SB2429,SD1

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

KEALI`I S. LOPEZ
DIRECTOR

EVERETT S. KANESHIGE
MORTGAGE FORECLOSURE TASK
FORCE CHAIRPERSON

TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Friday, February 24, 2012
9:30 a.m.

TESTIMONY IN SUPPORT OF SB 2429 SD1: RELATING TO FORECLOSURES

TO THE HONORABLE CLAYTON HEE, CHAIR, AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("DCCA") appreciates the opportunity to testify in support of SB 2429 SD1. My name is Everett Kaneshige, I am the chairperson of the Mortgage Foreclosure Task Force ("MFTF").

As I've noted in prior testimony, this bill is the result of consensus and compromise between the disparate interests of the stakeholders groups represented on the MFTF. Wherever possible the MFTF strove to avoid making policy judgments about the nonjudicial foreclosure law, but instead focused on streamlining the process enacted by the Legislature, and trying to bring to the Legislature's vision of a functional and fair nonjudicial foreclosure process to fruition. The findings and final recommendations of the MFTF focus on addressing nonjudicial foreclosure by condominium and homeowner

associations, revising the Mortgage Foreclosure Dispute Resolution Program to protect personal information and procedural issues, simplifying definitions and addressing inconsistencies in terminology.

The SD1 under consideration by the Committee addresses concerns from community associations regarding issues arising from enabling community association nonjudicial foreclosures using language borrowed from condominium association law. It also repeals Part I nonjudicial foreclosures (HRS §667-5), which necessitated adjusting the timeline of the Mortgage Foreclosure Dispute Resolution ("MFDR") Program so that it would not greatly extend the amount of time needed to complete a Part II nonjudicial foreclosure (HRS §667-22). This was done by creating an exemption within the stay that goes into effect when participation in the MFDR Program is elected by an owner-occupant (SB 2429 SD1, Section 48). The other issue addressed by the SD1 was the possibility of electronic publication of notices of public sale arising from foreclosures in order to reduce the cost of publication, which is passed on to the foreclosed mortgagor. The Department assisted in providing the enabling language, which was inserted into Section 22 of the SD1, by adding a new subsection (2) to subsection (d) of HRS §667-27, as well as additional amendments to related parts of Part II to accommodate the change.

In addition to the above, the Department has identified the following potential issues for which it would like to propose amendments for the Committee's consideration:

1. In light of the deletion of Part I, the public information statement drafted by the MFTF is no longer accurate. Specifically, in Section 27, 667-41(b), under "STEP FOUR: DISBURSEMENTS OF PROCEEDS; POTENTIAL DEFICIENCY JUDGEMENT" the following amendment to the SD1 should be made (additions double-underlined, deletions bracketed and stricken):

   "In a NONJUDICIAL FORECLOSURE, the Mortgagee distributes the proceeds from the sale. [~~If the mortgaged property does not sell for enough to pay off the balance due under your loan, the Mortgagee may have the right to file a lawsuit against you to collect the deficiency. In many cases, after a nonjudicial foreclosure, a Mortgagee cannot or will not choose to file a lawsuit for a deficiency.~~] Unless the debt is secured by other collateral, or except as otherwise provided by the law, the recordation of both the conveyance document and affidavit shall operate as full satisfaction of the debt."

   The original text had to account for the ability of a foreclosing mortgagee to pursue a deficiency under Part I, in the event that an owner-occupant had a fee simple or leasehold ownership interest in any other real property. As HRS §667-38 does not permit deficiencies unless the debt is secured by other collateral, the statement as originally drafted would not adequately describe the law.

2. Section 38 of the SD1 is an MFTF amendment that aims to enable the Department to contract with housing counselors and budget and credit counselors to provide services to the consumers participating in the MFDR Program. When it was drafted, an error was made wherein the Department was enabled to contract with "private organizations **or** approved housing

counselors **or** approved budget and credit counselors…" (emphasis added). The "or" should have been "and", as "or" implies that the Department may contract with a private organization, or an approved housing counselor, but not both. Therefore the following amendment to the SD1 is requested (additions double-underlined, deletions bracketed and stricken):

> "(c) The department is authorized to contract with county, state, or federal agencies, and with private organizations,[~~or~~] approved housing counselors, and [~~or~~] approved budget and credit counselors for the performance of any of the functions of this part. These contracts shall not be subject to chapter 103D or 103F."

3. The SD1 made an amendment to an Unfair Deceptive Act or Practice ("UDAP") clause related to the operation of the MFDR Program. This clause, prior to the SD1, was located in HRS §667-76(b), and pertains to the timely filing of a lender's foreclosure notice with the Department. It was moved, in the SD1, to Section 35, as a new subsection in 667-60(a)(13). This clause is absolutely necessary to the operation of the MFDR Program, as such it is very important that even if subsequent amendments are made to other parts of §667-60, it is critical that §667-60(a)(13) should be preserved as is. That being said, the language of Section 35 conforms to the recommendations of the MFTF, and as such it represents the compromise between consumers, lenders, and title insurance stakeholders, therefore it is recommended that Section 35 of the SD1 should remain unamended.

Thank you for this opportunity to testify in support of SB 2429 SD1, DCCA recommends that it be passed, with amendments per the comments above. I will be

happy to answer any questions that the Chairperson or members of the Committee may have.

Hawai'i Association of REALTORS®
www.hawaiirealtors.com

The REALTOR® Building
1136 12th Avenue, Suite 220
Honolulu, Hawaii 96816

Phone: (808) 733-7060
Fax: (808) 737-4977
Neighbor Islands: (888) 737-9070
Email: har@hawaiirealtors.com

February 24, 2012

The Honorable Clayton Hee, Chair
Senate Committee on Judiciary and Labor
State Capitol, Room 016
Honolulu, Hawaii 96813

RE: S.B. 2429, S.D.1, Relating to Foreclosures

HEARING: Friday, February 24, 2012, at 9:30 a.m.

Aloha Chair Hee, Vice-Chair Shimabukuro, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR **submits comments and requests a proposed amendment** on S.B. 2429, S.D.1, which implements the recommendations of the mortgage foreclosure task force to address various issues relating to the mortgage foreclosure law and related issues affecting homeowner associations.

HAR sincerely appreciates the efforts of the Mortgage Foreclosure Task Force to make recommendations regarding the existing foreclosure law in Hawai'i. However, the HAR has concerns that some of these recommendations may create unintended adverse consequences if it becomes law.

Moratorium on Non-Judicial Foreclosures
HAR understands that, since the enactment of Act 48, non-judicial foreclosures have essentially stopped, and lien holders have opted to pursue the more costly and lengthy judicial foreclosure route. This issue appears to be linked, in part to the stringent Unfair or Deceptive Acts and Practices (UDAP) provisions in Act 48. The mortgage industry and even Fannie Mae have cited UDAP as one of the primary reasons for noncompliance with the legislative intent of Act 48. Until certain UDAP provisions that apply to non-judicial foreclosures are clarified, HAR believes that it may be prudent to continue a moratorium on Part I and even Part II non-judicial foreclosures.

HAR believes that non-judicial foreclosures should exist as a mechanism only if it is fair and balanced for both the borrower and creditor. HAR believes that, in the meantime, court oversight via the judicial foreclosure process should continue to be utilized as the only foreclosure mechanism and be only limited to owner-occupants.

Hawai'i Association of REALTORS®
www.hawaiirealtors.com

The REALTOR® Building
1136 12th Avenue, Suite 220
Honolulu, Hawaii 96816

Phone: (808) 733-7060
Fax: (808) 737-4977
Neighbor Islands: (888) 737-9070
Email: har@hawaiirealtors.com

Foreclosure Recovery for Homeowner Associations

HAR strongly supports the expansion of the condominium foreclosure law to cover planned community associations so that planned community associations are able to obtain relief due to unpaid common assessments as a form of recovery from foreclosure. Moreover, HAR supports the concept of a new section to establish an alternate power of sale process for homeowner and condominium associations for unpaid liens and assessments. We recognize that this section may need refining, and defer to the appropriate parties on specifics.

HRS Section 667-60– Oppose 180-Day Waiting Period (Section 35)

Under Section 35 (page 131) of S.B. 2429, S.D.1 the Task Force recommends that a 180-day waiting period be implemented after a foreclosure sale, to allow the foreclosed borrower to bring forth any claims for invalidating the public auction sale. HAR has concerns that the imposition of the 180-day requirement would severely impact the ability of a bidder to be able to purchase foreclosed real estate at auction. This will discourage potential bidding from the public at large, because, among other reasons, the waiting period will make it challenging to obtain financing. Owner occupant financing usually contains a requirement that a buyer take occupancy of the property within 30-90 days of closing the loan/purchase. If a Buyer cannot occupy a property within the lender's guidelines, the loan is categorized as an "investor loan," which requires a much larger down payment and a higher interest rate.

