SB 2429

Measure Title:	RELATING TO FORECLOSURES.
Report Title:	Mortgage Foreclosures; Homeowner Association Liens and Assessments
Description:	Implements the 2011 recommendations of the mortgage foreclosure task force to address various issues relating to the mortgage foreclosures law and related issues affecting homeowner association liens and the collection of unpaid assessments.
Companion:	
Package:	None
Current Referral:	CPN, JDL
Introducer(s):	BAKER, CHUN OAKLAND, DELA CRUZ, ENGLISH, FUKUNAGA, GALUTERIA, IGE, IHARA, TSUTSUI, Espero, Kahele, Solomon, Taniguchi

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

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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EVERETT S. KANESHIGE
MORTGAGE FORECLOSURE TASK
FORCE CHAIRPERSON

TO THE SENATE COMMITTEE ON COMMERCE
AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

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

TESTIMONY IN SUPPORT OF SB 2429: RELATING TO FORECLOSURES

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

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

After the Regular Session of 2011, there were significant changes in the membership and leadership of the MFTF and, in light of the major changes made by Act 48, SLH 2011, the necessity of doing a "comprehensive evaluation of Hawaii's mortgage foreclosure laws", as found by the Legislature in Act 162, SLH 2010, was all the more relevant. The methodology for review and discussion of HRS Chapter 667, associated mortgage servicer statutes in HRS Chapter 454M, and related association lien

foreclosure statutes in HRS Chapters 421J, 514A, and 514B was revised to provide for maximum discussion, while facilitating the Legislative Reference Bureau's ("LRB") task of compiling the proposed amendments into bill format, and allowing the MFTF members to view each proposed amendment within the context of HRS Chapter 667, generally, before having to take a position for or against the proposed amendments. As in the year previous, Task Force members were assigned to investigative groups according to their area of expertise and with an eye toward maintaining the balance of interests within the Task Force as a whole. The investigative groups submitted their proposed amendments to the Task Force for inclusion in the LRB draft legislation, followed by a final vote to confirm their inclusion in the proposed legislation in what is now SB 2429. This methodology was followed in order to obtain 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. A key provision proposed by the MFTF would amend HRS §667-60 to balance protecting consumers' rights, while providing guidance for title

insurers, lenders and their representatives, and avoiding penalizing them for circumstances outside of their control (SB 2429, Section 33). This last issue was particularly important, as HRS §667-60 was widely cited by lender and title insurance stakeholders as a primary reason as to why the nonjudicial foreclosure process under Part II of HRS Chapter 667 has gone unused in the wake of Act 48, SLH 2011. This diversion of foreclosure cases to the judicial foreclosure track is evidenced in monthly statistics on judicial foreclosure filings presented by the Judiciary to the MFTF (included in the MFTF Final Report), and the emergence of a meaningful compromise on the issue is a major milestone for the MFTF and its members.

It has been noted by practitioners of planned community association law during testimony regarding SB 2429's companion bill, HB 1875, that the amendments proposed by the MFTF (SB 2429, Part II, Section 2) may be inadequate to address the special circumstances surrounding these entities. The MFTF is open to dialogue as to how to best address the issues raised with the inclusion of planned community associations within HRS Chapter 667.

Thank you for this opportunity to testify in support of SB 2429, DCCA recommends that it be passed, unamended. I will be happy to answer any questions that the Chairperson or members of the Committee may have.

HAWAII CHAPTER
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January 30, 2012

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

Re: SB 2429

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

I chair the CAI Legislative Action Committee. CAI ***opposes*** SB 2429.

CAI has offered an alternative bill which, at the moment, is pending introduction in the House. The bill has been introduced in the Senate as SB 2442.

The focus of this testimony is on the portion of SB 2429 that addresses an alternate power of sale provision for associations. CAI supports the availability of an efficient and effective non-judicial foreclosure remedy for associations.

Associations are non-profit entities that provide essential services and maintain and repair the association premises. They are completely unlike mortgage lenders. Associations do not choose their members or underwrite risk. Association assessments lack a profit component, and other consumers must make up for the defaults of those who do not pay their fair share.

Any non-judicial foreclosure remedy should protect consumers and be a remedy that is likely to be used in appropriate circumstances. The task force proposal suffers from many deficiencies which can reasonably be expected to limit its utility.

Without limitation, there are two poison pills in the proposed alternate power of sale procedure for associations. Section 667-I allows any creditor to credit bid. The lender can always outbid the association, so use of the remedy would mean that the association would incur expense and receive nothing.

Similarly, section 667-K(b) provides for distributing sales proceeds to the lender. Again, the association would incur expense and receive no money. There is little incentive for an association to use such a remedy.

Proponents of the personal service requirement should candidly acknowledge that such a requirement essentially turns a non-judicial process into a judicial process whenever the owner cannot be found for service. That is particularly unfortunate because a significant reason to use a non-judicial process is when the owner has abandoned the unit or is hiding. It is not uncommon for an owner in hiding to nonetheless rent out the unit and receive income while defaulting on the payment obligation to the association.

When a person cannot be found for personal service, the civil procedure rules require compliance with statutes to enable *substitute* service. Substitute service requires a court order. See, for example, Hawaii Revised Statutes section 634-23 and 634-36.

After failure of personal service, the next step is an attempt to serve by certified mail. The attempt to serve by certified mail is always appropriate, and is otherwise provided for in existing law. It is a largely ineffectual step, though, if someone is dodging service. Service by certified mail is not effective under the civil procedure rules if the owner simply chooses to not sign for the mail.

This leaves **judicial** action to authorize service by publication. Since publication is required in the non-judicial foreclosure context in all events, there should simply be a requirement in Chapter 667 that there be three separate attempts to personally deliver (but not to "serve") the appropriate notice.

The task force fails to adequately account for the probability that substitute service (that is, judicial action) will be required in many cases under its proposal. It further fails to attend to how lengthy service delays will adversely impact the timelines in the task force proposals, to say nothing of the needless and pointless expense. The question of due process can be more than adequately addressed without requiring personal service in the manner provided for in the civil procedure rules.

