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STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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KEALI'I S. LOPEZ
DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

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

TESTIMONY ON SENATE BILL NO. 2429, S.D. 1, RELATING TO FORECLOSURES.

TO THE HONORABLE CLAYTON HEE, CHAIR,
AND TO THE HONORABLE MAILE S.L. SHIMABUKURO, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs appreciates the opportunity to testify on S.B. No. 2429, S.D. 1, Relating to Foreclosures. My name is Bruce Kim, Executive Director of the Office of Consumer Protection ("OCP"). OCP supports the intent of the bill and offers the following comments in support of the proposition that the two-year limit on recorded association liens should not be taken out of the bill.

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

surrounding the foreclosure crisis affecting the State and proposed legislation addressing this complex subject. The first report led to the adoption of Act 48 which sought to reform the foreclosure process and enact significant consumer protections especially in the area of nonjudicial foreclosures. This year the Task Force through its various working groups devoted a significant amount of time and effort in attempting to strengthen Act 48. Ultimately, the Task Force's working groups came up with a number of recommendations intended to provide clarity and certainty to lenders, borrowers and associations in the foreclosure process.

One of the three MFTF working groups this year worked on incorporating non-judicial foreclosures for associations into Chap. 667. Among the final recommendations of the MFTF was to include a two-year limit on **recorded** association liens under Chaps. 421J, 514A and 514B. This provision was unanimously approved by the MFTF and the MFTF rejected proposals advocating even longer expiration periods for association liens.

An element of the condominium association lobby has objected to the MFTF's two-year limitation on **recorded** association liens for various reasons. However, these objections should be considered in light of the following facts:

1. The MFTF approved adoption of identical lien and collection language for Chap. 421J associations which have been in effect for Chaps. 514A and 514B associations for many years.

The task force recommends adding two new sections to chapter 421J,

on planned community associations, to provide these associations with the same options as condominium associations with regard to association liens for assessments (modeled after sections 514A-90 and 514B-146) and the collection of unpaid assessments from tenants or rental agents (modeled after sections 514A-90.5 and 514B-145).

Comment 2, Final Report of the Mortgage Foreclosure Task Force to the Legislature for the Regular Session of 2012, at 18.

2. Under the MFTF's lien and collection provision for 421J, Chaps. 421J, 514A, and 514B associations would now have identical **automatic lien** rights which arise without any requirement that the lien be recorded. These **automatic liens** have priority over "all other liens" except for a) tax liens; and b) mortgages that were recorded prior to the recordation of a notice of a lien by the association. See H.R.S. § 514b-146(a). The MFTF's two-year expiration limit applies only to "**recorded**" liens, not to automatic liens which are not recorded. However, if an association chose to record its lien then the **recorded** lien would expire after two years.

3. Under Secs. 514A-90, 514B-146, and the MFTF's proposed lien and collection provision for 421J, Chaps. 421J, 514A, and 514B associations do not have to record their lien in order to foreclose on the delinquent unit owner.

The lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board, acting on behalf of the association, in like manner as a mortgage of real property.

H.R.S. § 514B-146(a).

There is no waiting period. Under the automatic lien provisions of 514A-90 and 514B-146, associations can foreclose on their liens from dollar one whether they are

recorded or not. Under the MFTF's proposal the automatic lien would be there whether the lien is recorded or not and, if the lien is recorded, even after the two year period has run. The arguments against the two-year lien expiration for **recorded** liens are illusory.

4. According to a review of other state condominium laws, at least 33 states plus the District of Columbia place similar time limits on association liens. These include Alaska, Arkansas, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, North Carolina, Nebraska, New Hampshire, Nevada, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, Washington, West Virginia and Wisconsin.

It is not anti-consumer to require associations to timely initiate collection efforts on delinquent association assessments in fairness to the other unit owners in the association and to the individual who is delinquent. It is also not anti-consumer to require that a **recorded** association lien expire by law after two years if the lien has been paid or is no longer under collection by the association. If the association's recorded lien automatically expires after two years, then it completely eliminates any need to file and engage in expensive and protracted litigation to obtain the release of the recorded the lien under the provisions added in S.D. 1. See § 421J-C, SB 2429, S.D. 1 at 11-12.

Thank you for allowing me to testify on this matter. I would be happy to answer any questions the committee may have.