The California civil code sections regarding bona fide purchaser protections have worked for many years and could provide guidance for this Committee to consider. In California, the law presumes that the lender has satisfied requirements relating to notification, the auction sale, and all other aspects of the foreclosure. The lender is liable for financial damages to the mortgagor if the sale is overturned, but the third-party bidder is protected. In short, the California system encourages competitive bidding at the auction, fosters competition that will yield the highest possible sale price, and creates the opportunity for the homeowner who lost the property to recover funds in the event there is an overbid.

Based on the foregoing, if the Committee is inclined to move this bill forward for further discussion, HAR would recommend that the 180-day waiting period only apply in situations where the lender takes back the property at auction with a credit bid, but that a third-party purchaser be exempted from this requirement.

For the forgoing reasons, HAR respectfully ask this Committee to consider the attached amendments to protect third-party purchasers, while still preserving consumer protection for homeowners.

Mahalo for the opportunity to testify.

Hawaii Bankers Association

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

Presentation of the Committees on Judiciary and Labor
Friday, February 24, 2012 at 9:30 a.m.
Testimony on SB 2429, SD1 Relating to Foreclosures

In Opposition

TO: Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Members of the Committee

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in opposition to SB 2429, SD1. HBA is the trade organization that represents FDIC insured depository institutions operating branches in Hawaii.

While we appreciate the efforts of all members of the Mortgage Foreclosure Task Force and remain sympathetic to those homeowners who are experiencing hardship due to inappropriate behavior by, and difficulty communicating with, their mainland lenders, we respectfully oppose this bill.

We recognize that steps were taken to address lenders' concerns, such as narrowing the scope of potential violations related to Unfair and Deceptive Acts or Practices. However, although modest improvements were incorporated into the Task Force recommendations, the recommendations and other added provisions still make Act 48 unworkable.

Several issues that need to be reconsidered include:

- Allowing borrowers to go through Dispute Resolution and then subsequently converting to a judicial foreclosure should they not like the outcome of the DR process. This extends the process and increases costs. Instead of using the Dispute Resolution process with the possibility of then going through the judicial foreclosure process, mortgagees will likely continue to use the judicial process.

- Allowing the filing of an action to void the foreclosure sale for up to six months after the sale is recorded. This will chill the real estate market and is unwarranted, overly broad and unnecessary.

- Removing the "cap" on the dollar amount on delinquent maintenance fees will likely lead to the unintended consequence of making it more difficult for first-time and middle-income homebuyers to qualify for a loan since it will require more money to complete the purchase.

This provision is especially damaging to Hawaii borrowers because if the unit is a condominium, the buyer at foreclosure will have to pay the delinquent maintenance fees, and the potential for this liability will inherently be borne by future borrowers. It also makes it more difficult for the condo owner to sell.

- Language specifying the application of rent collected by an Association of Apartment Owners should be included in the bill. It is anticipated due to the extended period of time for a mortgagee to foreclose, Associations will likely be able to collect rent to cover its delinquent maintenance fees and other costs, therefore, any excess rental income received by the association from the unit should be paid to existing lienors based on priority of lien, and not on a pro rata basis.

- Repealing of nonjudicial foreclosures under Part I, Section 51 of SB 2429, SD 1. At a minimum, Part I nonjudicial foreclosures should be permitted for foreclosures of commercial, industrial and investor owned property.
- The provision to hold two open houses is unrealistic as the lender does not have any legal right to take possession of the property and could face unknown potential liability for any action taken to comply with this provision.

All of the above proposals serve to discourage lenders from utilizing the non-judicial process. We must not lose sight of the fact that funds used to provide mortgages to borrowers come from banks' depositors. As depository institutions, banks have a fiduciary responsibility and obligation to all our depositors that the funds entrusted to us is preserved for future return. What the legislature is proposing no longer serves as a streamlined and fair method of foreclosure for lenders to seek fulfillment of their loan contracts.

Last year, we cautioned that Act 48 would likely result in unintended consequences. Almost immediately upon its passage, Fannie Mae and Freddie Mac issued mandates to lenders to stop all non-judicial foreclosures and switch to the judicial process. Absent any appropriate and immediate remedy, it was evident that our court system would become overburdened and an already lengthy foreclosure process would grow even longer. Additional delays in removing the backlog of foreclosures only prolong a return to a healthy housing market and Hawaii's economic recovery.

The Hawaii Credit Union League, Hawaii Financial Services Association and Hawaii Bankers Association "minority reports" contained in the Task Force report outline additional issues that need to be addressed in the non-judicial foreclosure law. A summary of those combined reports is attached.

Thank you for the opportunity to provide our testimony.

Gary Y. Fujitani
Executive Director

Attachment

Attachment

Summary of Lenders' Issues on Task Force Bill

1. **§667-56 Prohibited conduct:** Repeal of §§667-56(5), -56(6) and -56(7). In all three subsections, the phrase "completing nonjudicial foreclosure proceedings is ambiguous. It is unclear whether that period ends with: recordation of an affidavit of sale; recordation of a conveyance document to the foreclosure sale purchaser; or recovery of possession from the foreclosed mortgagor of the foreclosed property by the purchaser.

(a) Section 667-56(5) also ignores that a lender or servicer may not have notice of a pending short sale escrow at the time of completion of a nonjudicial foreclosure sale. Item (5) attempts to give a potential short sale that is agreed to at or around the time of the non-judicial foreclosure sale priority over the foreclosure so long as the sales price is at least 5% greater than the foreclosure sale price. Recognizing that a sales commission of 6% on the short sale would wipe out the entire 5% increased sales price, the Task Force agreed to increase this percentage to at least 10%. However, this does not address other conditions in the short sale that might have prevented the lender from approving the short sale in the first place, such as payment of other debts of the seller that effectively reduce the amount of the payoff to the lender. This effectively places unsecured creditors ahead of the foreclosing lender and other lien holders

(b) Section 667-56(6) also uses the vague phrase "bona fide loan modification negotiations." If a mortgagor has been denied a loan modification, can the mortgagor then reapply seriatim and maintain the mortgagor's status as pending bona fide loan modification negotiations? Does the time reset each time a mortgagor submits a loan modification request notwithstanding the requests are not materially different than one already denied?

(c) Section 667-56(7) also is too vague because it fails to define with clarity when a mortgagor is being evaluated and when a mortgagor is no longer being evaluated for a loan modification program. This section presumes that there will be timely-issued documentation that a borrower is no longer being evaluated when that is not always the case.

Section 667-60 must be amended to provide clarity to these items and allow the foreclosing lender to end negotiations at some point.

2. **§667-58 Valid notice; affiliate statement**: (a) As worded, the subsection implies mortgagee/lender must file affiliate statements naming their own officers. A suggested amendment to begin as follows:

> Any notices made pursuant to this chapter may be issued only by the foreclosing mortgagee or lender, or by a person identified by the foreclosing mortgagee or lender in an affiliate statement signed by that foreclosing mortgage or lender and recorded . . . .

3. **§667-59 Actions and communications with the mortgagor in connection with a foreclosure**: Besides the obvious proof problems and violation of the parol evidence rule, this section is directly counter to the express stated provisions in virtually all notes and mortgages which require any revision to the existing terms to be in writing. This section should be amended to include the words "in writing," in the first sentence so that it will read as follows:

"A foreclosing mortgagee shall be bound by all agreements, obligations, representations, or inducements to the mortgagor, which are made **in writing** by its agents, including but not limited to its . . . ."

4. **§667-60 Unfair or deceptive act or practice; transfer of title**: The Task Force attempted to correct one of the more problematic provisions in Act 48 Sec. 667-60 states: "Any foreclosing mortgagee who violates this chapter shall have committed an unfair or deceptive act or practice under section 480-2." It unnecessarily subjects lenders to the liabilities in HRS Sec. 480-2 for even immaterial and nonsubstantive violations of HRS Chapter 667 (Mortgage Foreclosures). HRS Sec. 667-60 has been cited as one of the reasons why lenders decided after May 5, 2011 to foreclose judicially rather than non-judicially. This section should be repealed.

Instead, the Task Force recommended that Sec. 667-60 be changed to: (a) create a "laundry list" of 21 violations which would be unfair or deceptive acts or practices (including 7 items in Sec. 667-56 and 4 items related to the Mortgage Foreclosure Dispute Resolution Program), (b) create 17 violations which could result in a non-judicial foreclosure sale being voided, and (c) allow actions to void the foreclosure sale to be filed up to 6 months after an affidavit of the sale is recorded. This recommendation is arguably unwarranted and overly broad. Lenders likely will continue not to use non-judicially foreclosure process and consequently not use the dispute resolution program.