The open house requirement proposed by the task force makes no sense in the association context. The non-judicial process is frequently used when the owner lacks equity and the association will be the sole bidder at the auction. Please keep in mind that the successful bidder at an association auction takes title ***subject to*** **the existing mortgage.**

No bidders come to an auction for a unit worth $200,000 when the unit will be sold ***subject to*** a $300,000 mortgage. The association will be the successful bidder and it will rent the unit out until the lender forecloses its superior lien. The association cannot await the unpredictable behavior of lenders.

In addition to the fact that an open house will not yield money for the owner being foreclosed or for any creditor, it is also true that the task force proposal depends on the unlikely prospect of cooperation by the owner. Keep in mind that when a court appoints a foreclosure **commissioner** to hold an open house the commissioner is an officer of the court who is both subject to the control of, and protected by, the court. The pool of commissioners is also selected by the court.

In contrast, the task force notion is that some non-court officer will hold an open house. That is an opportunity for conflict and debate at minimum. It is also an opportunity for claims to be made. It is easy to imagine allegations that property is missing following an open house. It would also be prudent to consider the prospect that an assault of some kind might occur in that setting.

The open house requirement would add no value to a consumer in the association context. It would simply enable the potential for claims and conflict.

With respect to the payment plan language in the task force proposal, it is conflicting and ambiguous. The task force evidently tried to paper over differences between the members by leaving the useless "some amount" requirement and a twelve-month period. Which is it?

"Some amount" renders the remedy basically worthless, because it means $1.00 per month for a thousand months. A definite period is appropriate.

CAI recommends ten percent of the delinquency per month. Moreover, the owner should be required to tender the first ten percent payment in order to commence the payment plan option. It is not enough for the owner to merely *claim* that a payment plan will be performed in the future.

The task force proposes to change essential law in existence for decades to eliminate any effective remedy to collect fines, penalties and late fees. Current law is structured on a pay first, dispute later basis. That is, for example, why Hawaii Revised Statutes section 514B-146(c)(4) provides: "That under Hawaii law, a unit owner has no right to withhold assessments for any reason[.]"

It is easy to understand that no one will pay fines, penalties and late fees if the association lacks an effective remedy to collect them. Existing law is properly structured. Pay first, dispute later. The task force proposal reflects a lack of appreciation for the legitimate needs of self-governing associations to be able to enforce their project documents.

The task force also proposes that liens should expire. The rationale for such a provision is not obvious. In all events, ***if*** an expiration period is to be considered, then it should match the six-year statute of limitations for contract claims.

Concerns about unfair and deceptive trade practice liability are well known by now. CAI shares such concerns and asserts that the misdeeds of lenders should not be ascribed to associations.

This testimony merely samples the various and sundry difficulties that can be perceived in the task force proposal. Some problems seem to reflect carelessness.

The task force, for example, imports the concept of loan acceleration into the association context where it lacks relevance. That sort of error reflects that the task force may have simply copied procedures designed for lenders with little thought for the substantial differences between the for-profit lending industry and the non-profit function that associations serve.

The task force proposal is replete with such vulnerabilities. CAI has put forward a more cogent proposal.

Very truly yours,

Philip S. Nerney

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February 1, 2012

The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: S.B. 2429, Relating to Foreclosures

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

Aloha Chair Baker, Vice-Chair Taniguchi, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify 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** regarding S.B. 2429, 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.

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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 33)
Under Section 33 (page 107) of S.B. 2429, 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.

Mahalo for the opportunity to testify.

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

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

In support of SB 2429 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 SB 2429 as it would strengthen protections for borrowers in the State of Hawai`i. SB 2429 seeks to implement the recommendations of the Mortgage Foreclosure Task Force ("Task Force"). LASH supports the general intent of the Task Force recommendations to make Act 48 and Hawai`i's foreclosure law more efficient and effective. 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 by 13 of the 17 voting Task Force members in direct response to lenders' stated concerns regarding potential liability for minor chapter 667 violations.

In order to further strengthen consumer protections in the law, LASH suggests revisions to the bill:

In addition to the Task Force recommendations, substantially more foreclosures could be avoided by (1) repealing the dispute resolution program sunset, and (2) allowing borrowers to participate in dispute resolution before they must decide whether to convert to a judicial foreclosure. There is also no reason to retain Part I of chapter 667 when the current moratorium on Part I nonjudicial foreclosures ends. Further, eliminating the FDIC loan modification guidelines from the dispute resolution program, as some have suggested, would undoubtedly reduce the number of agreements reached between lenders and borrowers. Finally, granting lenders' request to eliminate mortgagee liability for oral misrepresentations made on their behalf, or for completing a foreclosure after a loan modification has been approved or while one is being considered, would invite abuses and limit the remedies available to injured homeowners.

LASH suggests the concurrent repeal of Part I of Chapter 667, and enactment of the protections suggested by the Mortgage Foreclosure Task Force. With the recommendations of the Task Force, Part II is the more complete, more clear, and more effective foreclosure statute. Once the protections and clarifications of the Task Force are enacted, Part I should be repealed.

Conclusion:

For the above reasons, we respectfully request passage of SB 2429. We appreciate the committee's recognition of the need to protect consumers in the State of Hawai`i and support SB 2429's attempts at doing so. Thank you for the opportunity to testify.

RCO
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January 31, 2012

Via Email: CPNtestimony@capitol.hawaii.gov

Senator Rosalyn H. Baker
Chair, Committee on Commerce and Consumer Protection
Hawaii State Capitol, Room 230

Re: S.B. 2429 –Relating to Foreclosures
Hearing: Wednesday, February 1, 2012 at 9:00 a.m.
Room 229

Dear Chair Baker and Members of the Committee on Commerce and Consumer Protection:

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, Relating to Foreclosures. This measure proposes to make numerous amendments to Act 48, 2011 Session Laws of Hawaii, including amending the requirement that notice of a non-judicial foreclosure 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 foreclosure laws and elsewhere in the Hawaii Revised Statutes ("HRS"), the publication of government notices only required publication in a "newspaper of general circulation."

