

# SB 2428

Measure Title: RELATING TO MORTGAGE FORECLOSURES.  
Report Title: Mortgage Foreclosure  
Description: Repeals part I of chapter 667, HRS, relating to foreclosure by action or foreclosure by power of sale.  
Companion:  
Package: None  
Current Referral: CPN, JDL  
Introducer(s): BAKER, CHUN OAKLAND, Dela Cruz, Espero, Fukunaga, Gabbard, Galuteria, Ige, Ihara, Kahele, Tokuda

<u>Sort by Date</u>		<u>Status Text</u>
1/20/2012	S	Introduced.
1/23/2012	S	Passed First Reading.
1/23/2012	S	Referred to CPN, JDL.
1/27/2012	S	The committee(s) on CPN has scheduled a public hearing on 02-01-12 9:00AM in conference room 229.



NEIL AMBERCROMBIE  
GOVERNOR

BRIAN SCHATZ  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF CONSUMER PROTECTION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
LEIOPAPA A KAMEHAMEHA BUILDING  
235 SOUTH BERETANIA STREET, ROOM 801  
HONOLULU, HAWAII 96813-2419  
Phone Number: (808) 586-2636  
Fax Number: (808) 586-2640  
[www.hawaii.gov/dcca/ocp](http://www.hawaii.gov/dcca/ocp)

KEALI'S. LOPEZ  
INTERIM DIRECTOR  
EVERETT KANESHIGE  
DEPUTY DIRECTOR

BRUCE B. KIM  
EXECUTIVE DIRECTOR  
OFFICE OF CONSUMER PROTECTION

PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION  
TO THE SENATE COMMITTEE ON COMMERCE  
AND CONSUMER PROTECTION  
THE TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION OF 2012

Wednesday, February 1, 2012  
9:00 a.m.

**TESTIMONY ON SENATE BILL NO. 2428, RELATING TO MORTGAGE  
FORECLOSURES.**

THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs, Office of Consumer Protection ("OCP") appreciates the opportunity to appear today and testify concerning S.B. No. 2428. My name is Bruce B. Kim and I am the Executive Director of OCP. OCP is generally in support of S.B. No. 2428 with the following comments.

In 2010, the Legislature created the Mortgage Foreclosure Task Force ("Task Force") pursuant to Act 162. The Task Force met over the course of the past two years and submitted separate reports to the Legislature. The reports covered many of the

issues surrounding the foreclosure crisis affecting the State and proposed legislation addressing this complex subject. The first report led to the adoption of Act 48 which sought to reform the foreclosure process and enact significant consumer protections especially in the area of nonjudicial foreclosures. This year the Task Force through its various working groups devoted a significant amount of time and effort attempting to strengthen Act 48. Ultimately, the Task Force's working groups came up with a number of recommendations intended to provide clarity and certainty to both lenders and borrowers in the foreclosure process. It is OCP's sincere hope that the measures submitted by the Task Force this year will lead to further implementation of Act 48, particularly utilization of the DCCA's alternate dispute resolution program created back in October under Act 48.

However, to the extent Sec. 16 repeals Part I in its entirety, it may have unintended consequences which should be studied by the Task Force prior to adoption especially as it effects foreclosures on commercial or other investor loans.

OCP supports repeal under Sec. 16 of Part I nonjudicial foreclosures as it relates to residential owner-occupants. This affords all owner-occupants the benefits of Parts II, III and IV of HRS Chap. 667 as amended by Act 48, including the right to personal service; the right to convert to judicial foreclosure under Part III; and the right to participate in the dispute resolution program under Part V.

OCP does not take a position on whether or not the repeal of Part I nonjudicial foreclosure under HRS § 667-5 should extend to cases involving investor loans, to

Testimony on S. B. No. 2428  
February 1, 2012  
Page 3

commercial loans which may be secured in part by residential property, loans to deceased mortgagors, loans to bankrupt mortgagors or loans where the mortgaged property has been abandoned. These type of cases might justify existing Part I nonjudicial foreclosure actions to address these specific situations.

OCP therefore generally supports S.B. 2428 subject to the foregoing comments.

Thank you for this opportunity to testify on S.B. 2428. I will be happy to answer any questions that the Committee members may have.

