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# HOUSE CONCURRENT RESOLUTION

URGING THAT THE REMAINDER OF PROCEEDS FOLLOWING A FORECLOSURE SALE BE PAID TO THE PREVIOUS MORTGAGOR OF THE FORECLOSED PROPERTY OR TO THE UNCLAIMED PROPERTY TRUST FUND.

1           WHEREAS, not all mortgage foreclosure sales end up with  
2 negative equity; and

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4           WHEREAS, in situations in which foreclosure sales end up  
5 with positive equity, any surplus remaining after paying all  
6 liens, encumbrances, fees, and costs should be distributed to  
7 the mortgagor of the foreclosed property; and

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9           WHEREAS, in situations in which the mortgagor cannot be  
10 located the moneys should be transmitted to the unclaimed  
11 property trust fund in order to remove any economic incentives  
12 for foreclosing mortgagees to retain the surplus; now,  
13 therefore,

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15           BE IT RESOLVED by the House of Representatives of the  
16 Twenty-sixth Legislature of the State of Hawaii, Regular Session  
17 of 2011, the Senate concurring, that the Legislature urges that  
18 when public sale is made of mortgaged property, the remainder of  
19 the proceeds, if any, should be paid over to the previous  
20 mortgagor of the foreclosed property, after deducting the amount  
21 of claim and all expenses attending the same, within 30 days  
22 after the completion of the sale; and

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24           BE IT FURTHER RESOLVED that if the previous mortgagor of  
25 the foreclosed property cannot be located, the remainder of the  
26 proceeds should be transmitted to the Director of Finance for  
27 deposit into the unclaimed property trust fund established under  
28 section 523A-26, Hawaii Revised Statutes; and

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30           BE IT FURTHER RESOLVED that no sale or transfer by the  
31 mortgagor should impair or annul any right or power of attorney



1 given in the mortgage to the mortgagee to sell or transfer the  
2 mortgaged property, as attorney or agent of the mortgagor,  
3 except as otherwise provided by chapters 501 and 502, Hawaii  
4 Revised Statutes; and


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6 BE IT FURTHER RESOLVED that after paying all liens and  
7 encumbrances in the order of priority as a matter of law, the  
8 foreclosing mortgagee's attorney's fees and costs, after paying  
9 the fees and costs of the power of sale foreclosure, and after  
10 paying the moneys owed to the foreclosing mortgagee, the balance  
11 of the sale proceeds should be distributed by the foreclosing  
12 mortgagee to junior creditors having valid liens on the  
13 mortgaged property in the order of their priority and not pro  
14 rata; and

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16 BE IT FURTHER RESOLVED that any remaining surplus after  
17 payment in full of all valid lien creditors should be  
18 distributed to the previous mortgagor of the foreclosed property  
19 within thirty days after the completion of the sale; and

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21 BE IT FURTHER RESOLVED that if the previous mortgagor of  
22 the foreclosed property cannot be located, the remaining surplus  
23 should be transmitted to the Director of Finance for deposit  
24 into the unclaimed property trust fund established under section  
25 523A-26, Hawaii Revised Statutes;

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27 BE IT FURTHER RESOLVED that certified copies of this  
28 Concurrent Resolution be transmitted to the Governor, Director  
29 of Commerce and Consumer Affairs, and the Mayors of the City and  
30 County of Honolulu, County of Kauai, County of Maui, and County  
31 of Hawaii.

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OFFERED BY: 

MAR 15 2011