RCO is specifically concerned regarding the proposal in this bill to revise HRS Sections 667-G(d), 667-5(a)(1)(B), 667-27(d), and 667-32 (b)(4)(E) ,which amend the public notice requirements of Act 48. Since the passage of Act 48, due to the inclusion of the terms "daily" and "largest," RCO has seen 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

[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.

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 understands and appreciates that the Mortgage Foreclosure Task Force attempted to address the issues that have been created by the Act 48 publication requirement. However, we do not feel that the proposed fix goes far enough to ensure that there is fair competition for the publication of notices. Specifically, leaving the term "daily" in the bill continues to create the problem of the increase in publication rates. A daily paper is not necessarily required, particularly given that the publication notice in Act 48 is a weekly requirement.

Based upon the foregoing, RCO recommends that the bill be amended, and that the following language be included where the publication requirement is referenced:

> a ~~daily~~ newspaper ~~having the largest~~ of general circulation in the specific county in which the mortgaged property lies.~~; provided that for property located in a county with a population of more than one hundred thousand but less than three hundred thousand, the public notice shall be published in the newspaper having the largest circulation expressly in the eastern or western half of the county, corresponding to the location of the subject property;~~
>
> (i) To be "of general circulation", a newspaper must:
>
> (a) Be distributed at least weekly in the county where the property is located;
>
> (b) Be distributed in the county for a minimum of six months unless interrupted by strike, natural disaster, or act of war or terror;
>
> (c) Contain news of a general nature; and
>
> (d) Be distributed to a minimum of one percent (1%) of the residents of the county as determined by the last census and as verified by an independent audit.
>
> (ii) A person may apply to the Circuit Court for an order confirming a newspaper to be "of general circulation", which the Circuit Court shall grant upon proof of compliance with Section (i) above.

This approach, which has been implemented in other states, would ensure both that a newspaper is of sufficient circulation, and that there would be an opportunity for more than one paper to compete to publish notices. This would bring more fairness to the process under Act 48 -- especially because the resulting dramatic increase in cost ultimately causes the most harm to the borrower, to whom this 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.

LAW OFFICE OF GEORGE J. ZWEIBEL
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Senate Committee on Commerce and Consumer Protection

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

IN SUPPORT OF SB 2429

Chair Baker, Vice Chair Taniguchi, and Committee Members:

My name is George Zweibel. I am a Hawaii Island attorney and have for many years represented mortgage borrowers living on Oahu, Hawaii, Kauai and Maui. Earlier, I was a regional director and staff attorney at the Federal Trade Commission enforcing consumer credit laws as well as a legal aid consumer lawyer. I have served on the Legislature's Mortgage Foreclosure Task Force ("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 would implement the 2012 recommendations of the Task Force, which I helped formulate and 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 by 13 of the 17 voting Task Force members in direct response to lenders' stated concerns regarding potential liability for minor chapter 667 violations.**

In addition to the Task Force recommendations, substantially more foreclosures could be avoided by (1) repealing the dispute resolution program sunset, and (2) allowing borrowers to participate in dispute resolution before they must decide whether to convert to a judicial foreclosure. There is also no reason to retain Part I of chapter 667 when the current moratorium on Part I nonjudicial foreclosures ends.

Further, eliminating the FDIC loan modification guidelines from the dispute resolution program, as some have suggested, would undoubtedly reduce the number of agreements reached. Finally, granting lenders' request to eliminate mortgagee liability for oral misrepresentations made on their behalf or for completing a foreclosure after a loan modification has been approved or while one is being considered would invite abuses and limit the remedies available to injured homeowners.

1. **Enact and simultaneously implement all recommended Task Force § 667-60 amendments.** 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.

On January 25, 2012, I testified in opposition to HB 2018, which would repeal § 667-60's declaration that any violation of chapter 667 is a UDAP, while greatly reducing the time now available for a homeowner to ask a court to set aside a wrongful foreclosure sale. This would drastically reduce existing homeowner rights and protections and encourage widespread noncompliance with Chapter 667. Essentially, HB 2018 would "unbundle" the Task Force compromise package, giving immediate effect to borrowers' major concession but delaying restoration of limited per se UDAP liability until the time when they are needed most has passed, *i.e.*, after the foreclosure crisis hopefully has abated and the dispute resolution program is currently scheduled to end.

For the above reasons, I respectfully request that you approve simultaneous implementation of all of the Task Force's recommended § 667-60 revisions, which reflect substantial compromise and balance the legitimate interests of homeowners and lenders alike.

2. **Repeal sunset of dispute resolution program.** 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.

3. **Repeal requirement that borrowers choose between dispute resolution and conversion.** 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.

4. **Repeal Part I nonjudicial foreclosure.** I support SB 2428 or, alternatively, adding to SB 2429 the repeal of Part I of chapter 667. When the moratorium on new nonjudicial foreclosures under Part I expires on July 1, 2012, Hawaii would again have two very different but overlapping nonjudicial foreclosure laws. With the Task Force's 2012 recommended revisions (included in SB 2429), Part II will embody the best efforts of lender and borrower representatives as well as the Legislature to craft a fair, comprehensive and effective Hawaii nonjudicial foreclosure law. There is no reason for Part I to continue to provide for an inferior alternative nonjudicial foreclosure process and it should be repealed.

5. **Retain use of FDIC loan modification guidelines in foreclosure dispute resolution program**. Section 667-80(e) mandates use of the calculations, assumptions and forms established by the Federal Deposit Insurance Corporation loan modification program (or a different program or process if the parties and neutral agree). The Task Force considered but rejected recommending removal of the specific reference to the FDIC guidelines, because that program is widely recognized as the most objective, transparent and verifiable loan modification program in widespread use. Retention of the FDIC language in § 667-80(e) will help avoid mistakes and ensure that the "net present value" calculation accurately determines whether it is more beneficial for

the loan holder to modify the loan or to foreclose. Conversely, its deletion would seriously undercut the dispute resolution program's ability to achieve its intended goal.