NEIL ABERCROMBIE  
GOVERNOR

BRIAN SCHATZ  
LT. GOVERNOR

KEALI'I S. LOPEZ  
DIRECTOR



IRIS IKEDA CATALANI  
COMMISSIONER

LYNNE HIMEDA  
DEPUTY COMMISSIONER

STATE OF HAWAII  
DIVISION OF FINANCIAL INSTITUTIONS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
335 MERCHANT STREET, ROOM 221, HONOLULU, HAWAII 96813  
P.O. BOX 2054, HONOLULU, HAWAII 96805

Phone: (808) 586-2820  
Fax: (808) 586-2818  
E-Mail: [dfi@dcca.hawaii.gov](mailto:dfi@dcca.hawaii.gov)

TO THE  
SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH STATE LEGISLATURE  
REGULAR SESSION OF 2012

Wednesday, February 1, 2012  
9:00 a.m.

TESTIMONY ON S.B. 2428  
RELATING TO MORTGAGE FORECLOSURES

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda Catalani, commissioner of Financial Institutions ("Commissioner"). I am testifying on behalf of the Department of Commerce and Consumer Affairs ("Department") in support of Section 18 of S.B. 2428 relating to the repeal of Section 40, Act 48 of the Session Laws of 2011, and against that portion of S.B. 2428 which repeals judicial foreclosures.

The Department supports Section 18 of the Bill which provides for the repeal of Section 40 of Act 48, Session Laws of Hawaii 2011. Section 40 imposed a moratorium on all new nonjudicial actions under Part 1 of Chapter

667, Hawaii Revised Statutes. The moratorium began on the effective date of Act 48 (2011) and is scheduled to end on July 1, 2012. Repealing the moratorium will help in rebuilding the economy for Hawaii's banking and financial institutions and the people of Hawaii. The foreclosure process is expedited by nonjudicial foreclosures. It enables banks and financial institutions to return foreclosed properties to the marketplace with fewer delays. When foreclosed properties are sold, banks and financial institutions can remove the distressed properties from their books. Consumers will be able to rehabilitate their credit and move on to a housing situation that is more in line with their financial condition.

DFI believes that nonjudicial foreclosures serve a purpose for certain types of loans. These loans include investor loans, commercial loans, where the borrower is deceased, and loans where the property is abandoned. Financial institutions would benefit from using Part 1 nonjudicial foreclosures and thus, DFI opposes that portion of H.B. 2020 which repeals nonjudicial foreclosures. Nonjudicial foreclosures are essential in facilitating foreclosures when commercial properties or investor owners are involved.

The purview of the Division is to regulate financial institutions so that they operate in a safe and sound manner. In order to have financial institutions operate in a safe and sound manner, financial institutions cannot keep forestalling the foreclosure situation in certain circumstances. I would contend that all financial institutions would prefer to work with a borrower to find a solution that would enable a borrower to continue to make payments on the mortgage

and stay in his or her home rather than have the financial institution take back the mortgage as a bank owned property.

Probably the most important unintended consequence is that the repeal of Part 1 may negatively impact the safety and soundness of our financial institutions. The repeal may cause bad loans to stay on the books of financial institutions, causing the financial institutions to reserve additional capital. The more bad loans there are on the books, the more capital needs to be reserved, leaving less capital available to make additional loans. The greater the amount of reserves, the more the federal and state regulators may determine financial institutions are at risk. Banks already have tightened their underwriting and the type of residential loans they make to potential borrowers. To the extent that the banks want to show regulators they are financially sound, the more conservative they will be in their lending practices.

While the Division is sympathetic to the mortgage foreclosure situation, it is also concerned about maintaining the financial stability of our local banks and allowing banks to make residential loans to potential homeowners. Those advocating for a repeal of Part 1 are well intended, however, the Division believes the unintended consequences should be considered.

Thank you for the opportunity to testify. I would be pleased to respond to any questions you may have.