5. **§667-85 Neutral qualifications; status and liability**: Reads in part: "A neutral shall not be a necessary party to, called as a witness in, or subject to any subpoena duces tecum for the production of documents in any arbitral, judicial, or administrative proceeding that arises from or relates to the mortgage foreclosure dispute resolution program." This sentence should be repealed. A neutral in the Mortgage Foreclosure Dispute Resolution Program should not be immune from testifying if the neutral makes findings or determinations which subject a lender or a borrower to sanctions.

6. **§667-80 Parties; requirements; process**: This section should be amended to permit mainland lenders to attend during reasonable business hours where they are situated. Additionally, provision must be made to accommodate situations where approval of a loan modification requires more than one approval. For example, in instances where mortgage insurance is in place, the insurer will be required to approve the modification in addition to the lender.

7**.** **§667-41 Public information notice requirement**: While improved tremendously by the proposed amendment approved by the Task Force, this section still potentially applies to certain commercial loans in which residential property is taken as collateral. It is doubtful that the Legislature intended this informational notice to apply to commercial borrowers and applicants and requests that the Legislature, in addition to adopting the proposed revisions made the Task Force, also enact a further amendment to specify that such notice requirement applies only to consumer, residential mortgage loans.

HAWAIIAN COMMUNITY ASSETS

1050 Queen Street, Suite 201
Honolulu, Hawaii 96814
Ph: 808-587-7886
Toll Free: 1-866-400-1116
www.hawaiiancommunity.net

February 23, 2012

Senate Committee on Judiciary and Labor
Friday, February 24, 2012
Conference Room 016

RE: Testimony in Support of SB2429 – Relating to Foreclosures

Good morning Chair Hee, Vice Chair Shimabukuro, and Committee Members,

My name is Noelle Kai Desaki, Community Services Manager of Hawaiian Community Assets, a HUD-approved housing counseling agency that provides free foreclosure prevention counseling services through our statewide offices. Our organization was a part of the Mortgage Foreclosure Task Force. I am submitting testimony in support of the recommendations made by the Mortgage Foreclosure Task Force and included in SB2429 – Relating to Foreclosures.

First, I want to commend the State Legislature for its leadership in last legislative session in taking action to address the ongoing foreclosure crisis we face. At the time of the passing of Act 48, Center for Responsible Lending reports showed that our State had seen a 687% increase in foreclosure filings between the third quarter of 2006 and the first quarter of 2010 resulting in a loss of approximately $15 billion in home equity for our families – an average loss per home of $41,668. During our counseling work, we saw the impacts of a lending industry that never had to modify loans on such a widespread basis – submitted paperwork was being reported as lost or never received, families' mortgage payments were not being recorded, repayment plans would be agreed upon and changed when the family would receive the approval paperwork, and we struggled alongside families to simply make contact with lenders from the Continent. Foreclosures were so rampant at the time that most of us in this room knew someone within our family or circle of friends who was going through the painful process of foreclosure. Today, I am proud to say that because of your actions we have seen better responses from lenders and families now have the opportunity to sit face-to-face with their lender and a third party to determine alternatives to foreclosure. As a result of implementing a culturally-appropriate process for our families, on January 11, 2012 RealtyTrac reported that the number of foreclosures in Hawaii had dropped by 52% from this time last year. Still, I caution us to be too optimistic as reports by the Center for Responsible Lending project that our nation's homeowners will experience a second round of resets on adjustable-rate mortgages at the end of 2012 into 2013 which would no doubt throw many of our families who have lost their jobs and reduced income into foreclosure.

SB2429 – Relating to Foreclosures reflects the various viewpoints of the task force members and provides all parties with a clear path to continue the work of addressing the foreclosure crisis in our State.

There are 4 primary areas that I would like to highlight as important in the overall legislation and encourage the Committee to pass without amendments.

1. Promote Housing Counseling to Address Foreclosure. The National Foreclosure Mitigation Counseling (NFMC) Program has been the primary source of funding for all Hawaii HUD-approved housing counseling agencies as well as Consumer Credit Counseling Services of Hawaii. According to an independent evaluation of by the Urban Institute, homeowners who received counseling through the Program were 60% more likely to avoid losing their home to foreclosure than homeowners who do not seek counseling. NFMC Program clients were more likely to receive a loan modification, and on average, saved $454 more on their monthly mortgage payments per month, than homeowners who received modifications but did not work with a counselor. Simply put: housing counseling works. It is a tool for both lenders and borrowers to work out alternatives to foreclosure prior to entering into judicial or the nonjudicial process. However, due to budget disputes at the Federal level, the NFMC Program has been significantly cut, endangering the capacity of housing counseling agencies to continue with this crucial service to lenders and borrowers. As a result, the Housing Counseling and Dispute Resolution Program Working Group recommended that the Department of Commerce and Consumer Affairs have the authority to contract with housing counseling agencies to provide a fee-for-service payment if the said agencies could secure a loan workout prior to the lender and borrower having to enter into the Dispute Resolution Program; a win-win for all parties involved.

2. Provide a Transparent Process for Mortgage Mediation. We have all seen Federal programs that have been established to address our foreclosure crisis fail miserably because of a lack of process, transparency, and due to the fact that loan modifications had not been implemented on such a widespread basis by lenders prior to 2008. This was the reason behind the Federal Deposit Insurance Corporation's (FDIC) creation of the "Modification-in-a-Box" Program. The program was established as a "comprehensive package of information to give servicers and financial institutions all of the tools necessary to implement a systematic and streamlined approach to modifying loans." The FDIC program provides a tested, transparent process for determining the best workout options available to homeowners and lenders on mortgage loans. Its clear set of calculations, assumptions, and forms can be reviewed for accuracy by borrowers, lenders, and third-party neutrals, but also ensures quality control for delivery of the Dispute Resolution Program and lends additional oversight of the program without squeezing the capacity of the Department of Commerce and Consumer Affairs. While the Dispute Resolution Program prefers lenders utilize the FDIC Program during mandatory mediation, there is also flexibility for lenders to utilize another program or process agreed upon by all parties.

3. Ensure Quality of Dispute Resolution Program. Hawaii-based lender and borrower representatives were present on the Housing Counseling and Dispute Resolution Program Working Group. Agreement among members was made to support language must in Section 667-85 that provides immunity to mediators of the Dispute Resolution Program in order to

ensure highly-qualified neutrals participate in the program and provide the opportunity for it to function in the utmost effective and efficient manner for all parties involved. Without the language, our group members feared the number of highly-qualified neutrals who have already begun training to serve in this capacity would withdraw, leaving a vacuum filled by less qualified individuals and therefore compromising the efficiency and effectiveness of the Dispute Resolution Program sessions.

4. Establish Clarity with Regards to Unfair or Deceptive Acts and Practices. Section 667-60 was identified throughout the task force as a highly contentious issue; however, task force was able to draft a compromise that creates clear "rules of the road" for both lenders and borrowers that will allow for effective implementation of non-judicial foreclosures in Hawaii through the Dispute Resolution Program and, more broadly, improve the way mortgage foreclosures are conducted in the State. The compromise upholds common sense consumer protections by addressing some of the most egregious violations, such as "robo-signing", committed by large, Continental United States lenders, while ensuring that typographical and other non-substantial errors are not cause for finding mortgage servicers, title insurance companies, or other entities in violation of unfair or deceptive acts or practices. The compromise, which is included in our Task Force draft bill, was supported by 13 members with 4 against and 1 abstention.

Thank you for your time,

Noelle Kai Desaki
Community Services Manager

ANDERSON LAHNE & FUJISAKI LLP
A Limited Liability Law Partnership

733 Bishop Street, Suite 2301
Honolulu, Hawai`i 96813
Telephone: (808) 536-8177
Facsimile: (808) 356-7635

Of Counsel:
Joyce Y. Neeley

M. Anne Anderson
Philip L. Lahne
Lance S. Fujisaki

Pamela J. Schell
Randall K. Sing
Jana M. Naruse
Jennifer B. Lyons
Mark W. Gibson

February 23, 2012

Sent via email to: senhee@Capitol.hawaii.gov
enshimabukuro@Capitol.hawaii.gov

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Committee on Judiciary and Labor

RE: S.B. No. 2429, S.D.1

Dear Senators Hee and Shimabukuro:

Thank you for the opportunity to present testimony on S.B. No. 2429, S.D.1. My comments are directed at the limitation on liens found in Part II, Section 2 (page 4); Part III, Section 11 (page 70); and Part III, Section 12 (page 75).