6. **Retain mortgagee liability for *oral* misrepresentations**. Lenders have proposed amending § 667-59 so that foreclosing mortgagees would be bound only by written agreements and representations made on their behalf. Consumer protection law enforcement agencies and private consumer attorneys have long recognized that most misrepresentations are oral and not put into writing, making them much easier to deny later. Contrary to general rules of evidence, proof of oral misrepresentations usually is permitted to establish UDAP or fraud claims. Lenders' proposed change would eliminate foreclosing mortgagees' legal responsibility for all oral misrepresentations made by their representatives. There can be no justification for giving anyone a "license" to commit fraud, especially when families' homes are at stake.

7. **Retain mortgagee liability for foreclosing during consideration or after approval of loan modification**. Lenders have proposed repealing § 667-56(6) and (7), which prohibit completing a foreclosure during loan modification negotiations or after acceptance into a federal loan modification program. There have been many instances in which mainland servicers have completed foreclosures while loan modifications were being considered or while trial or permanent modifications were in effect. Retaining § 667-56(6) and (7) is essential to protect Hawaii homeowners from such abuses and the obvious harm they cause.

Thank you for your consideration of my testimony.

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January 31, 2012

The Honorable Rosalyn H. Baker, Chair
Committee on Commerce and Consumer Protection

RE: BILL: SB2429, Section 2
DATE: February 1, 2012
TIME: 9:00 a.m.
PLACE: Conference Room 229

Dear Senator Baker and Members of the Committees:

This testimony is submitted on my behalf as a member of the Hawai`i State Bar Association and as the lawyer for many planned community associations. I believe I am very qualified to testify on this issue. I have twice written the article for the Hawai`i State Bar Association entitled "Community Associations" in its periodic 3 volume publication: Hawaii Real Estate Law Manual Vol. II. I have also written and taught the GRI course for Realtors® in Hawai`i for the Hawai`i Association of Realtors® and for its various statewide boards. During that time, I have served and testified on behalf of the HSBA Subcommittee on Community Associations (part of the Real Property Section) and on the Legislative Action Committee for CAI for which I have also testified. I have been selected by my peers over the last few years as one of the "Best Lawyers in America." I have practiced community association law for more than 30 years in Hawai`i.

I GAVE THIS SAME TESTIMONY AT A JOINT HEARING OF THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE AND COMMITTEE ON JUDICIARY LAST WEEK. AS A RESULT, REPRESENTATIVE HERKES ASKED THAT I WORK WITH THE LEGISLATURE'S ATTORNEYS AND THE TASK FORCE ON THE LANGUAGE RELATED TO PLANNED COMMUNITY ASSOCIATIONS (KAANAPALI HILLSIDE HOMEOWNERS' ASSOCIATION, WAILEA, PLANTATION ESTATES LOT OWNERS' ASSOCIATION, KAPALUA) TO FIX THE MANY LEGAL PROBLEMS WITH SECTION 2 OF THE HOUSE VERSION OF THE BILL ON THOSE ASSOCIATIONS. I AM WORKING ON A PROPOSED REWRITE OF §2 OF PART II OF THE TASK FORCE BILL AND SHOULD HAVE IT AVAILABLE (IF NOT BY THIS HEARING, WITHIN A DAY OR TWO).

As you know, the common expense assessments fund the operation and administration of planned community associations. Such associations represent a significant portion of housing available in Hawaii, especially low income housing. Those associations depend upon the timely payment of common expense assessments by all members. Planned community associations provide important services to all members, including, without limitation, the maintenance and repair of roadways, parks, recreational facilities and sewer easements. The purchase of

insurance, security services, management services, landscaping services and other required products and services are also funded entirely by common expense assessments.

If planned community associations did not pay these charges for roadways, parks, private sewer systems, etc., those costs would fall on Hawai`i taxpayers. Thus, it is in the public interest that planned community associations be maintained on a sound financial footing. Such associations are also very important to the overall housing market in Hawaii. As much as 50% of the housing in Hawaii is estimated to be in these associations.

An alternative power of sale foreclosure remedy for associations, distinct from remedies available to mortgage creditors or banks, is appropriate in light of the non-profit nature of condominium associations and planned community associations. Although I support separate legislation for all community associations and have many concerns with the process as it affects associations in Hawai`i, I plan to limit my testimony to Section 2 of the task force bill because it includes numerous errors of law and of fact, is constitutionally infirm and will devastate planned community associations in Hawai`i.

Planned community associations should be treated differently than banks when it comes to collecting assessments and foreclosing a lien on the unit for many reasons:

1. Planned Community Associations, unlike banks, are non-profit. They are simply a pass-through mechanism for owners of units to pay essential bills, like electricity, water, liability and property insurance, maintenance of common areas and in some cases the exterior of units, security costs, landscaping costs, painting, re-roofing and other regular maintenance, management fees and the mandated statutory reserve funds for condominium associations. (Planned community associations do not have a statutory mandate for reserves but typically have a documentary mandate to keep reserves if they have any structures or roadways or easements to maintain.)

2. Planned Community Associations, unlike banks, have no opportunity to "screen" buyers of units to ensure that the buyer can pay the amount of current and future assessments. Banks are able to obtain unlimited amounts of financial information including credit reports, tax returns, employment information, on the applicant buyer and have the right to say "no" if the bank believes the applicant cannot pay its loan costs (but banks in Hawaii have little or no motivation to worry about whether buyers can pay assessments due to Condominium Associations because the law is currently written to protect banks and not Planned Community Associations). Planned Community Associations **never** have financial information from the prospective buyer **or any involvement in the decision** whether to allow the buyer to buy the unit.

3. Planned Community Associations, unlike banks, do not simply suffer a loss of profit absent collection of delinquencies. A shortfall in the budget of a planned community association will result in that shortfall being paid by all other unit owners (members) of the Planned Community Association. Shareholders of the bank are very unlikely to be affected or affected in the same manner as those unit owners in an association who pay their bills. Non-delinquent owners are affected in a very direct and negative manner absent collection. They will be faced with a special assessment or an increase in the monthly assessments for any shortfall in the budget.