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JDL TESTIMONY

February 23, 2012

Via Email: JDLtestimony@capitol.hawaii.gov

Senator Clayton Hee
Chair, Committee on Judiciary and Labor
Hawaii State Capitol, Room 407

Re: S.B. 2429, SD1 –Relating to Foreclosures
Hearing: Friday, February 24, 2012 at 9:30 a.m.
Conference Room 016

Dear Chair Hee and Members of the Committee on Judiciary and Labor:

I am Michael Wong, an attorney with RCO Hawaii LLLC (“RCO Hawaii”), a law firm dedicated to the representation of the mortgage banking and default servicing industry. Our firm provides a wide range of services in banking and real estate law to more than 200 large and small companies located in several Western states, including Alaska, Idaho, Arizona, Washington, Oregon, California, Nevada and Hawaii. It also serves as retained counsel for Fannie Mae in Hawaii.

RCO submits comments regarding S.B. 2429, SD1, Relating to Foreclosures, which implements the recommendations of the Mortgage Foreclosure Task Force, and makes numerous other changes to the Hawaii foreclosure law. RCO specifically supports the amendments made in S.B. 2429, SD1, which change the publication requirements for non-judicial foreclosures to a “newspaper of general circulation” and provide guidelines for qualifying as such a newspaper.

This approach, which has been implemented in other states, ensure that a newspaper meets general circulation requirements, and that there is an opportunity for more than one paper to compete to publish non-judicial foreclosure notices.

Since the passage of Act 48, 2011 Session Laws of Hawaii, non-judicial foreclosure notices were required to be published in a “daily newspaper having the largest general circulation in the county where the property is located. . . ” (emphasis added). Prior to Act 48, both in the Hawaii foreclosure laws and elsewhere in the Hawaii Revised Statutes, the publication of notices only required publication in a “newspaper of general circulation.” Due to the inclusion of the terms “daily” and “largest,” there has been a dramatic increase in the costs for publishing notice on

Oahu, in the largest and only daily paper available.¹ Specifically, in a review of our judicial foreclosure publication costs in Hawaii between 2008 through the end of 2011, we found that the average advertising cost per foreclosure was \$800 in 2008, but costs \$2,000 today. This amounts to a 150% increase between 2008 and 2011. Moreover, if non-judicial foreclosures begin to take place pursuant to Act 48 and any changes that are made to the law this session, non-judicial foreclosure notices (which are significantly longer than judicial foreclosure notices) may cost up to \$4,300 per foreclosure.

RCO believes the amendments made in S.B. 2429 S.D.1 ensure that there is fair competition for the publication of notices. This also ultimately reduces harm to the borrower, to whom the resulting dramatic increase in cost is passed.

RCO understands that there may be other alternatives to accomplish public notice, and remains willing to engage in further discussion and to provide input, based upon its experiences in Hawaii and other states.

Thank you very much for the opportunity to testify regarding this measure.

¹ While the Act 48 publication requirements apply only to non-judicial foreclosures, Hawaii courts have found Act 48 to be instructive, and have applied these requirements to judicial foreclosures.

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 all 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= fe es 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.

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Committee on Judiciary and Labor
February 23, 2012
Page 3

Sincerely,

Sheila Schiel

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



Honorable Clayton Hee
Chair: Committee on Judiciary and Labor

Re: SB 2429 SD1 Relating to Foreclosures
February 24, 2012
9:30 a.m.
Conference Room 016, State Capitol

Chair Hee, Vice Chair Shimabukuro and Members:

Thank you for allowing me the opportunity to testify in opposition portions to 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). My name is Warren Wegesend. I have been a Certified Property Manager (CPM) for over 40 years. I have managed everything from condominiums, commercial property, Public Housing to planned community associations. I am currently the General Manager of the Villages of Kapolei Association.

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 all 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.
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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.

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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,



Warren F. Wegesend, Jr., CPM
General Manager

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

Honorable Clayton Hee
Chair: Committee on Judiciary and Labor

Re: SB 2429 SD1 Relating to Foreclosures
February 24, 2012
9:30 a.m.
Conference Room 016, State Capitol

Chair Hee, Vice Chair Shimabukuro and Members:

Thank you for allowing me the opportunity to testify in opposition to 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). My name is Moana Heu and I am a board member for the Villages of Kapolei.

I have been advised by our general manager that the language referenced which 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.
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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.