The language that provides that a lien recorded by a planned community association or condominium association shall expire two years from the date of recordation is an extremely harmful provision to associations and consumers and must be stricken for a number of reasons, including, without limitation:

1. Condominium associations have had automatic statutory liens for almost 50 years and a number of planned community associations have had automatic liens by virtue of their governing documents for even longer. Such automatic liens protect associations from owners selling their units or lots without paying delinquent assessments. S.B. No. 2429, S.D.1 will take away this vitally important legal right without a compelling reason. While the proponents of this bill may argue that the proposed language refers only to "recorded" liens, it will have the effect of destroying the automatic lien because the provision would be meaningless if the expiration of the written lien does not also destroy the automatic lien.

2. The destruction of the automatic lien currently enjoyed by <u>all</u> condominium associations and a number of planned community associations will require those associations to record written liens to secure their liens. This will have the adverse effect of not only increasing the attorneys' fees and costs incurred by the associations but it will make it more difficult for delinquent owners to cure their delinquency as the attorneys' fees and costs incurred by the associations will be included in the amounts owed by the delinquent owners.

3. The two year limitation on liens will require all associations to immediately proceed with foreclosure upon recording a lien to ensure that the foreclosure process can be completed in two years. This means that the two year language will result in more foreclosures than ever.

4. As drafted, the lien will expire in two years without any opportunity to renew it. This means that an association could spend thousands of dollars in foreclosing a lien only to find the lien extinguished in the middle of the foreclosure process because the process was delayed for reasons beyond the association's control. Foreclosure actions can be delayed for a number of reasons, such as problems in effectuating service, the filing of bankruptcies by delinquent owners, and the filing of appeals and/or motions filed by owners, lenders, and other parties to the action. In these instances, an association might not only lose its lien and right to foreclose, but it might also be required to pay the attorneys' fees and costs of the delinquent owner because the delinquent owner might be declared the "prevailing" party in the foreclosure proceeding and thus perhaps be entitled to an award of fees and costs against the association.

5. Part II, Section 5 on page 34 of S.B. No. 2429, S.D.1, provides that associations may not reject a reasonable payment plan which is defined, in part, as a payment plan for a period of up to twelve months. If an owner defaults during the course of the payment plan, the association will have less than two years to complete the foreclosure of its recorded lien before it expires. This is highly prejudicial to associations and will undoubtedly result in a number of extinguished liens.

6. The persons who will benefit from the two-year limitation on liens are the: a) attorneys representing associations in their collection matters as the demand for their services will increase due to the urgency to record liens and proceed with foreclosure; and b) delinquent owners who are able to stall the foreclosure process past two years, thereby preventing the association from foreclosing upon their units.

7. The persons who will be damaged by the two-year limitation on liens are the vast majority of association members who faithfully pay their maintenance fees and whose maintenance fees will increase to cover the additional collection costs that cannot be recovered from bankrupt or judgment-proof delinquent owners.

The two year limitation on liens will be extremely prejudicial to all associations and their members. It is an anti-consumer provision. For the reasons stated above, we strongly urge you to strike this language from S.B. No, 2429, S.D. 1.

Sincerely,

M. Anne Anderson

Philip L. Lahne

Lance S. Fujisaki

Joyce Y. Neeley

cc: Senator Rosalyn Baker via email: senbaker@capitol.hawaii.gov

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 Clayton Hee, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

Hearing : Friday, February 24, 2012, 9:30 a.m.
State Capitol, Conference Room 016

In support of SB 2429, SD1 Relating to 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. Specifically, I teach a clinic to show individual consumer debtors how to prepare and file their own petition for chapter 7 bankruptcy relief, as well as provide full representation to Legal Aid clients in bankruptcy matters. I give counsel and advice to clients on protected income sources, exempt assets, and settlement options regarding their consumer debts. I also 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 the intent of SB 2429, SD1 as it would strengthen protections for borrowers in the State of Hawai`i. LASH supports the general intent of the Task Force recommendations to make Act 48 and Hawai`i's foreclosure law more efficient and effective. We support in particular the provisions of SB 2429, SD1 which seek to (1) implement the recommendations of the Mortgage Foreclosure Task Force ("Task Force"), including the repeal of Part of Chapter 667, HRS; (2) make permanent the mortgage foreclosure dispute resolution program and the process for converting nonjudicial foreclosures of residential property into judicial foreclosures; and (3) repeal the provision excluding participants of the dispute resolution program from converting nonjudicial foreclosure proceedings to judicial actions.

As stated in our prior testimony, the Task Force's recommendations reflect substantial compromise between the interests of borrowers and lenders. In particular, and as reflected in the Committee on Commerce and Consumer Protection's report, the Task Force recommended amending § 667-60 to limit lender UDAP liability to serious, listed violations only. This recommendation was approved by 13 of the 17 voting Task Force members in direct response to lenders' stated concerns regarding potential liability for minor chapter 667 violations.

LASH specifically supports the following committee report's amendments to the bill, which further strengthen consumer protections: (1) repealing the nonjudicial foreclosure process under Part I of chapter 667, HRS, to provide for a single nonjudicial foreclosure process under Part II of that chapter; (2) making permanent the mortgage foreclosure dispute resolution program under Part V of chapter 667, HRS by repealing its sunset date; and (3) repealing the prohibition against participants of the program converting their nonjudicial foreclosure proceedings to judicial actions.

Conclusion:

For the above reasons, we respectfully request passage of SB 2429. SD1. We appreciate the committee's recognition of the need to protect consumers in the State of Hawai`i and support SB 2429, SD1'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 Judiciary and Labor

Hearing: Friday, February 24, 2012, 9:30 a.m.
Conference Room 016, State Capitol, 415 South Beretania Street

IN SUPPORT OF SB 2429, SD1

Chair Hee, Vice Chair Shimabukuro, 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 ("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 2429, SD1 would implement the 2012 recommendations of the Task Force, which I helped formulate and generally support. These recommendations reflect substantial compromise between the interests of borrowers and lenders**.** In particular, the Task Force recommends amending § 667-60 to limit lender UDAP liability to serious, listed violations only. This recommendation was approved in direct response to lenders' stated concerns regarding potential liability for minor chapter 667 violations.

In addition, I strongly support three revisions made in SB 2429, SD1: (1) repeal of the nonjudicial foreclosure process under Part I of chapter 667; (2) making permanent the mortgage foreclosure dispute resolution program; and (3) repeal of the prohibition against participants in the dispute resolution program converting nonjudicial foreclosures to judicial foreclosure actions. Many needless foreclosures would be avoided as a result of these three changes.

Task Force § 667-60 compromise

By expressly stating that any chapter 667 violation constitutes an unfair or deceptive act or practice ("UDAP") under § 480-2, § 667-60 deters violations of the foreclosure law and at the same time provides meaningful remedies if they do occur. This helps prevent wrongful foreclosure, *e.g.*, when servicers make mistakes or fail to honor loan modification agreements, and ensures that

important borrower rights are honored, including dispute resolution and conversion of nonjudicial to judicial foreclosures.

Lenders contend that § 667-60 may subject them to disproportionate penalties for trivial violations of chapter 667. The Task Force recommendations respond to lenders' stated liability concern in two ways. First, it recommends creating several "safe harbors," *e.g.*, providing a public information notice form lenders can use to comply with § 667-41 and clarifying where foreclosure notices must be published. Second, the Task Force recommends limiting the applicability of § 667-60 to listed chapter 667 violations that are most likely to result in wrongful foreclosure and/or financial harm. Voiding a transfer of title under § 480-12 would be further limited to the most serious of those violations, and a court action seeking such relief would have to be filed within 180 days.

The Task Force's recommended revision of § 667-60, approved by 13 of the 17 voting members, reflects substantial compromise and strikes a fair and reasonable balance between lenders' stated concerns regarding liability for minor violations on one hand, and the need to protect borrowers from real harm caused by serious chapter 667 violations on the other.

Make sunset of dispute resolution program permanent

Under Act 48, the dispute resolution program currently is scheduled to end on September 30, 2014. Although the program has been available since October 1, 2011, mortgagees have stopped doing nonjudicial foreclosures in Hawaii, based on their perceived risk of undue liability under § 667-60. Consequently, mortgagees' decision to stop doing nonjudicial foreclosures will reduce to considerably less than the intended three years the period during which dispute resolution is actually available. On the other hand, by facilitating negotiations between owner-occupants and mortgagees to determine whether a loan modification or other agreement avoiding foreclosure is possible, the dispute resolution program will benefit homeowners and loan holders alike for as long as it exists. For these reasons, the sunset provision in Act 48 should be repealed.

