

STAND. COM. REP. NO. 1609-12

Honolulu, Hawaii

April 5, 2012

RE: S.B. No. 2429
S.D. 2
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committee on Finance, to which was referred S.B. No. 2429, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO FORECLOSURES,"

begs leave to report as follows:

The purpose of this measure is to implement the 2011 recommendations of the Mortgage Foreclosure Task Force and other best practices to address mortgage foreclosures and related issues, including:

- (1) Adding provisions relating to unpaid assessments and release of recorded liens by associations;
- (2) Clarifying the mortgage foreclosure law under Chapter 667, Hawaii Revised Statutes, by establishing general provisions and provisions for an association alternate power of sale process;
- (3) Clarifying provisions relating to penalties and fines;
- (4) Clarifying provisions relating to public notice of public sale;

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- (5) Clarifying provisions relating to unfair or deceptive acts or practices; and
- (6) Making other clarifying and conforming amendments.

The Legal Aid Society of Hawaii and Hawaiian Community Assets testified in support of this measure. The Hawaii Bankers Association; Hawaii Financial Services Association; Hawaii Credit Union League; Mililani Town Association; and Association of Apartment Owners of The Cliffs at Princeville testified in opposition to this measure. The Department of Commerce and Consumer Affairs; Hawaii Association of REALTORS; Hawaii Chapter of the Community Associations Institute; RCO Hawaii, LLC; Honolulu Star-Advertiser; and two individuals provided comments.

Your Committee finds that this bill and its companion, House Bill No. 1875, were introduced to facilitate the statutory changes needed to implement the task force's recommendations. As both measures proceeded through the legislative process, the standing committees in both the House of Representatives and the Senate were offered conflicting viewpoints on the merits and potential problems with the technical language of the bills. Accordingly, the stakeholders have continued to meet to find consensus on the best statutory remedies that can be offered at this point in time.

On March 30, 2012, your Committee heard Senate Bill No. 2429, Senate Draft 2. During this public hearing, your Committee received testimony from the Chair of the Task Force stating that after careful deliberation by the stakeholders, a compromise was found. However, because the statutory amendments needed to facilitate this compromise were voluminous, it was unclear whether the bill, as amended, could be drafted and adequately reviewed in time to meet the Second Decking Deadline scheduled for April 5, 2012.

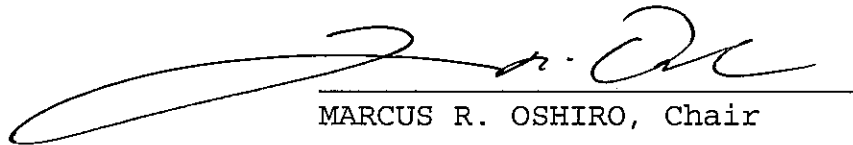
In addition, the Legislature finds that the United States Court of Appeals for the Ninth Circuit opined in *In re: Margery Kanamu-Kalehuanani Kekauoha-Alisa v. Ameriquest Mortgage Company; JPMC Specialty Mortgage, LLC, FKA WM Specialty Mortgage, LLC*, Slip Op. 09-60019 (March 26, 2012), that Hawaii law requires strict compliance with statutory foreclosure procedures. Presently, it is unclear how this decision will impact the compromise among the stakeholders and the provisions of their proposed amendments.



Accordingly, your Committee has amended this measure by deleting its contents and replacing it with language to facilitate continued discussions among the various stakeholders and ensure a thorough legal and technical review of the statutory amendments offered to the Legislature. It is the intent of your Committee that this measure serve as a vehicle to ensure that the Legislature can work on these issues during Conference. It is also the intent of your Committee that the House of Representatives and the Senate be provided with maximum flexibility during the remainder of the Regular Session of 2012, to facilitate a meaningful resolution to these issues.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2429, S.D. 2, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2429, S.D. 2, H.D. 1.

Respectfully submitted on
behalf of the members of the
Committee on Finance,



MARCUS R. OSHIRO, Chair



