

STAND. COM. REP. NO.

2709

Honolulu, Hawaii

MAR 02 2012

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

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 2429, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO FORECLOSURES,"

begs leave to report as follows:

The purpose and intent of this measure is, among other things, to implement the recommendations of the Mortgage Foreclosure Task Force submitted to the Legislature for the Regular Session of 2012 and other best practices regarding mortgage foreclosures.

Your Committee received testimony in support of this measure from the Office of Consumer Protection, Department of Commerce and Consumer Affairs; the Mortgage Foreclosure Task Force, Department of Commerce and Consumer Affairs; Hawaiian Community Assets; Legal Aid Society of Hawaii; and one private individual. Testimony in opposition to this measure was submitted by the Hawaii Bankers Association, the Villages of Kapolei Association, the Hawaii Credit Union League, and seventeen individuals. Your Committee received comments on this measure from the Hawaii Association of Realtors; Anderson, Lahne & Fujisaki, LLP; and RCO Hawaii, LLLC.

Your Committee finds that Act 162, Session Laws of Hawaii 2010, established the Mortgage Foreclosure Task Force to recommend policies and procedures to improve the way mortgage foreclosures are conducted in the State. Act 162 required the task force to submit its findings and recommendations, including any proposed



legislation, to the Legislature for the Regular Sessions of 2011 and 2012.

The task force met over several public meetings during the legislative interim of 2011. The focus of these meetings was divided among these major issues:

- (1) The new mortgage foreclosure provisions of Act 48, Session Laws of Hawaii 2011, which, among other things, implemented some of the task force's initial recommendations, required the conversion of certain nonjudicial foreclosures to judicial foreclosures, established a mortgage foreclosure dispute resolution program, and placed a temporary moratorium on certain new nonjudicial foreclosures;
- (2) Matters involving condominium and other homeowner associations, including association liens and the collection of unpaid assessments; and
- (3) Mortgage foreclosure counseling and dispute resolution issues.

Based upon its deliberations on these issues, the task force adopted further recommendations in its report to the Legislature for the Regular Session of 2012. This measure implements the recommendations of the task force.

Your Committee notes the concerns regarding the priority of planned community association unpaid liens, specifically, whether first mortgages should have a higher priority than planned community association liens for assessments chargeable to a unit in a planned community association. Furthermore, concerns were raised regarding holding open houses of foreclosed condominium and community association units, similar to residential homes. The concerns relate to whether a private entity would have the same rights and protections as an officer of a court when conducting an open house of a foreclosed condominium or community association unit and when any liability claims for stolen or damaged property are made against the entity.

Accordingly, your Committee has amended this measure by:

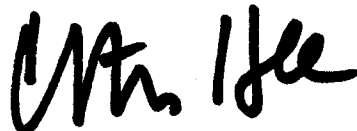
- (1) Inserting language as a new section under chapter 421J, Hawaii Revised Statutes, to clarify that:



- (A) The priority of unpaid liens of a unit in a planned community association shall be provided in the association documents or, if no priority is stated, priority shall be determined by the recordation dates of the liens; and
- (B) Any amendment made to the planned community association documents shall not provide that a planned community association lien has priority over a mortgage lien that is recorded before the association document amendment is recorded;
- (2) Making amendments to various sections under chapter 667, Hawaii Revised Statutes, to delete various provisions relating to open houses to address the concerns regarding holding open houses of foreclosed condominium and community association units, similar to residential homes;
- (3) Inserting an effective date of July 1, 2050, to ensure further discussion; and
- (4) 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 Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2429, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2429, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