Allow participants in the dispute resolution program to convert nonjudicial foreclosures to judicial foreclosures

Foreclosure dispute resolution and converting a nonjudicial foreclosure to a judicial foreclosure are both extremely important rights. However, they serve different purposes and borrowers should not be forced to choose between them. Conversion allows borrowers to assert legal claims and defenses in a court of law which, if established, may prevent a wrongful foreclosure and afford other relief. In contrast, dispute resolution creates a process for determining whether foreclosure can be avoided by reaching a mutually beneficial agreement, *e.g.*, by modifying loan terms, irrespective of whether legal foreclosure defenses may exist. Alternative dispute resolution should be encouraged and utilized as much as possible, but not at the cost of losing the conversion right if an agreement

cannot be reached. Instead, the homeowner should retain the option, in the event dispute resolution is unsuccessful, to move the foreclosure to court so that a judge can decide whether valid foreclosure defenses exist.

Repeal nonjudicial foreclosure process under Part I

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, SD1), 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.

HAWAII CHAPTER
community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

February 22, 2012

Honorable Clayton Hee
Honorable Maile Shimabukuro
415 South Beretania Street
Honolulu, Hawaii 96813

Re: SB 2429 S.D. 1

Dear Chair Hee, Vice Chair Shimabukuro and Committee Members:

I chair the CAI Legislative Action Committee. CAI remains concerned about Part II of S.B. 2429 S.D. 1. Broadly speaking, significant concerns relate to:

1. The substantial change in law to the effect that no association may foreclose a lien that arises solely from fines, penalties, legal fees or late fees;

2. The policy of lien expiration and the language chosen to implement that policy;

3. Notwithstanding certain provided alternatives, the requirement to "serve" lien creditors (as opposed to the owner) according to the rules of civil procedure;

4. The length of the redemption period;

5. The length, and consequent publication expense, of the public notice;

6. Importation of the inapplicable concept of loan acceleration into the realm of association assessments; and

7. Miscellaneous matters.

CAI respectfully requests that the Committee consider certain legal precedent relating to an association's need to have an enforcement capacity, and to note that current law provides an available adequate remedy for owners who dispute assessments, contained in H.R.S. Section 514B-146(d). Those precedents and Section 514B-146(d) are referenced in an attachment.

Very truly yours,

Philip S. Nerney

ATTACHMENT TO CAI TESTIMONY RE: SB 2429 SD1

Condominium law is premised on a pay first, dispute later basis. Thus, Hawaii Revised Statutes ("H.R.S.") Section 514B-146(c) begins: "No unit owner shall withhold any assessment claimed by the association." The owner's remedy is found in Section 514B-146(d):

> (d) A unit owner who pays an association the full amount claimed by the association may file in small claims court or require the association to mediate to resolve any disputes concerning the amount or validity of the association's claim. If the unit owner and the association are unable to resolve the dispute through mediation, either party may file for arbitration under section 514B-162; provided that a unit owner may only file for arbitration if all amounts claimed by the association are paid in full on or before the date of filing. If the unit owner fails to keep all association assessments current during the arbitration, the association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the unit owner pays all association assessments within thirty days of the date of suspension, the unit owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all association assessments by the end of the thirty-day period, the association may ask the arbitrator to dismiss the arbitration proceedings. The unit owner shall be entitled to a refund of any amounts paid to the association which are not owed.

Adoption of SB 2429 SD1 would be severely prejudicial to the financial viability of associations. A solid premise for the pay first, dispute later approach is demonstrated in the following cases:

"**Because homeowners associations would cease to exist without regular payment of assessment fees**, the Legislature has created procedures for associations to quickly and efficiently seek relief against the non-paying owner." (Emphasis added) Park Place Estates Homeowners v. Naber, 29 Cal. App. 4th 427, 432, 35 Cal. Rptr. 2d 51, 53 (Cal. App. 4 Dist. 1994)(denying an owner's claimed right to withhold assessments due to a grievance).

In Park Place East Condo. v. Hovbilt, 279 N.J. Super. 319, 323, 652 A.2d 781, 783 (N.J. Super. Ch. 1994), the court noted: The legislative scheme for collection of assessments for maintenance charges against individual unit owners is a recognition that **such charges are the financial life-blood of the Association**. They are conceptually akin to the right of a municipality to levy and collect real estate taxes. The legislature clearly did not intend that the necessary income stream be reduced by the payment of 'reasonable attorneys fees' incurred in the process of collection of the charges. [footnote omitted] (emphasis added)

Inwood Condominium Association v. Winer, 49 Conn. 694, 696, 716 A.2d 139, 140 (Conn. App. 1998) presented the case of a condominium owner who opposed an Association's summary judgment motion in its foreclosure action by "claiming that the amount due was in dispute. He claimed that the amount due to the plaintiff for assessments and common charges had been tendered to it but not accepted and that, therefore, the only remaining sums allegedly due were for attorney's fees. The defendant claimed that such fees are not recoverable until a judgment has entered." The court disagreed. It *affirmed* the foreclosure judgment. 49 Conn. at 698, 716 A.2d at 141.

Mountain View Condominium Association v. Bomersbach, 734 A.2d 468 (Pa. Cmwlth. 1999), appeal dismissed 564 Pa. 433, 768 A.2d 1104 (2001), is another case in point. In that case, an owner declined to pay $500.00 in attorney's fees in connection with an effort to collect $1,200.00. The court affirmed a $46,548.64 attorney's fee award. That case involved an owner who had a "trench warfare philosophy[.]" 734 A.2d at 471. The court quoted the trial court's decision, which included the following:

> The Association had the option of either backing off or enforcing its rights under the Declaration and the decisional law. The fact that it elected not to compromise, to stand on principal [sic] and to uphold the law requires that its attorney's fees be covered. **Any holding to the contrary would cause chaos in Condominium Associations whose compliant members would have to bear the cost of dealing with non-compliant members.** . . .The Association had no choice, in this writer's view, but to pursue its legally correct position. It has done so and is entitled to be reimbursed for the expenses of doing so. 734 A.2d at 471 (emphasis added)

Inwood Condominium Association v. Winer, 49 Conn. 694, 696, 716 A.2d 139, 140 (Conn. App. 1998) presented the case of a condominium owner who opposed an Association's summary judgment motion in its foreclosure action by "claiming that the amount due was in dispute. He claimed that the amount due to the plaintiff for assessments and common charges had been tendered to it but not accepted and that, therefore, the only remaining sums allegedly due were for attorney's fees. The defendant claimed that such fees are not recoverable until a judgment has entered." The court disagreed. It *affirmed* the foreclosure judgment. 49 Conn. at 698, 716 A.2d at 141.

Nottingdale Homeowner's Association v. Darby, 33 Ohio St.3d 32, 36, 514 N.E. 2d 702. 706 (Ohio 1987)(superseded by statute) clearly demonstrates that adoption of SB2429 SD1 would severely hamper collection efforts. After noting that the owner in that case contracted freely to be bound by the condominium declaration, and that the owner enjoyed the services paid at common expense, it stated:

> No amount of legal wrangling can obscure the fact that appellees knowingly accepted the services and must pay for them. To obtain this inevitable result, appellant has been forced by appellees' intransigence to incur large amounts in attorney's fees to collect the relatively small amount of past due assessments. [footnote omitted] By refusing to enforce the provision which would require appellees to pay appellant's reasonable attorney fees, this court would make it virtually impossible for condominium unit owners' associations to recoup unpaid assessments from recalcitrant unit owners. **The expense of collection would render the effort useless.** The result would be that a unit owner, who for any reason does not wish to pay his monthly service assessment, can enjoy the benefits of such services and refuse to pay for them, secure in the knowledge that collection by the association will be prohibitively expensive. **Under such circumstances, what incentive would exist for the unscrupulous unit owner to pay his assessments? Obviously, very little.**
> As can be seen, the fee-shifting agreement in this case protects the fund of the unit owners' association from potential bankruptcy, and the conscientious contributors thereto from the burden of paying for the delinquency of others. Without such fee-shifting arrangements, unit owners' associations may have to abandon claims against

> debtors, such as appellees, as too costly to pursue. *With* such agreements, the debtor will be encouraged to pay to avoid litigation, and if litigation becomes necessary, the association's resources will be protected if its suit proves meritorious. A more ideal arrangement can scarcely be imagined. (Italics in original. Other emphasis added)