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Moana Heu

Honorable Clayton Hee
Chair: Committee on Judiciary and Labor

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Sincerely,

Moana Heu

Charles Zahn
92-970 Puanihi St
Kapolei, HI 96707

February 23, 2012

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

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

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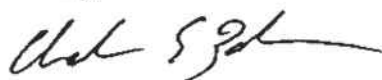
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The two year limitation on liens will be extremely prejudicial to all associations and their members. It is an anti-consumer provision. For the reasons stated above, I strongly urge you to strike this language from S.B. No, 2429, S.D. 1.

Sincerely,



Charles Zahn
e-mail: czahn@hawaii.rr.com
cell: 282-5784

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



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Testimony to the Senate Committee on Judiciary and Labor
Friday, February 24, 2012

Testimony in opposition to SB 2429 SD1, Relating to Foreclosures

To: The Honorable Clayton Hee, Chair
The Honorable Maile Shimabukuro, Vice-Chair
Members of the Committee on Judiciary and Labor

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 81 Hawaii credit unions, representing approximately 811,000 credit union members across the state. We are in opposition to SB 2429 SD1, Relating to Foreclosures.

While we understand the current economic situation, and the plight of homeowners today, we oppose this measure. We recognize and appreciate the efforts of the legislature to amend Act 48 to address some concerns raised by lenders, however, this bill continues to present many significant concerns for Hawaii's credit unions, and the lending market as a whole. We have listed these concerns below.

1. The League opposes the repeal of nonjudicial foreclosures under Part I, (under sections 49 – 55 of SB 2429, SD 1). The Task Force split evenly on (and accordingly did not adopt) the motion that the Task Force recommend to the Legislature that “mortgagees [lenders] be allowed to continue to have the option to initiate non-judicial foreclosure actions under § 667-5 [Part I of HRS Chapter 667] when the moratorium in Act 48 (in Section 40) ends on July 1, 2012.” The Part I non-judicial foreclosure process should continue to exist as a viable alternative to the Part II non-judicial foreclosure process now that Act 48 strengthened consumer protections in Part I. Act 48 now (a) requires that Part I foreclosure notices be served at least 21 days before the auction date, (b) specifies that the service of the notice be in the same manner as serving civil complaints, (c) enables an owner-occupant to convert a Part I non-judicial foreclosure to a judicial foreclosure or to elect dispute resolution under certain circumstances, and (d) prohibits a lender in a Part I non-judicial foreclosure from pursuing a deficiency against certain owner-occupants. At a minimum, Part I nonjudicial foreclosures should be permitted for foreclosures of commercial, industrial and investor-owned property, if not for owner-occupied residential property.

2. The League opposes the proposed repeal of the sunset provisions in Act 48. While Hawaii is faced with a unique situation involving residential mortgage foreclosures that is without precedent in its history, there is no reason to believe that these circumstances will persist for any substantial period. The radical and untested changes to Hawaii's foreclosure

laws made in Act 48 should sunset so that there is an impetus to further review the need to continue them.

3. Because of the increasing costs being charged by certain newspapers of daily circulation in Hawaii to print the notices of judicial and non-judicial foreclosure auctions required to be "published", the League supports the Legislature's efforts to have a state agency provide a centralized internet website for the official posting of notices required by Chapter 667.

4. **§§ 514A-90 and 514B-146:** The League opposes the lifting of the cap on an association's super-lien for maintenance fees. It was originally capped at the lesser of 6 months of \$3,200. Under Act 48, that cap lifted to the lesser of 12 months or \$7,200. Now, the super-lien is simply six months of monthly assessments with no monetary cap. This cost will eventually be borne by the next private buyer of the unit, and will effectively depress prices for units in the project.

5. **§ 667-41:** While the League agrees that the proposed amendment of § 667-41 is a tremendous improvement, the section still potentially applies to certain commercial loans in which residential property is taken as collateral. The League believes that the Legislature did not intend this informational notice to apply to commercial borrowers and applicants. The League asks that the Legislature, in addition to adopting the revisions proposed by the Task Force, also amend § 667-41 to specify that such notice requirement applies only to consumer, residential mortgage loans.

6. **§667-53(c):** The League opposes the proposed repeal of §667-53(c), the effect of which is to give a mortgagor the opportunity to first go through the mortgage foreclosure dispute resolution process, and then convert the nonjudicial foreclosure to a judicial foreclosure.

7. **§667-56:** Prohibited practices: The League seeks 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.