4. Planned Community Associations typically pay the cost of maintaining the collateral for the bank. The costs of exterior maintenance, electricity, water, landscape maintenance, security, management fees and other day to day charges are often paid out of the operating funds of the Planned Community Association. However, because in most instances, Planned Community

Associations are subordinate to at least the first mortgagee at a foreclosure auction, the owners of other units in the Association and not the bank will pay those costs to ensure the collateral is maintained. Banks are much more likely to be promptly paid some significant amount of their debt at auction given the current state of the law than planned community associations. And, if banks do not recover at auction, it should be their responsibility as they procured the services of the appraiser who valued the unit and they evaluated the ability of the unit owner to pay monthly mortgage fees, real property taxes and insurance premiums on the property. The banks have all the information and make all the decisions that Planned Community Associations must then live with.

5. Even though an owner of a unit in a Planned Community Association is only a few months delinquent, banks always have the power of acceleration of the entire debt in the note secured by the mortgage and generally then are owed hundreds of thousands of dollars of debt which justify the high court costs and lengthy period of time of a judicial foreclosure. This is not true with Planned Community Associations. An owner in a Planned Community Association who is a few months delinquent and causing a serious shortfall in the annual budget (which is being paid by other unit owners during the delinquency) will not typically owe hundreds of thousands of dollars, thus making judicial foreclosure a less attractive or even impossible option for many associations. At one point, a calculation was performed of the amount of time that the largest Planned Community Association in Hawaii would have to wait until the estimated court costs of a typical judicial foreclosure (*e.g.*, attorney's fees, costs of service, costs of filing) would be equal to the delinquency. That calculation totaled 40+ years. **Thus, it is essential that Planned Community Associations have their own, straight forward foreclosure process that provides due process to the unit owner but does not bankrupt the Association in collection costs.**

The task force bill makes little effort to distinguish between the collection abilities of associations and those of banks. While my primary testimony is with regard to the serious legal problems of Section 2 in the task force bill on HRS Chapter 421J or on Planned Community Associations, I also am against combining the remedies of banks with the remedies of associations for delinquent members. The purpose of a bill for associations (which are themselves "consumers" as previously recognized and defined by this legislature in the Hawai`i statute on unfair trade practices) should be to provide an effective and efficient alternative power of sale foreclosure remedy for associations that attends to the reasonable needs of all consumers who own units governed by an association which is itself, unlike a bank, a consumer. This bill, primarily drafted by bank attorneys, would destroy the existing priority of many planned community associations, delay those associations from collection of assessments, eliminate altogether the right of associations to collect if they don't or can't do so within 2 years while allowing banks to collect during the entire period of the mortgage (*e.g.*, 15 or 30 years). Planned community associations need a bill of their own. It is my understanding that one has been introduced.

Section 2 - 421J-A Association Fiscal Matters; Lien for Assessments.

The following is my detailed testimony on the specifics of Section 2. The drafter of this provision was apparently not familiar with the governing documents of planned community associations or with Chapter 421J which governs Planned Community Associations.

- (a) Unlike Chapter 514B which is the basis for creation of condominiums who all have the same statutory lien priority, planned community associations do not require a statute to exist and have been around much longer than condominiums and generally

have very different lien priorities in their governing documents than the banks are attempting to legislate. For example, one of the largest master resort community association in the State has priority over all but first mortgages and collects its assessments from either the Condominium Associations which form part of its membership or from the members. Many of the planned community associations in this state are given priority over all but the first mortgage. Queens Gate Community Association, Na Pali Haweo Community Association, Napilihau Community Association, Hoakalei Resort Community Association, and Kauai Beach Resorts are a few examples I obtained in a short time looking at public records (*e.g.*, the Declaration). This Section would completely reverse these governing documents that apply to a large segment of the population of Hawaii. This piece of legislation is constitutionally infirm as it attempts to make all planned community associations accept a priority below all mortgage lenders and below all condominiums which is not necessarily true. Courts are likely to hold that this part of the legislation is an unreasonable impairment of contract under the state and/or federal constitution.

Planned community associations need the priority given to them by developers to maintain private roadways, private parks and other infrastructure that would otherwise have been the obligation of the taxpayers of Hawaii. Thousands of home buyers purchased their residences with the notion that the lien of the planned community association would be above that of first mortgagees. This would put planned community associations like Queens Gate Community Association, Na Pali Haweo Community Association, Napilihau Community Association, Hoakalei Resort Community Association, Kauai Beach Resorts and many, many others in a far less effective position insofar as the priority of their liens are concerned. **The planned community association should be entitled to the lien provided for in its governing documents not some artificial "one size fits all" priority adopted to protect banks.**

- (a) The expiration date of the lien is also very problematic. Many community associations file a lien and (because of the small amount accruing) they do not foreclose for a lengthy period of time especially if a lender is foreclosing ahead of them. This language would purportedly deprive community associations of two years of maintenance fees from delinquent lenders simply because the association was not able to finish foreclosure in that period of time. If, for example, an association waits one year to file and it takes one year to finish, the association would lose the lien for all of the amounts previously due. That is a ridiculous provision. The banks would have an association lien expiring in 2 years from the date of recordation while they continue to enjoy at least 6 years from a default. The title companies have not expressed any reservations about planned community association liens remaining on property when paid. This is a much bigger problem with mortgage lenders.

- (a) Community association liens often provide that fines, penalties or late fees comprise part of their lien because that is what their governing documents state. Why should the lenders be permitted to deprive the community associations of this right given by their governing documents of that very effective collection tool if it is permitted in their governing documents. Because of the small amount of many community association liens, late fees are essential to collection. Recognizing the importance of fines, this legislature has provided in Chapter 514B that all condominium association boards can fine as long as due process is provided.

- (a) It is interesting to note that when the provisions of the governing documents would act against planned community associations, the lenders are anxious to include it

in this law which is patently unfair to these large master associations. For example, Section 421J-A, in the next to the last sentence, would preclude planned community associations from bidding at an auction unless if it is not permitted by their governing documents. Contrast this with condominiums. Condominiums have this right by statute. See §514B-146, HRS. Thus, the lenders are happy to allow the planned community association liens to be lowered in priority even if this is totally inconsistent with the governing documents purchasers relied on upon purchase of the unit but will enforce the governing documents if it hurts planned community associations and their members -- precludes them from bidding at the auction.