Cf. Springs Condominium Association, Inc. v. Harris, 297 Ga. App. 507, 677 S.E.2d 715 (Ga.App. 2009)(belated tender of amounts did not defeat mandatory attorney's fee award); BA Mortgage, LLC v. Quail Creek Condominium Association, 192 P.3d 447 (Colo.App. 2008)(declaration and statute mandated attorney's fee award); and Fortenberry Professional Building v. Zecman, 581 So. 2d 972 (Fla.App. 5 Dist. 1991)(attorney's fee award to association mandatory in foreclosure action despite owner prevailing on counterclaim). One salient point to be gleaned from the foregoing cases is that cases such as the instant case are about ***governance***, and the Association's essential *need* to maintain the integrity of the system. Thus, in Mozley v. Prestwould Board of Directors, 264 Va. 549, 557, 570 S.E.2d 817, 821-22 (Va. 2002), the court noted that "the Board was confronted with litigation that could have had a significant negative impact on its procedures and methods of operation. Thus, in the words of the chancellor, '[h]aving initiated the proceeding, [Mozley] cannot now complain that defendant and its counsel took [the suit] too seriously.'" (Editing in original) The owner in that case had contended that the Association could not collect fees because she paid an assessment *after* the association filed a summary judgment motion; but the court disagreed.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: kahinaperkins@yahoo.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 12:24:11 PM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Laine K. Perkins
Organization: Individual
E-mail: kahinaperkins@yahoo.com
Submitted on: 2/23/2012

Comments:

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: akluvo@gmail.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 12:15:13 PM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Arthur Kluvo
Organization: Individual
E-mail: akluvo@gmail.com
Submitted on: 2/23/2012

Comments:
I am treasurer for AOAO Cathedral Point and we have over $215,000 in delinquent accounts for a 222 unit complex. We currently are spending over $30,000 per year on legal fees to collect money owed. The judicial foreclosure procedure is much more costly and much more time consuming compared with non-judicial foreclosures. You legislators are really making it difficult for condominium associations to conduct business by introducing such frivolous legislation that will not solve our current problem with delinquent accounts, but only make it more costly and time consuming. Present legislation doesn't provide adequate compensation to condominium associations once the foreclosure procedure is completed and we end up "writing off" the loss. This bill would increase the amount of loss that would have to be "written off". Please give us a break and veto this bill. Thank you.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: kessler808@gmail.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 10:49:59 AM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Kenneth Kessler
Organization: Individual
E-mail: kessler808@gmail.com
Submitted on: 2/23/2012

Comments:
I agree with the position taken by Philip Nerney in his February 22nd letter to Senators Hee and Shimabukuro.

Thank you.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: kanani@certifiedhawaii.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 11:08:14 AM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Kanani Kealoha-Faleafine
Organization: Individual
E-mail: kanani@certifiedhawaii.com
Submitted on: 2/23/2012

Comments:
support for CAI's position

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: brent@certifiedhawaii.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 11:07:21 AM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Brent Dolan
Organization: Individual
E-mail: brent@certifiedhawaii.com
Submitted on: 2/23/2012

Comments:

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: greenlyw001@hawaii.rr.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 11:46:10 AM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Walter C. Greenly
Organization: Kehalani Gardens AOAO
E-mail: greenlyw001@hawaii.rr.com
Submitted on: 2/23/2012

Comments:
The affect of this legislation would render AOAOs ability to operate the association useless! Owners could not comply with assessment with ease and cause an undue hardship on owners who do comply. Current legislation gives owners ample ways to voice their opposition or to ask for relief. The proposed legislation would find many associations bankrupt and the members Boards with no way to operate under the condo regulations.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: waikikigary@yahoo.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 2:24:41 PM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: William Johnson
Organization: Kealohi Kai Community Association
E-mail: waikikigary@yahoo.com
Submitted on: 2/23/2012

Comments:
Please add optional comment indicating support for CAI's position

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: ronald.day.civ@mail.mil
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 11:07:39 AM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Ronald Day
Organization: Individual
E-mail: ronald.day.civ@mail.mil
Submitted on: 2/23/2012

Comments:
support for CAI's position

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: mark.r.despault@gmail.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 12:03:47 PM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Marcel R. Despault
Organization: Individual
E-mail: mark.r.despault@gmail.com
Submitted on: 2/23/2012

Comments:

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: joanipt@hawaii.rr.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 11:58:21 AM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Joanne Taylor
Organization: Individual
E-mail: joanipt@hawaii.rr.com
Submitted on: 2/23/2012

Comments:
Dear Chair Hee, Vice Chair Shimabukuro and Committee Members:
As a member of an AOAO and having served on the Board of Directors for 29 years, 15 of which as treasureer, I find some of the provisions of SB 2429 SD 1 punative toward the majority of homeowners that pay their maintenance fees in a timely manner.

By eliminating collection of late fees, penalties and legal fees from a foreclosure action, the burden of paying for the costs, incurred by the BOD while fulfilling their fiduciary duty to the Association to pursue collections,will be borne by the nondelinquent assiciation members.

By requiring the lien to be recorded every two years, the AOAO is forced to incur additional legal fees, which cannot be reimbursed as this law is written.The timeline to include notice, acceptance of a lengthly payment plan,plus the usual delays guarantee that the two years requirement to rerecord the lien would either occur before the foreclosure or during the process. This could result in a complete dismissal. Why do the mortgage companies have preferential treatment over the AOAO's, as they as not required to refile their lien every two years?

Please consider the AOAO members that budget to remain current on their fees and provide us a law that allows our BOD to collect our delinquencies in a fair and expedited manner, at minimum cost to the AOAO members in good standing.

Thank you for the opportunity to testify,
Joanne Taylor

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: ronrossmaui@msn.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 10:53:45 AM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Ron Ross
Organization: Wailea Pualani HOA Pres,
E-mail: ronrossmaui@msn.com
Submitted on: 2/23/2012

Comments:
Strongly oppose this measure many delinquecies take longer than the two year proposal to prosecute and collect.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: liane@certifiedhawaii.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 11:29:08 AM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Liane Carlos
Organization: Individual
E-mail: liane@certifiedhawaii.com
Submitted on: 2/23/2012

Comments:

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: candace@certifiedhawaii.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 11:30:07 AM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Candace Villarmia
Organization: Individual
E-mail: candace@certifiedhawaii.com
Submitted on: 2/23/2012

Comments:

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: joannyorkgilmore@yahoo.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 11:12:04 AM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: JoAnn York-Gilmore
Organization: Townhomes@Kamakana
E-mail: joannyorkgilmore@yahoo.com
Submitted on: 2/23/2012

Comments:
Don't make it more difficult for HOA's to take action against unit owners who are in arrears or fail to pay assessments/fines/dues. The other unit owners have to pick up the financial impact for those who refuse to pay their bills.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: dougger@hawaiiantel.net
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 12:24:47 PM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Douglas Whitehurst
Organization: Individual
E-mail: dougger@hawaiiantel.net
Submitted on: 2/23/2012

Comments:
I support CAI Legislative Action Committee's position regarding these proposed changes.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: cathymmatthews@gmail.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 8:16:00 AM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Catherine M Matthews
Organization: Individual
E-mail: cathymmatthews@gmail.com
Submitted on: 2/23/2012

Comments:

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: les@certifiedhawaii.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 11:13:31 AM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Les Fernandez
Organization: Individual
E-mail: les@certifiedhawaii.com
Submitted on: 2/23/2012

Comments:

The Honorable Chair Senator Clayton Hee
The Honorable Vice ChairSenator Maile S.L. Shimabukuro

Senate Committee on Judiciary and Labor

Friday, February 24, 2012
TIME:9:30 a.m.
PLACE:Conference Room 016
State Capitol415 South Beretania Street

Chair Senator Clayton Hee, Vice Chair Senator Maile S.L. Shimabukuro
and members of the committee

In support of SB 2429 Relating to Foreclosures with revisions to further strengthen the bill:

I want to thank you for courage and support of the people of Hawaii by creating ACT 48.

My name is Marcy Koltun-Crilley and I am a home owner living on Maui.

My testimony comes from my two years of personal experience trying to protect my home from the unfair and deceptive practices of Bank Of America.

It is not just my own experince and opinion that Bank of America and other large mainland banks are engaging in unfair and deceptive practices. It is also the conclusion of The Office of the Comptroller of the Currency when it issued cease-and-desist orders in April 2011 against eight national mortgage bankers, including Bank of America, for “unsafe and unsound” practices dealing with residential mortgage foreclosures.

The banks agreed to the orders, which required them to undertake a number of fixes to address concerns. The banks agreed to correct any mistakes that were identified. They also agreed not to foreclose on mortgages once the loan has been approved for modification. OCC required them to make sure borrowers have a single point of contact available to them throughout the modification and foreclosure process.

However they STILL have NOT complied to those things (among others) they agreed to.

One example of how I know this is that I have been assigned no less than EIGHT " single" point contacts, since they they were ordered by the OCC to assign just one and only one. None have yet to answer my calls although ALL of their voicemails promise to do so within two business days.

And my last experience has been just last week!

So when the banks complain that trivial violations of chapter 667 puts them at risk of UDAP (unfair or deceptive act or practice) creating unfair liability

for THEM, I can feel the same old smoke being blown up my skirt.