(b) Section 667-56(6) also uses the phrase "bona fide loan modification negotiations." This phrase is vague, and raises many questions, such as: If a mortgagor has been denied a loan modification, can the mortgagor then reapply time after time and maintain the mortgagor's status as "pending" bona fide loan modification negotiations? Does the time reset with each mortgage 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. Section 667-56(7) presumes that there will be timely-issued documentation that a borrower is no longer being evaluated when that is not always the case.

8. **§667-58:** As worded, § 667-58(a) implies credit unions must file affiliate statements naming their own officers. The League suggests § 667-58(a) be amended to begin as follows:

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

9. **§667-59:** : The League suggests that this section, captioned, "Actions and Communications with the Mortgagor in Connection with a Foreclosure," 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"

10. **§ 667-60:** The League submits that the proposed amendment of § 667-60 is too complex and overly broad. Section 667-60 now states: "Any foreclosing mortgagee who violates this chapter shall have committed an unfair or deceptive act or practice under section 480-2." The requirement that a claimant must show a court proof that an act was "unfair and deceptive" is removed. Any violation of Chapter 667, no matter how miniscule, becomes an unfair and deceptive act or practice entitling the claimant to certain remedies and damages, and that includes voiding of the contract or agreement. Section 667-60 is often cited as one of the principal reasons why lenders decided after May 5, 2011 to foreclose judicially rather than non-judicially. Section 667-60 should be repealed.

The amendment of §667-60 proposed by a majority of the Task Force should not be enacted; it would merely compound the problem because:

(a) It would create a "laundry list" of twenty-one (21) violations which would be unfair or deceptive acts or practices (including seven items in § 667-56 and four items related to the Mortgage Foreclosure Dispute Resolution Program),

(b) It would create seventeen (17) violations which could result in a non-judicial foreclosure sale being voided, and

(c) It would allow actions to void the foreclosure sale to be filed up to 6 months after an affidavit of the sale is recorded.

The League submits that the proposed amendment is too complex and overly broad and it would continue to discourage lenders from foreclosing non-judicially. It is also unnecessary. Every lender is already subject to potential liability under §480-2 where someone has evidence sufficient to convince a court that a violation occurred.

11. **§ 667-80:** The League believes that § 667-80 should be amended to permit mainland lenders to attend dispute resolution sessions during reasonable business hours where they are situated. In addition, provisions must be made to accommodate situations where a lenders agreement to a loan modification requires more than one other approval. For example, in instances where mortgage insurance is in place, the insurer usually has the right to approve the modification in addition to the lender.

12. **§ 667-85:** The League submits that § 667-85 should be repealed. In part, this section reads:

"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. "

A neutral in the Mortgage Foreclosure Dispute Resolution Program should be immune from liability but should not be privileged from testifying where, for example, the neutral may make findings or determinations which subject a lender or a borrower to sanctions.

13. The League opposes the requirement in part II of Chapter 667 regarding open houses/public showings be held prior to the public auction. There would be issues with access to the property, which would lead to potential liability.

In addition to the concerns listed above, we also concur with the issues raised by the Hawaii Bankers Association and the Hawaii Financial Services Association. Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2012 10:01 PM
To: JDLEstimony
Cc: ljarlington@yahoo.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 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: Linda Arlington
Organization: Alii Cove HOA
E-mail: ljarlington@yahoo.com
Submitted on: 2/23/2012

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2012 11:29 PM
To: JDLTestimony
Cc: elenacs5@hotmail.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 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: Elena Sakugawa
Organization: Individual
E-mail: elenacs5@hotmail.com
Submitted on: 2/23/2012

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 24, 2012 6:05 AM
To: JDLTestimony
Cc: hamiltond008@hawaii.rr.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 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: Dale Hamilton
Organization: The Pines at Kailua Kona II
E-mail: hamiltond008@hawaii.rr.com
Submitted on: 2/24/2012

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 24, 2012 6:48 AM
To: JDLTestimony
Cc: akluvo@gmail.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 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: Arthur Kluvo
Organization: Individual
E-mail: akluvo@gmail.com
Submitted on: 2/24/2012

Comments:
24 Feb 2012

Yesterday I submitted testimony to oppose SB2429. I want to add to the testimony. My original testimony follows below this addendum. I am the treasurer for AOA Cathedral Point, a 222 unit complex which has over \$215,000 in delinquent accounts. After rereading the bill, I want to add to my testimony because I don't think the Mortgage Foreclosure Task Force did a thorough investigation of the problem.