TELEPHONE:  
808-524-5161  
FAX:  
808-521-4120  
ADDRESS:  
1000 Bishop Street, Suite 301B  
Honolulu, HI 96813-4203

Presentation to the Committee on Commerce and Consumer Protection  
Wednesday, February 1, 2012 at 9:00 a.m.  
Testimony on SB 2428 Relating to Mortgage Foreclosures

### In Opposition

TO: The Honorable Rosalyn H. Baker, Chair  
The Honorable Brian T. Taniguchi, Vice Chair  
Members of the Committee

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in opposition to SB 2428. HBA is the trade organization that represents FDIC insured depository institutions doing business in Hawaii.

This bill repeals part I of chapter 667, HRS, relating to foreclosure by action or foreclosure by power of sale.

**It is requested that instead of repealing Part I that this section be amended to allow for nonjudicial foreclosures for non-owner occupant residential mortgage loans.** If amendments to Part I cannot be completed this legislative session, then the Part I moratorium should be extended for another year to allow time for the stakeholders to craft the appropriate revisions for consideration in the 2013 session.

It is our understanding Act 48 was meant to protect residential owner occupants. If this was the legislative intent, then hopefully the legislature *recognizes that there is a place and need for nonjudicial foreclosures (NJF) in certain situations.*

We believe there is a need for the nonjudicial foreclosure process for **non-owner occupant residential** mortgage loans (investor loans, vacant land, etc.). The nonjudicial foreclosure process should also be preserved for commercial mortgages or a situation where the borrower is in bankruptcy and the court has lifted the automatic stay.

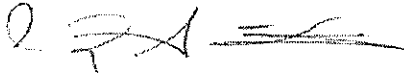
Additionally, since investor loans are generally condominium units, a streamlined NJF process has the salutary effect of helping association of apartment owners, consistent with the exemption from Act 48 for such associations.



As proposed Sections 667-1 through 667-4 would also be repealed in Part I. These sections apply to "foreclosure by action" or the judicial foreclosure process. We are unsure of the impact, in any, if these 4 sections are repealed?

A streamlined NJF for non-owner occupant residential mortgage loans will reduce the backlog of pending foreclosures, allow these properties to be made available for sale and occupancy sooner, and ease the burden on the Judiciary by not having to hear these cases.

Thank you for the opportunity to provide our testimony.

A handwritten signature in black ink, appearing to read 'Gary Y. Fujitani', with a long horizontal flourish extending to the right.

Gary Y. Fujitani  
Executive Director



1654 South King Street  
Honolulu, Hawaii 96826-2097  
Telephone: (808) 941.0556  
Fax: (808) 945.0019  
Web site: [www.hcul.org](http://www.hcul.org)  
Email: [info@hcul.org](mailto:info@hcul.org)



Testimony to the Senate Committee on Commerce and Consumer Protection  
February 1, 2012, at 9:00 a.m.

Testimony in Opposition to SB 2428, Relating to Mortgage Foreclosures

To: The Honorable Rosalyn Baker, Chair  
The Honorable Brian Taniguchi, Vice-Chair  
Members of the Committee on Commerce and Consumer Protection

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 83 Hawaii credit unions, representing approximately 811,000 credit union members across the state. Approximately 60 of our credit unions write mortgage loans in the State of Hawaii. We are in opposition to SB 2428, and offer the following amendments.

As written, this bill would repeal Part I of HRS Chapter 667. This section includes provisions that relate to judicial foreclosures: HRS 667-1 through 4. These provisions should not be repealed. Part I's nonjudicial foreclosure sections relate to commercial and industrial property as well as residential mortgages. They also cover nonjudicial foreclosures of investor-owned properties. Consistent with Act 48, Part I should not be repealed with respect to nonjudicial foreclosures of these types of property.

Part II nonjudicial foreclosures can then be the sole nonjudicial foreclosure process applicable to owner-occupied residential property. We believe this change will help to bring clarity to both the nonjudicial and judicial foreclosure processes.

Thank you for the opportunity to present testimony.

HAWAII CHAPTER

  
**community**  
ASSOCIATIONS INSTITUTE

P.O. Box 976  
Honolulu, Hawaii 96808

January 30, 2012

Honorable Rosalyn H. Baker  
Honorable Brian T. Taniguchi  
Commerce and Consumer Protection  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: SB 2428

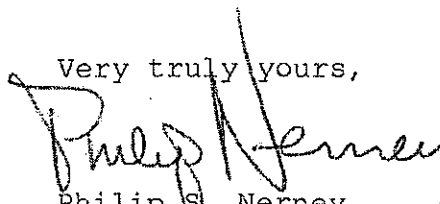
Dear Chair Baker, Vice-Chair Taniguchi and Committee Members:

I chair the CAI Legislative Action Committee. CAI offers comment on SB 2428.