They are not used to having ANYONE or ANYTHING actual hold them accountable for their actions.

They do not mind breaking the law or even having to pay a small fine AS LONG as it can be just written off as the cost of doing business.

If we take away the TEETH of ACT 48 we have done a lot of work for nothing.

If the bank wants to ability to take away people's homes that they may have lived in for years, sometimes for generations, that they have put love and money and family into, they had better do so in a VERY Legal way.

The banks have been taking away people's homes because they did not dot an I , the signed modifcation was one day late, etc etc. They can no longer have it BOTH ways.

They have to PROVE they LEGALLY have a right to foreclose and to KNOW and Follow the Rules.

That is the point! They have an arsenal of attorneys and employees pitted agaisnt the home owner, their complaiance should be IMPECCABLE!

While I SUPPORT SB 2429, I always ask that you make it STRONG.
I respectfully request that you

1) approve simultaneous implementation of all of the Task Force's recommended § 667-60 revisions.

2) Repeal sunset of dispute resolution program.

3) Repeal reguirement that borrowers choose between dispute resolution and conversion.

4) Repeal Part I nonjudicial foreclosure

5) Retain use of FDIC loan modification guidelines OR a more borrower favorable one in foreclosure dispute resolution programs.

6. Retain mortgagee liability for oral misrepresentations.

I have two full note books and tape recordings of "oral promises" that I trusted and believed which has cost me my credit and possibly my home. Furthermore the banks go out of their way to never put anything in writing, and anytime I ever got anything in writing their was never a name to hold anyone accountable. Allowing oral misrepresentations is allowing banks to lie, which is what has been going on all along.

7. Retain mortgagee liability for foreclosing during consideration or after

approval of loan modification.

8 Require proper proof of legal ownership PRIOR to starting ANY judicial OR non-judicial foreclosure.

All endorsments , assignments and alongees required by the securities that are the reason foreclosures are allowed. Without them the security is no longer "backed" by the mortgage and there is no right to foreclose Chain of title DOES affect WHO has the right to foreclose

http://www.creditslips.org/files/levitin-senate-banking-testimony-9_13_11-1.pdf

9) Incorporate or Pass HB 2705 to repeal UCC definition of "person entitled to enforce".
" A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument."

This OLD Law MUST be repealed and it is crazy that still even excists, the fact that it does shows how strong the bank lobby is.

Thank You for allowing my testimony and for your courage in supporting the people of Hawaii.

Marcy Koltun-Crilley
Kihei, Hi 96753
808-874-5644
marcyfrommaui@gmail.com

Ted Walkey
99-969 F Aiea Heights Drive
Aiea, HI 96701
February 23, 2012

Honorable Clayton Hee
Honorable Maile Shimabukuro
415 South Beretania Street
Honolulu, Hawaii 96813

Re: SB 2429 S.D. 1

Dear Chair Hee, Vice Chair Shimabukuro and Committee Members:

I am a condominium and homeowners' association manager and owner. I see many sides to the problems of home foreclosure.

First, I applaud the efforts of the Mortgage Task Force to provide protection to Hawaii's consumers facing loss of their homes to foreclosure. But, I feel the Task Force may have overlooked a large consumer group that also needs protection in these tough economic times – the members of homeowner and condominium associations. **These groups need protection from that member of their association who ignores his responsibility to pay association assessments that protect and maintain the property values of all members.** I am particularly concerned about the following in SB 2429 S.D. 1:

§421J-A (a) *"A lien recorded by the association shall expire two years from the date of recordation."*

This stipulation protects no one. An association, such as Mililani Town, Waikele Community, or Ewa By Gentry, that has very small monthly assessments will record a lien against a delinquent member's unit in order to protect its other members in the event the unit is sold outside of escrow. To force re-recordation every two years is an additional monetary burden on the owner, and in the event the unit is later foreclosed by a mortgagee, an increased burden on the other members of the association. I do believe that any lien recorded by an association should be released upon proof the delinquency to the association has been erased. Recordation of the release of lien should be stipulated at 30 - 60 days.

§421J-A (a) *"provided that no association may foreclose a lien against any unit that arises solely from fines, penalties, legal fees, or late fees."*

A member of an association who operates against the norm of the community or the rules of the association's documents will not be prosecuted by civilian law enforcement agencies. It is up to the association to enforce the member's responsibility to his association. Other than a costly law suit, for which the other members of the association will pay, the association has no choice but, through its board of directors, to levy fines and penalties. If these are not legally collectable through actions of a lien and foreclosure, the association has no choice but to abandon enforcement of the association

documents designed to protect and enhance the value of the other members' property. This creates a loss not only to the other members, but to the counties as well, when property values plummet.

§421J-A (h) *"The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular periodic assessments that were assessed during the six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure.*

(i) For purposes of subsections (g) and (h), the following definitions shall apply, unless the context requires otherwise: "Completion" means:

(1) In a nonjudicial power of sale foreclosure, when the affidavit required under section 667-33 is recorded; and

(2) In a judicial foreclosure, when a purchaser is deemed to acquire title pursuant to subsection (b).

"Regular periodic assessments" does not include:

(1) Any special assessment, except for a special assessment imposed on all units as part of a budget adopted pursuant to the association documents;

(2) ***Late charges, fines, or penalties;***

Please see the preceding regarding fines and penalties. Late charges, and interest, are key physiological factors to encouraging association members pay their assessments in a timely manner. If they are to be forgiven, the incentive to maintain accounts current is diluted, and delinquencies will increase. Who wouldn't take advantage of a short-term, interest free loan?

§421J-A (h) "Regular periodic assessments" does not include: *(5) Any fees or costs related to the collection or enforcement of the assessment, including attorneys' fees and court costs.*
This provision puts the responsibility of these costs on the other members (consumers) of the association who have done nothing to incur them.

§667-B *Notice of default and intention to foreclose;*
(f) If the association is unable to serve the notice of default and intention to foreclose on the unit owner or any other party listed in subsection (e)(2) to (5) within sixty days, the association may:

(1) ~~*File a special proceeding in the circuit court of the circuit in which the unit is located, for permission to p*~~ Proceed with a nonjudicial foreclosure by serving the unit owner only by publication and posting;

§667-B *(3) Take control of the unit if the unit is unoccupied, after giving notice to the unit owner at the unit owner's last known address as shown on the records of the association or as determined by the association as part of its due diligence to serve notice to the owner. The association's authority to take control of the unit pursuant to this paragraph shall be exercised solely for the purpose of renting the unit to generate rental income to pay the unit owner's delinquency, and the association shall acquire no legal title to the unit. In addition, the association shall credit the net rental proceeds generated from the rental of the unit to the owner's delinquency. For purposes of this paragraph, "net rental proceeds" means the rental proceeds remaining each month after deducting:*

(A) The unit's regular monthly assessments that come due while the association controls the unit pursuant to this subsection;

(B) Any rental agent commissions; and

(C) Expenses incurred by the association in maintaining the unit in rentable condition.
This section should include amounts past due.

Thank you for your attention to my comments.

Sincerely,

Ted Walkey, PCAM

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 24, 2012

Senator Clayton Hee, Chair
and members of the Senate Committee on Judiciary & Labor
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 2429, SD 1 (Foreclosures)**
Hearing Date/Time: Friday, February 24, 2012, 9:30 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 as drafted.**

The purposes of this Bill are to: (a) implement the 2011 recommendations of the Mortgage Foreclosure Task Force, and other best practices, to address various issues relating to the mortgage foreclosure law and related issues affecting homeowner association liens and the collection of unpaid assessments; (b) repeal the non-judicial foreclosure process under Part I of HRS Chapter 667; (c) make permanent the mortgage foreclosure dispute resolution program and the process for converting non-judicial foreclosures of residential property into judicial foreclosures; and (d) repeal the provision excluding participants of the dispute resolution program from converting non-judicial foreclosure proceedings to judicial actions.

I served as the Vice Chair of the Hawaii Mortgage Foreclosure Task Force ("Task Force") from 2010 to the present. I was a member of the Task Force as the designee of the HFSA. This testimony is not on behalf of the Task Force and it is not in my capacity as the Vice Chair of the Task Force.

The Task Force, which was created by Act 162 of the 2010 Session Laws of Hawaii, issued its Preliminary Report to the 2011 Legislature and its Final Report to the 2012 Legislature. There were various issues on which the 18 Task Force members were divided. These issues are detailed in the "minority reports" attached to the Report for the HFSA, the Hawaii Bankers Association, and the Hawaii Credit Union League.

This testimony of the HFSA incorporates by reference the concerns raised in those three "minority reports" about some of the Task Force's recommendations.