There is an assumption that the condominium or homeowner association ends up with the foreclosed property. This is RARELY the case.

Usually the condominium or homeowner association is the one who initiates the lean and foreclosure action, not the bank. As you well know, at the end of the foreclosure, it is the primary lender that recovers the property, such as the bank, not the association. Rarely is there enough equity in the property left for anyone else involved in the foreclosure. Under current legislation, the association only receives six months of maintenance fees. This amount is only a small fraction of the total money owed the association by the delinquent owner. This bill will only increase the amount of the delinquent account that has to be written off our books. That is the reason I and our board of directors opposes this bill. It doesn't provide any relief for the delinquency problems and only makes a judicial foreclosure more costly and more time consuming. Please veto this bill. Thank you. Arthur Kluvo, treasurer.

+++Original Testimony Below +++

I am treasurer for AOA 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.

hee12 - Heath

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2012 3:03 PM
To: JDLEstimony
Cc: lhalv@msn.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 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: Lyle G. Halverson
Organization: Ke Noho Kai CA Treasure
E-mail: lhalv@msn.com
Submitted on: 2/23/2012

Comments:

I am the treasure for Ke Noho Kai CA, 651 homes, we are owed hundreds of thousands of dollars from delinquent home owners. We have several empty units the owners have left and we can not find them. We have owners that live in their homes and will not pay the CA dues, despite numerous letters from the CA and our attorneys. We have home owners that rent their house out and refuse to pay the CA dues. We have squatters that we can not remove. We need the ability to use the NJF process. We have raised our dues by over 20% to cover costs and we will have to raise them another 18% next year if we do not get control of the delinquency problem. Please help us and vote no on this bill.

hee12 - Heath

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2012 3:03 PM
To: JDLEstimony
Cc: lhalv@msn.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 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: Lyle G. Halverson
Organization: Ke Noho Kai CA Treasure
E-mail: lhalv@msn.com
Submitted on: 2/23/2012

Comments:

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hee12 - Heath

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2012 3:03 PM
To: JDLTestimony
Cc: lhalv@msn.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 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: Lyle G. Halverson
Organization: Ke Noho Kai CA Treasure
E-mail: lhalv@msn.com
Submitted on: 2/23/2012

Comments:

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MARK A. MONOSCALCO
430 Lewers St., # 23D
Honolulu, HI 96815-2421
Cell: (808) 224-4439
E-mail: mark@monoscalco.com
www.monoscalco.com

February 23, 2012

COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

RE: SB2429 SD1

Dear Committee Members,

I am a resident of a condominium association in Waikiki. I have been a board member of our association for over 10 years. In my experience the most damaging problem that a condominium association faces is delinquent maintenance fee payments. Our Board of Directors spends much time and energy planning and budgeting for the economic wellbeing of our association. The one thing that we cannot plan for is an owner who stops making timely maintenance fee payments.

When we are unable to collect outstanding maintenance fee payments our last line of defense is to depend on our lien rights. Any changes to the automatic lien rights now granted to the condominium associations will invariably cause monetary harm to the apartment owners. It is of utmost importance that you defend the interest of all condominium associations and thereby the apartment owners by keeping our automatic lien rights intact. It is also imperative that you do not place a time 2 year time limit on liens.

If I can be of any service in this matter please email or call using the contact information above.

Sincerely yours,
Mark A. Monoscalco

MARK A. MONOSCALCO
430 Lewers St., # 23D
Honolulu, HI 96815-2421
Cell: (808) 224-4439
E-mail: mark@monoscalco.com
www.monoscalco.com

February 23, 2012

COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

RE: SB2429 SD1

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When we are unable to collect outstanding maintenance fee payments our last line of defense is to depend on our lien rights. Any changes to the automatic lien rights now granted to the condominium associations will invariably cause monetary harm to the apartment owners. It is of utmost importance that you defend the interest of all condominium associations and thereby the apartment owners by keeping our automatic lien rights intact. It is also imperative that you do not place a time 2 year time limit on liens.

If I can be of any service in this matter please email or call using the contact information above.