There may be some reason to consider extending the moratorium on the use of Part I procedures. Part I might possibly be amended and prove to be a useful and appropriate remedy in the future.

Appropriate emphasis on establishing alternative non-judicial power of sale remedies now may still allow for an eventual role of some sort for a Part I remedy in some circumstances. Extending the existing moratorium would put the remedy out of reach for the time being and would allow for further consideration of the issues at a later time.

Very truly yours,

  
Philip S. Nerney

# HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

Fax No.: (808) 521-8522

February 1, 2012

Senator Rosalyn H. Baker, Chair  
and members of the Senate Committee on Commerce & Consumer Protection  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **Senate Bill 2428 (Mortgage Foreclosures)**  
**Hearing Date/Time: Wednesday, February 1, 2012, 9:00 a.m.**

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is a trade association for Hawaii's consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

**The HFSA opposes this Bill.**

The purpose of this Bill is to repeal Part I of chapter 667, HRS, relating to foreclosure by action or foreclosure by power of sale.

Part I of HRS Chapter 667 includes provisions for "foreclosure by action", i.e. judicial foreclosures (HRS Secs. 667-1 through 667-4), and "foreclosure by power of sale", i.e. non-judicial foreclosures under the 1874 law (HRS Secs. 667-5 through 667-15).

We recommend that:

1. The judicial foreclosure provisions in Part I should not be repealed. Even though the Circuit Courts have jurisdiction over mortgage foreclosure actions (see HRS Sec. 603-21.7), there doesn't appear to be any justification to repeal HRS Secs. 667-1 through 667-4.

2. The non-judicial foreclosure provisions in Part I should not be repealed. The non-judicial foreclosure process in Part I is currently an alternative to the non-judicial foreclosure process in Part II of HRS Chapter 667. Currently both processes can be used for foreclosures of owner-occupant properties and non-owner-occupant properties. However, Part II has more "bells and whistles" in it than Part I. Rather than being repealed, the Part I non-judicial foreclosure process could be limited to non-owner-occupant foreclosures. Foreclosures of non-occupant properties should not have to proceed under the non-judicial foreclosure process in Part II which arguably is more appropriate for owner-occupant non-judicial foreclosures. In this regard, this Bill needs to be amended to:

a. Limit the non-judicial foreclosure in Part I to non-judicial foreclosures of "non-owner-occupant properties" (regardless of whether or not the property is residential). The definition of "owner-occupant" is currently in HRS Sec. 667-21(b). That definition needs to be replicated in HRS Sec. 667-5. "Non-owner-occupant properties" would need to be defined as any property that is not the owner-occupant's primary residence for a continuous period of not less than 200 days immediately preceding the date on which the non-judicial foreclosure notice in HRS 667-5 is served on that person.

b. Delete HRS Sec. 667-5(a)(2) which requires that notice be given by a foreclosing lender to a borrower of (a) the right to elect to participate in the Mortgage Foreclosure Dispute Resolution ("MFDR") program under HRS 667-71, and (b) the right to convert a non-judicial foreclosure to a judicial foreclosure pursuant to Sec. 667-53. The deletion is needed because the MFDR program and the conversion right are limited to owner-occupants.

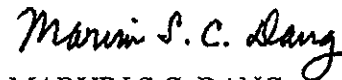
c. Delete HRS Sec. 667-5(e) relating to deficiency judgments. With the deletion, the lender will be able to pursue a deficiency judgment against non-owner-occupants.

d. Make the changes to HRS Secs. 667-5, 667-6, 667-10, 667-14, and 667-15 as recommended by the Mortgage Foreclosure Task Force in its Report to the 2012 legislature.

e. Delete the reference in HRS 667-53(a) to Part I non-judicial foreclosures consistent with the deletion in HRS Sec. 667-5(a)(2) above.

f. Delete the reference in HRS 667-71(a) to Part I non-judicial foreclosures consistent with the deletion in HRS Sec. 667-5(a)(2) above.