This HFSA testimony also incorporates by reference the testimony which we understand is being submitted by the Hawaii Bankers Association detailing the reasons for concerns about various provisions in this Bill.

In order to make the non-judicial foreclosure process a viable alternative to the judicial foreclosure process, this Bill needs to be revised at a minimum as follows:

1. Do not repeal the non-judicial foreclosure process under Part I of HRS Chapter 667. The Task Force did not recommend the repeal. The Part I non-judicial foreclosure process was already enhanced by consumer protection provisions in Act 48 (2011).

2. Delete the proposed changes in HRS Sec. 667-60(b) and (c) which would allow a court action to be brought to void the transfer of title after a non-judicial foreclosure sale. This

action could be filed up to 180 days after the transfer of title. These provisions will discourage third parties from bidding at reasonable price levels at non-judicial foreclosure auctions.

3. Do not repeal the provision excluding participants of the dispute resolution program from converting non-judicial foreclosure proceedings to judicial actions. The Task Force did not recommend the repeal. Such a repeal would unreasonably extend the foreclosure process and would unnecessarily increase the cost of foreclosures.

4. Delete the requirement in Part II of HRS Chapter 667 for staging "open houses" or "public showings" prior to the public sale (auction) in non-judicial mortgage foreclosures. The references to be deleted in Part II are in HRS Secs. 677-21, 667-22, 667-26, 667-27, and 667-32. It should be noted that the non-judicial foreclosure process being proposed for condominium associations and planned community associations in the Senate Draft 1 version of this Bill specifically deleted such an open house requirement from the original version of this Bill. Deleting this requirement in Part II is needed because of the legal impediment of obtaining access to the property to conduct open houses and because of the potential liability connected with such open house showings.

5. Enable notices of non-judicial foreclosure public sales (auctions) under Part I of HRS Chapter 667 to be published either in a newspaper of "weekly" circulation (instead of newspapers of "daily" circulation) or on a website maintained by a state government entity such as the Department of Commerce and Consumer Affairs. These two alternatives are needed because of the current high cost of publishing notices in newspapers of daily circulation. These alternatives would be similar to what is being proposed in this Bill for notices in Part II non-judicial foreclosures. See the proposed revision in HRS Sec. 667-27.

Additionally, we ask that your Committee revise the Bill to reinstate the monetary cap in HRS Sec. 514A-90(h) and HRS Sec. 514B-146(h). This cap is on the total amount of unpaid common area maintenance fees that a condominium association may specifically assess against a person who purchases a foreclosed unit. The amount of the cap is currently $7,200 based on 12 months of delinquent maintenance fees. The lack of a reasonable monetary cap could make it challenging for consumers to obtain mortgage financing for condominium units.

We also ask that your Committee put in a "defective" effective date in this Bill to encourage further discussion.

Thank you for considering our testimony.

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

(MSCD/hfsa)

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: allison@certifiedhawaii.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 11:53:32 AM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Allison R
Organization: Individual
E-mail: allison@certifiedhawaii.com
Submitted on: 2/23/2012

Comments:

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: hokuahi@yahoo.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 12:24:39 PM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Hoku Ahi
Organization: Individual
E-mail: hokuahi@yahoo.com
Submitted on: 2/23/2012

Comments:
As a Board of Director for my condo's association, I am seeing an increasing amount of debt by condo owners who are not paying dues, fees, etc. Often this ammount is in the thousands of dollars. Not being able to act to prevent this by the foreclosure option is unfair to other condo owners who are then stuck with paying for these debts with increased association dues.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: kananik@certifiedhawaii.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 10:45:53 AM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Kanani Kaopua
Organization: Certified Hawaii
E-mail: kananik@certifiedhawaii.com
Submitted on: 2/23/2012

Comments:

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: dmhinkley@hotmail.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 9:18:59 AM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Dean M. Hinkley
Organization: Alii Landing Homeowners ASSN
E-mail: dmhinkley@hotmail.com
Submitted on: 2/23/2012

Comments:
this measure will unnecessarily hamper homeowner/condo associations in their operations and actions re delinquesnt owners; I strongly support the CAI's position on this matter and oppose this Bill.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: mwm@lava.net
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Wednesday, February 22, 2012 9:37:57 PM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Mary Macmillan
Organization: Individual
E-mail: mwm@lava.net
Submitted on: 2/22/2012

Comments:
Community Association regime fees pay for water, sewer, lights, trash removal, painting, repairs and other services. Homeowners accepting these services must pay for them. This bill would transfer responsibility for legal fees from a complainer to other homeowners who are not disputing the services. This should remain the responsibility of the complainer. I support CAI position.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: rosalind@certifiedhawaii.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 12:51:25 PM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Rosy Denys
Organization: Individual
E-mail: rosalind@certifiedhawaii.com
Submitted on: 2/23/2012

Comments:
Aloha,
I am opposed to SB2429 as it is not consumer friendly and will cause greater expenses on the owners in pursuing delinquencies. Mahalo.
Rosy Denys

From:	mailinglist@capitol.hawaii.gov
To:	JDLTestimony
Cc:	al@certifiedhawaii.com
Subject:	Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date:	Thursday, February 23, 2012 12:50:36 PM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Al Denys
Organization: Individual
E-mail: al@certifiedhawaii.com
Submitted on: 2/23/2012

Comments:
Aloha,
I am opposed to SB2429 as it is not consumer friendly and will cause greater expenses on the owners in pursuing delinquencies.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: Cheryl@certifiedhawaii.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 12:47:05 PM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Cheryl Jepsen
Organization: Individual
E-mail: Cheryl@certifiedhawaii.com
Submitted on: 2/23/2012

Comments:

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: ckaleugher@yahoo.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 12:54:11 PM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Carl Kaleugher
Organization: Individual
E-mail: ckaleugher@yahoo.com
Submitted on: 2/23/2012

Comments:

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: mm@gmail.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 1:24:41 PM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Mike Murtle
Organization: Individual
E-mail: mm@gmail.com
Submitted on: 2/23/2012

Comments:

From:	mailinglist@capitol.hawaii.gov
To:	JDLTestimony
Cc:	bibbsq001@hawaii.rr.com
Subject:	Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date:	Thursday, February 23, 2012 1:16:46 PM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Paulette M. Bibbs
Organization: Individual
E-mail: bibbsq001@hawaii.rr.com
Submitted on: 2/23/2012

Comments:
Support for CAI's position, all members of the association pay their part to maintain upkeep our property.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: pleasure@maui.net
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 12:26:59 PM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Russell M. Speck
Organization: Board member
E-mail: pleasure@maui.net
Submitted on: 2/23/2012

Comments:
This bill seems to encourage people to ignore their responsibility with their Homeowner Associations. Two years is nothing with regards to the judicial process. The Homeowners that play by the rules and make their payments have to foot the bill.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: tbecker@hawaii.rr.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Thursday, February 23, 2012 1:04:47 PM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Anthony Becker
Organization: Ke Noho Community Association
E-mail: tbecker@hawaii.rr.com
Submitted on: 2/23/2012

Comments:
Give associations the strength to maintain our properties, by enforcing the agreement between the association and owner.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: bruceh@hmcmgt.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date: Wednesday, February 22, 2012 5:38:37 PM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: Yes
Submitted by: Bruce Howe
Organization: Individual
E-mail: bruceh@hmcmgt.com
Submitted on: 2/22/2012

Comments:
CAi submitted companion bills (SB2442 and HB2708which much more effectively dealt with the unique relationships between owners and associations regarding collection matters. They did not contain any 2-year lien expiration nor did they contain drastic penalties for failure to release a lien. They preserved the collectionprocedures long provided in HRS 514B and its predecessor A and the "pay mow and argue later" provisions which are essential to the financial stability of common interest associations.
The task force bill is sausage made from bad meat and should not be passed in an effort ot deal with miltiple different industries in one package.

From:	mailinglist@capitol.hawaii.gov
To:	JDLTestimony
Cc:	joneshi@aol.com
Subject:	Testimony for SB2429 on 2/24/2012 9:30:00 AM
Date:	Wednesday, February 22, 2012 9:09:20 PM

Testimony for JDL 2/24/2012 9:30:00 AM SB2429

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Suzanne Jones
Organization: Individual
E-mail: joneshi@aol.com
Submitted on: 2/22/2012

Comments:
I am an apartment owner at Holaniku Hale in Mililani and I'm sick that we have little if no recourse against the owners in our association who fail to pay their maintenance fees month after month. We are owed close to $100,000.00 in past due maint. fees by these people and we have to deal with increases to our maintenance fees every year because of it. What would happen if we all desided not to pay our maint. fees???? (water, sewer, electrical wouldn't get paid for starters and there would be no insurance on the buildings)