Sincerely yours,
Mark A. Monoscalco

hee12 - Heath

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2012 3:48 PM
To: JDLTestimony
Cc: gerald@funghawaii.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 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: Gerald Lai
Organization: Cathedral Point AOA
E-mail: gerald@funghawaii.com
Submitted on: 2/23/2012

Comments:

I am on the Board of Directors as VP. The Judicial foreclosure process is too cumbersome, lengthy, and too costly for AOAOs. We are losing a lot of money due to Owners not paying their maintenance fees on time. I am firmly opposed to SB2429. The non-judicial route would be more beneficial to AOAOs.

hee12 - Heath

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2012 3:04 PM
To: JDLTestimony
Cc: subodo@kahala.net
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 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: Susan Doles
Organization: Individual
E-mail: subodo@kahala.net
Submitted on: 2/23/2012

Comments:

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 all 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.

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 24, 2012 7:55 AM
To: JDLTestimony
Cc: pboyle001@hawaii.rr.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 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: Peter Boyle
Organization: Individual
E-mail: pboyle001@hawaii.rr.com
Submitted on: 2/24/2012

Comments:

As a resident of an townhouse association, I am disgusted at the way residents fail to follow house rules and don't make their association fees. I have always budgeted my finances to ensure I am never late. Yet, I see all these people who owe late fees, etc. driving expensive cars and living the "high life" knowing they owe their association.

It's time the government stops babying these people who USE the system and start supporting those of us who live within our means.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2012 4:27 PM
To: JDLTestimony
Cc: eleiter@prodigy.net
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 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: elliot leiter
Organization: Wailea Kai HOA
E-mail: eleiter@prodigy.net
Submitted on: 2/23/2012

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2012 4:54 PM
To: JDLTestimony
Cc: donjacksonii@yahoo.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 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: Donald Jackson
Organization: Individual
E-mail: donjacksonii@yahoo.com
Submitted on: 2/23/2012

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2012 5:24 PM
To: JDLTestimony
Cc: wgjones4@msn.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 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: ursula jones
Organization: Individual
E-mail: wgjones4@msn.com
Submitted on: 2/23/2012

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2012 5:25 PM
To: JDLTestimony
Cc: alphanumerikk@gmail.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 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: Christine Ho
Organization: Individual
E-mail: alphanumerikk@gmail.com
Submitted on: 2/23/2012

Comments:

As a member of the board of directors of my condo association, we are opposed to this legislation, because it would make it difficult for us to collect from delinquent owners.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2012 5:45 PM
To: JDLTestimony
Cc: metldoc@mindspring.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 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: Robert H. Sterne Jr.
Organization: Kohala by the Sea C/A
E-mail: metldoc@mindspring.com
Submitted on: 2/23/2012

Comments:

I am on the Board of the Kohala by the Sea community Association. We have several owners who consistently do not pay their assessments. This bill makes it more difficult to collect the assessments, and places an undue burden on homeowners that do pay them.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2012 6:03 PM
To: JDLTestimony
Cc: hawaiiithomsons@gmail.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 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: David Thomson
Organization: Individual
E-mail: hawaiiithomsons@gmail.com
Submitted on: 2/23/2012

Comments:

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

I am the president of the AOA at Kona By The Sea located in Kailua-Kona. 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).

I am very concerned about the affect SB 2429 will have on our association's ability to collect delinquent funds owed us. We currently have an automatic lean in place within our bylaws. If this bill takes affect it will nullify this and we will have to go through the time and expense of filing a lien, which will automatically expire in 2 years. Our association works hard to collect on funds owed to us. This process can sometimes take several years. There can be a substantial cost in collection of these funds and I would hate to see the expense we sometimes go through lost because of such a short lien period.

I hope you will reconsider this portion of the bill and eliminate our association's concern.

Thank you,

Todd Miller

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2012 6:07 PM
To: JDLTestimony
Cc: cdc.nuuanu@gmail.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 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: Carlton Chun
Organization: Individual
E-mail: cdc.nuuanu@gmail.com
Submitted on: 2/23/2012

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2012 7:45 PM
To: JDLTestimony
Cc: maujohn1@aol.com
Subject: Testimony for SB2429 on 2/24/2012 9:30:00 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: john costanzo
Organization: Individual
E-mail: maujohn1@aol.com
Submitted on: 2/23/2012

Comments:

I support CAI's position. This bill will devastate a condo's power to collect fees to maintain a property and will force many condos to deteriorate and reduce property values of those who play by the rules. Don't reward those who break the rules. Thank you, John Costanzo