Thank you for considering our testimony.



MARVIN S.C. DANG  
Attorney for Hawaii Financial Services Association



**LEGAL AID**  
**SOCIETY OF HAWAI'I**

Telephone: (808) 536-4302 • Fax: (808) 527-8088  
Mailing Address: P.O. Box 37375 • Honolulu, Hawaii 96837-0375  
924 Bethel Street • Honolulu, Hawaii 96813

Calvin Pang, Esq.  
President, Board of Directors

M. Nalani Fujimori Kaina, Esq.  
Executive Director

**The Honorable Rosalyn H. Baker, Chair**  
**The Honorable Brian T. Taniguchi, Vice Chair**  
**Senate Committee on Commerce and Consumer Protection**

Hearing : **Wednesday, February 1, 2012, 9:00 a.m.**  
**State Capitol, Conference Room 229**

**In support of SB 2428 Relating to Mortgage Foreclosures**

**Chair, Vice Chair, and Members of the Committee:**

My name is Madeleine Young, representing the Legal Aid Society of Hawai'i ("LASH"). I am advocating for our clients who include the working poor, seniors, citizens with English as a second language, disabled, and other low and moderate income families who are consumers and families facing default and foreclosure on their homes. I provide bankruptcy services as a staff attorney in Legal Aid's Consumer Unit. I also give counsel and advice to clients on protected income sources, exempt assets, and settlement options regarding their consumer debts. In addition, I provide legal services to clients regarding mortgage default and foreclosure matters, wage garnishment avoidance, fair debt collection practices, debt collection defense, as well as student loan, back taxes, and other consumer debt problems.

We are testifying **in support** of SB 2428 as it would strengthen protections for borrowers in the State of Hawai'i.

SB 2428 would repeal Part I of chapter 667. We support repeal of Part I to the extent it concerns nonjudicial foreclosure.

When the moratorium on new, nonjudicial foreclosures under Part I expires on July 1, 2012, Hawai'i would again have two very different but overlapping nonjudicial foreclosure laws. With the Mortgage Foreclosure Task Force's 2012 recommended revisions (included in SB 2429), Part II will embody the best efforts of lender and borrower representatives, as well as that of the Legislature, to craft a fair, comprehensive, and effective Hawai'i nonjudicial foreclosure law. There is no reason for Part I to continue to provide for an inferior alternative nonjudicial foreclosure process and it should be repealed.

**Conclusion:**

For the above reasons, we respectfully request passage of SB 2428. We appreciate the committee's recognition of the need to protect consumers in the State of Hawai'i and support SB 2428's attempts at doing so. Thank you for the opportunity to testify.

**LAW OFFICE OF GEORGE J. ZWEIBEL  
45-3590A Mamane Street  
Honoka'a, Hawaii 96727  
(808) 775-1087**

**Senate Committee on Commerce and Consumer Protection**

**Hearing: Wednesday, February 1, 2012, 9:00 a.m.  
Conference Room 229, State Capitol, 415 South Beretania Street**

**IN SUPPORT OF SB 2428**

**Chair Baker, Vice Chair Taniguchi, and Committee Members:**

My name is George Zweibel. I am a Hawaii Island attorney and have for many years represented mortgage borrowers living on Oahu, Hawaii, Kauai and Maui. Earlier, I was a regional director and staff attorney at the Federal Trade Commission enforcing consumer credit laws as well as a legal aid consumer lawyer. I have served on the Legislature's Mortgage Foreclosure Task Force since its inception in 2010, although the views I express here are my own and not necessarily those of the Task Force.

SB 2428 would repeal Part I of chapter 667. I support repeal of Part I to the extent it concerns nonjudicial foreclosure.

When the moratorium on new nonjudicial foreclosures under Part I expires on July 1, 2012, Hawaii would again have two very different but overlapping nonjudicial foreclosure laws. With the Task Force's 2012 recommended revisions (included in SB 2429), Part II will embody the best efforts of lender and borrower representatives as well as the Legislature to craft a fair, comprehensive and effective Hawaii nonjudicial foreclosure law. There is no reason for Part I to continue to provide for an inferior alternative nonjudicial foreclosure process and it should be repealed.

Thank you for your consideration of my testimony.