- (b) This part of Section 2 would again allow second, third or fourth mortgagees to gain priority over the non-profit entity which is maintaining the value of the unit – the roadways, the sewer easements, the landscaping, the security, the insurance and the many other tasks planned community associations MUST undertake. This provision would state that the mortgage that "the acquirer of title [the bank] and the [bank's] successors and assigns shall not be liable for this share of the assessments by the association chargeable to the unit that became due prior to the acquisition of title. In many, many planned community associations in Hawaii which are home for many of its residents, the Association's lien would take priority over all mortgages except first mortgages (See earlier discussion). This provision would completely destroy the governing documents of those planned community associations with regard to this important issue. The legislature should defer to the governing documents of the Association which is what the mortgage lenders and buyers were provided with during the sale and not attempt to impose a unilateral change in priority of the association's lien which is, of course, supported by the banks.

- (b)4 Item 4 is again, a proposal simply to protect banks from having to pay assessments. The residential neighbors of the delinquent unit owners will have to pay out of their own pockets for the delinquent neighbors' assessments until the bank actually takes title which could be months and months and cause a serious shortfall in association budgets. It is in the bank's and its shareholders' best interests to delay taking title as long as possible so as to avoid paying assessments. **This is an anti-consumer protection law as currently drafted.** Subpart (b) provides that when any person appears and objects to the form of order, the payment of the Association delinquencies is stalled. Thus, the bank itself can repeatedly appear and request continuances for the sole purpose of delaying its obligation to pay the assessments.

- (c) Subpart (c) would, contrary to common law and the statutory law that governs condominiums, permit unit owners in a planned community association to stop payment of any assessments as long as they submitted a payment plan. Thus, this provision would essentially give the unit owners in a planned community association, the right to determine their own amount of periodic payment of assessments despite what the budget of the association requires for maintenance and repair of common areas, insurance, electricity, etc. **The first clause of this Subpart should be stricken.** As the common law and many state laws including Hawai'i's recognize, there is no valid basis to withhold assessments. Later on the statute allows a payment plan and that would, of course override this obligation to pay in full. We should not permit owners to devise payment plans on their own whether or not they are delinquent and dictate to the planned community association how they plan to pay their share of the budget.

- (c)5 Subpart (c)(5) is simply incorrect and based on the common misapprehension that planned community associations are, in all respects, the same as condominium associations. The law requires arbitration for condominium associations but not for planned community associations. Thus, Chapter 421J includes no details whatsoever on how that arbitration would occur (*e.g.*, exemptions, judgment, arbitration service, etc.).

- (d) Subparts (c) and (d) introduce a whole new "mandatory" arbitration provision for planned community associations which have not previously been bound by this oft-criticized portion of the condominium law (that basically requires both parties to try the case twice – in arbitration and, if either party is unhappy, again in court). The condominium statute at least includes a whole separate section on the arbitration, the conduct of same, the rules to be used, the service to be used, the exemptions, and many other necessary procedural rights that are missing here. The drafters simply "dumped" portions of the condo law into this Bill without any real thought as to whether it even makes sense.

- (e) In Section 2, it appears the intent is to add the condo law's 514B-146 and rent collection provisions to apply to community associations in new 421JA and B, however, in at least one section -- (a)(3), there is still a reference to "condominium" association. **This shows the level of thought and concern that was put into the drafting of this bill many parts of which (not this part if the language is corrected) will seriously harm planned community associations.**

- (e) Subpart (e) is incorrect as it refers to "common elements" – a condominium defined term. "Common areas" is the term that should be used for planned community associations. Again, an illustration of the failure of the drafters to understand the statutes or the governing documents or to write a Bill that is even correct in its language.

- (f) Subpart (f) must be clearly understood to be a majority in attendance at a meeting. A planned community association like Mililani Town Association could not realistically expect to ever get a vote on anything by one-half of its members. Many planned community associations like MTA are comprised of tens of thousands of units and it is not feasible to depend on an amendment to its governing documents.

- (g)1 Again, subpart (g)(1) purports to change the priority of existing planned community associations. It must be recognized that if these type of provisions affect the priority of the associations' liens, there could and likely will be a successful constitutional challenge as it significantly impairs the contract of all the unit owners (*e.g.*, the priority of the lien set out in the governing documents).

- (h) Again, the governing documents of planned community associations would be overridden with regard to the priority of the lien with regard to subpart (h). The statutory special assessment is maintained at a maximum of $7200. However in Part IV, Section 47 (page 89), for community associations, the banks have reduced this to 6 months or $3,600. Thus, the law is not only poorly drafted with regard to planned community associations, it is blatantly inconsistent in material portions of the law.

Someone simply copied the condominium laws without even any reasonable proofreading. This is a sad way to draft legislation. The words "condominium" and "common elements" show up in this draft in error. A partially drafted arbitration provision was added without even any of the necessary timelines or rules as are in the condominium law. Forcing planned

community associations to arbitrate is not a position this legislature has ever before accepted. Without the requisite details, planned community associations would not even know whether they could accept this very intrusive provision. At a minimum, as with condominiums, certain issues need to be omitted from arbitration. The version in the condominium law is written so as not to deprive condominium owners of the right to have their claims heard by a judge or a jury. This version should be omitted because it is being thrust upon planned community associations without any ability to consider the serious implications. For example, it is not even clear whether the right of arbitration extends beyond issues related to assessments. Arbitration should not be mandated by the legislature for tens of thousands of owners lightly and without considerable investigation. Arbitration is more expensive than a court action (you have to pay arbitrators but not judges) and, most importantly, it would deprive planned community associations and the owners therein of due process as there is no real appeal available to a community association even if the arbitrator makes serious mistakes of law and fact.

The banks' attorneys are attempting to "dump" large portions of the condominium statutory provisions into the planned community association statute without understanding the fundamental legal and statutory differences between condominiums and planned community associations. All of these provisions would have to be significantly rewritten to be acceptable to most planned community associations in this state.

- (f) Subpart (f) should be entirely rewritten to give the governing documents of the planned community associations and the applicable statute, Chapter 421J priority over these provisions. Otherwise, the law will be subject to strong constitutional impairment of contract claims. Those type of claims could not occur in condominiums in this state because of the difference between condominiums (which are always based on a statute) and planned community associations which are not.

