.D. 2
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred H.B. No. 21, H.D. 2, 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) Amend procedures for reimbursement for common assessments by condominium associations after delinquency or foreclosures;
- (2) Authorize the collection of specified amounts for deposit into a reserve account to pay for unpaid common assessments in the event of foreclosure or unit sale or transfer; and
- (3) Specify how excess rental income received by a condominium association shall be paid to existing lien holders.

Your Committee received testimony in support of this measure from the Hawaii Bankers Association; Hawaii Financial Services Association; Hawaii Credit Union League; Mortgage Bankers Association of Hawaii; Oahuan Tower Corporation; and two individuals. Your Committee received testimony in opposition to this measure from the Hawai'i Association of REALTORS; Community Associations Institute, Hawaii Chapter; and seven individuals.



Your Committee received comments on this measure from the Department of Commerce and Consumer Affairs; Kona West Association of Apartment Owners; The Hilo Lagoon Centre Association of Apartment Owners; Associa Hawaii; OLS Hotels & Resorts, LP; Castle Resorts & Hotels, Inc.; Country Club Village, Phase Two Association of Apartment Owners; and numerous individuals.

Your Committee finds that this measure is intended to assist condominium associations with the collection of unpaid common assessments by permitting an association to collect a delinquency reserve from each owner in a condominium. If an owner later becomes delinquent, an association can use that owner's delinquency reserve to pay off the owner's unpaid assessments in the event of a foreclosure of the owner's unit.

Your Committee further finds that this measure, as it was originally introduced, provided associations with an absolute unlimited priority for monthly common assessments over the lien of any mortgage. Although your Committee has heard testimony stating that this measure in its original form is preferable, your Committee notes that no other state permits an unlimited super lien for common assessments. Your Committee additionally finds that imposing such an unlimited super lien for common assessments would likely have many unintended consequences on Hawaii's mortgage market, including Hawaii condominium projects being ineligible for VA and FHA loans or Fannie Mae declining to buy Hawaii mortgage loans.

However, your Committee understands the concerns shared by condominium associations and non-defaulting unit owners and mortgagors. Your Committee finds that the costs of default in a condominium are substantially born by condominium associations and non-defaulting unit owners and mortgagors in the affected communities. Your Committee further finds that the lending industry has an interest in preserving the value of the condominium projects that make up part of the lending industry's collateral. Repairs, maintenance, security, and insurance provided by a condominium association and paid for through common assessments are essential to preserving that value.

Your Committee additionally finds that because there are legitimate but competing issues relating to common assessments, the needs of the lending industry and condominium associations and non-defaulting unit owners must be appropriately balanced when attempting to create a priority lien for common assessments. As a



preliminary note, your Committee finds that Hawaii does not currently have a true six-month priority super lien. Under true super priority liens, a lender must pay an association the amount of the super lien when the lender acquires a unit in foreclosure. In comparison, section 514B-146, Hawaii Revised Statutes, requires the person who purchases a unit from the lender to pay the association.

Your Committee also finds that section 3-116 of the Uniform Common Interest Ownership Act can be used as a starting point to create a true six-month super priority lien for common assessments in Hawaii. The Uniform Common Interest Ownership Act was originally adopted by the Uniform Law Commission in 1984, with the most recent amendments adopted in 2008, and is a comprehensive act that governs the formation, management, and termination of common interest communities, including condominiums. Section 3-116 of the Uniform Common Interest Ownership Act, as appropriately modified to apply to Hawaii's condominium law, is a reasonable approach that will permit a six-month super lien for common assessments. This will provide condominium associations and non-defaulting unit owners with relief while also addressing some of the concerns of the lending industry. Amendments to this measure that incorporate certain elements of section 3-116 of the Uniform Common Interest Ownership Act are therefore necessary.

Your Committee notes that the provisions in this measure amending section 514A-90, Hawaii Revised Statutes, are unnecessary, as the proposed amendments to section 514B-146, Hawaii Revised Statutes, are sufficient. Pursuant to section 514B-22, Hawaii Revised Statutes, any amendment to part VI of chapter 514B, Hawaii Revised Statutes, which includes section 514B-146, Hawaii Revised Statutes, applies to all condominiums for events and circumstances occurring on or after July 1, 2006. Amendments to this measure are therefore necessary to remove these unnecessary provisions.

Finally, your Committee notes that although this measure authorizes the collection of a delinquency reserve from each owner in a condominium, associations already have the authority to take anticipated delinquencies into account when setting an annual budget. Furthermore, charging an additional amount to condominium owners who are already unable to pay common assessments does not adequately address the delinquency problems faced by condominiums. Your Committee therefore concludes that an amendment removing this proposed language is appropriate.



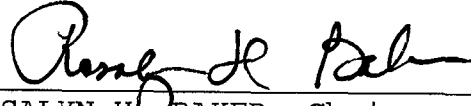
Accordingly, your Committee has amended this measure by:

- (1) Deleting language that would have amended section 514A-90, Hawaii Revised Statutes, as the proposed amendments to section 514B-146, Hawaii Revised Statutes, apply to chapters 514A and 514B, Hawaii Revised Statutes;
- (2) Clarifying that a board of directors of a condominium association has the authority to collect a six-month special assessment from the mortgagee or other purchaser of a condominium unit with a recorded lien for delinquent common assessments;
- (3) Deleting language that authorized an association to collect from unit owners, on a monthly basis at a rate of no more than ten percent of the regular monthly common assessments, an amount equal to twelve months of regular monthly common assessments as surety against the nonpayment of regular monthly common assessments following the foreclosure, sale, or transfer of a condominium unit;
- (4) Inserting an effective date of July 1, 2013; and
- (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

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. 21, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 21, H.D. 2, S.D. 1, and be referred to the Committee on Judiciary and Labor.



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



ROSALYN H. BAKER, Chair



