
HOUSE 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, that this body urges that when public sale is made of
18 mortgaged property, the remainder of the proceeds, if any,
19 should be paid over to the previous mortgagor of the foreclosed
20 property, after deducting the amount of claim and all expenses
21 attending the same, within 30 days after the completion of the
22 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 Resolution be transmitted to the Governor, Director of Commerce
29 and Consumer Affairs, and the Mayors of the City and County of
30 Honolulu, County of Kauai, County of Maui, and County of Hawaii.
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OFFERED BY: *Richard T. Q. Atchell*

MAR 15 2011