- The court decision)

In Lee v. Puamana Community Ass'n, 109 Haw. 561, 128 P.3d 874 (2006) (Puamana is a planned community association) (Hawaii 2006), the Hawaii Supreme Court recognized that there are fundamental differences between condominiums and planned community associations like Puamana that affect what the legislature and the judiciary can do:

Appellees' argument, however, ignores a fundamental distinction between condominium property regimes and planned community associations--that condominium property regimes are creatures of statute, whereas planned community associations are primarily creatures of common law. See Coon v. City & County Of Honolulu, 98 Hawai'i 233,252 n. 30, 47 P.3d 348, 367 n. 30 (2002) (" 'The condominium, or horizontal property regime, [was] a ... creature of statute' that was given its initial formal recognition in Hawai'i in 1961.")

(emphasis added) Our Supreme Court went on to recognize that because planned community associations did not derive their existence from legislative statutes, that Chapter 421J was not at all like the Condominium Property Act where the legislature could expected to be somewhat intrusive because the legislature had actually created condominiums. The legislature did not create planned community associations; they have been around in English common law since the 1800's. Thus, a constitutional challenge to this attempt by banks to change the priority of liens of planned community associations and otherwise override other governing documents will be treated with much greater scrutiny than similar amendments to the Condominium Property Act. The legislature created condominiums and thus is has a great deal of leeway to add to the law. But the same is not true of planned community associations. They are very different vehicles

and a court is much more likely to protect the property rights (*e.g.*, lien rights to collect delinquent assessments) of owners of units in those planned community associations.

- (g) Subpart (g) refers to "monthly" payments. Many or perhaps even most planned community associations do not collect on a monthly basis but rather a quarterly basis. I would recommend that this language be changed to read "monthly or periodically" to cover all possibilities.

PART I. GENERAL PROVISIONS
SECTION 3. Assessment is not defined in Chapter 421J, as this drafter assumes – **another example of the sloppy drafting with regard to planned community associations.** The bank's attorneys apparently could not even be bothered to look at Chapter 421J.

Thank you for the opportunity to submit this testimony. If you have any questions, I can be reached at 697-6006 or by email at jneeley@alf-hawaii.com.

Very truly yours,

ANDERSON LAHNE & FUJISAKI LLP
A Limited Liability Law Partnership

/s/ Joyce Y. Neeley

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Presentation to the Committee on Commerce and Consumer Protection
Wednesday, February 1, 2012 at 9:00 a.m.
Testimony on SB 2429 Relating to Foreclosures

In Opposition

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

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

This bill implements the 2011 recommendations of the mortgage foreclosure task force to address various issues relating to the mortgage foreclosures law and related issues affecting homeowner association liens and the collection of unpaid assessments.

We appreciate the attempt of the Mortgage Foreclosure Task Force to make Act 48 workable for all parties by offering a few improvements to add clarity to the law. However, the Task Force recommended changes to Act 48 will likely not be sufficient to induce Government Sponsored Enterprises (GSEs) such as Fannie Mae and Freddie Mac and lenders for their portfolio loans to use the nonjudicial foreclose (NJF) process without further changes.

The Hawaii Credit Union League, Hawaii Financial Services Association and Hawaii Bankers Association "minority reports" contained in the task force report outlines additional issues that need to be address in the nonjudicial foreclosure law. A copy of the HBA "minority report" is attached.

We believe there is a need for the nonjudicial foreclosure process for **non-owner occupant residential** mortgage loans (investor loans, vacant land, etc.). A streamlined NJF for non-owner occupant residential loans will reduce the backlog of pending foreclosures, allow these properties to be made available for sale and occupancy sooner and ease the burden on the Judiciary by not having to hear these cases.

Thank you for the opportunity to provide our testimony.

Gary Y. Fujitani
Executive Director

Attachment

HAWAII BANKERS ASSOCIATION
Statement Regarding Amendments to Act 48 Recommended by the Mortgage Foreclosure Task Force
December 14, 2011

The Hawaii Bankers Association (HBA) appreciates the opportunity to participate in the 2011 meetings of the Mortgage Foreclosure Task Force. This year's meetings focused on making recommendations to clarify and improve Act 48 following its enactment during the 2011 Legislative Session. HBA participated in the Act 48 Investigative Group which reviewed the text of Act 48 and recommended revisions to address concerns and issues raised by both consumer and lender groups.

Numerous revisions to Act 48 were recommended by HBA which were not included in the final recommended revisions approved by the Task Force. Nevertheless, HBA continues to believe such revisions are necessary to allow Act 48 to be implemented and used correctly and effectively by consumers and financial institutions alike. In order for the Legislature and any reviewer of the Task Force's recommended revisions to get an accurate and complete understanding of the divergent views expressed at the Task Force and Investigative Group meetings, HBA presents this Statement.

1. Unfair and Deceptive Act or Practice. Section 667-AC (new HRS Section 667-60) makes any violation of Chapter 667 by a foreclosing mortgagee an unfair or deceptive act or practice (UDAP) under HRS Section 480-2. By enacting this legislation, the proof requirement that a claimant must establish 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, the worst of which is the voiding of the contract or agreement violating Section 480-2. See HRS Section 480-12. Additionally, treble damages and all attorneys' fees and costs for the claimant under Section 480-13, and the imposition of a fine by the State for every day that a violation is found under Section 480-3.1, makes it extremely unlikely that any foreclosing lender will risk the penal damages and fines imposed by Act 48. If it is the Legislature's intent to end all non-judicial foreclosures, they have accomplished their intent. If the Legislature, however, recognizes that there is a place and need for non-judicial foreclosures in certain situations, Section 667-AC must be repealed. Other measures are available to ensure compliance with Chapter 667 that would not impose such harsh penalties which, at this point, have rendered the remedial purposes of Act 48 completely unworkable and unused.

2. Prohibited Conduct. Section 667-Y (new HRS Section 667-56) prohibits a foreclosing mortgagee from engaging in certain enumerated practices. While items (1) through (4) of the section are easily ascertainable and avoidable, items (5) through (7) are vague, ambiguous and ripe for potential unknowing violation. 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. This would not, and should not be acceptable and the foreclosing lender should not be forced to accept it. As for items (6) and (7), there is no definition to determine what are "bona fide loan modification negotiations" or "being evaluated for consideration for entry into a federal loan modification program." Moreover, in either instance, if a borrower proposes numerous loan modifications or applications for entry into a loan modification program just before closing of a foreclosure sale, must a foreclosing lender, because of the potential UDAP violation, continue to postpone the closing of the sale to deal with each proposal or application, even if such vary only slightly from previously denied proposals or applications? Section 667-Y must be amended to provide clarity to these items and allow the foreclosing lender to end negotiations at some point.

3. Oral Representations. Section 667-AB (new HRS Section 667-59) binds a foreclosing mortgagee to all agreements, obligations, representation or inducements made by its agents, employees, servicers, etc. 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. Additionally, this section is potentially ripe for abuse by savvy borrowers who could elicit, through manipulation or misrepresentation, representations from unsuspecting employees of the lender, unbeknownst to the responsible employee of the lender handling the loan.

4. Authority. Section 667-J (new HRS Section 667-80) must 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.

5. Public Information Disclosure. Existing Section 667-41, while improved tremendously by the proposed amendment approved by the Task Force, still potentially applies to certain commercial loans in which residential property is taken as collateral. HBA doubts 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.

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

Testimony in Opposition to SB 2429, Relating to Foreclosures

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

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 83 Hawaii credit unions, representing approximately 811,000 credit union members across the state. Approximately 60 of our credit unions write mortgage loans in the State of Hawaii. HCUL respectfully offers the following testimony regarding SB 2429, which is the legislation produced by the Mortgage Foreclosure Task Force. Francis P. Hogan, Esq. of was the representative of the Hawaii Credit Union League on the Task Force.

SB 2429 was the result of many months of meetings and work by the task force members. While we appreciate the hard work that went into attempting to re-work Act 48 to make its provisions more palatable to all parties, a number of concerns still exist. Attached, please find the "Minority Report" prepared by Mr. Hogan, which was submitted to the Mortgage Foreclosure Task Force and included in the task force's report, on behalf of the Hawaii Credit Union League. This document outlines the issues that remain.

Thank you for the opportunity to provide comments.

2011 Mortgage Foreclosure Task Force
Report on behalf of the Hawaii Credit Union League

The Hawaii Credit Union League represents 83 federal credit unions in the State of Hawaii. Our credit unions are not-for-profit, member-owned financial cooperatives. Sixty-one of our credit unions write mortgage loans and are concerned about some of the provisions in the recently amended Chapter 667. The League respectfully submits the following comments concerning the draft report of the 2011 Mortgage Foreclosure Task Force.

1. **§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 vague phrase "bona fide loan modification negotiations." If a mortgagor has been denied a loan modification, can the mortgagor then reapply seriatum 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. 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.

2. **§667-58(a)**: As worded, the subsection implies credit unions must file affiliate statements naming their own officers. The League suggests it be amended 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**: 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 . . . ."

4. **§667-60**: This section should be repealed. Many Hawaii credit unions are too small too survive even one successful attack under this section. Lenders have always been subject to Chapter 480. Making virtually any technical mistake in the administration of a foreclosure an "unfair and deceptive act or practice" will defeat the intent of the drafters of Act 48, because no rational lender will initiate the complicated nonjudicial foreclosure process. As a result none of those lenders and their loans will go through the dispute resolution process.

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law
P.O. Box 4109
Honolulu, Hawaii 96812-4109
Telephone No.: (808) 521-8521
Fax No.: (808) 521-8522

February 1, 2012

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

Re: **Senate Bill 2429 (Foreclosures)**
Hearing Date/Time: Wednesday, February 1, 2012, 9:00 a.m.

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

The HFSA **opposes this Bill as drafted.**

The purpose of this Bill is to implement the 2011 recommendations of the mortgage foreclosure task force to address various issues relating to the mortgage foreclosures law and related issues affecting homeowner association liens and the collection of unpaid assessments.

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. The recommendations in this Bill are the result of decision of the 18 Task Force members who represented diverse, and in some instances opposing, interests.

There were various issues on which the Task Force members were divided. These issues are detailed in the "minority reports" attached to the Report. Three of the 4 lender organizations on the Task Force submitted "minority reports". They are the HFSA, the Hawaii Bankers Association, and the Hawaii Credit Union League. (The Mortgage Bankers Association of Hawaii did not submit a "minority report" even though its votes on the Task Force were similar to the other 3 lender organizations.)

The HFSA "minority report" is attached for your reference as Exhibit "A". It is called "COMMENTS OF THE HAWAII FINANCIAL SERVICES ASSOCIATION ABOUT THE RECOMMENDATIONS OF THE MORTGAGE FORECLOSURE TASK FORCE."

We direct your attention to items 2(a), (b), (c) and 3 in the attached. These are issues on which the 4 lender groups on the Task Force were in the minority. We urge you to revise this Bill accordingly.

Thank you for considering our testimony.

Marvin S. C. Dang

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

(MSCD/hfsa)

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
E-mail: dangm@aloha.net

December 12, 2011

COMMENTS OF THE HAWAII FINANCIAL SERVICES ASSOCIATION ABOUT THE RECOMMENDATIONS OF THE MORTGAGE FORECLOSURE TASK FORCE

Act 162 (2010) designated the **Hawaii Financial Services Association** ("HSFA") as one of the organizations to be represented on the Hawaii Mortgage Foreclosure Task Force ("Task Force"). The HFSA is a trade association for Hawaii's consumer credit industry. Its members include financial services loan companies, financial institutions, and other mortgage lenders.

As the HFSA's representative on the Task Force since July, 2010, I am submitting these comments about the recommendations in the Task Force's Report to the Legislature for the 2012 Session.

1. The Task Force members collectively devoted innumerable hours in investigative groups and at Task Force meetings to produce the recommendations in the Report. These recommendations, if adopted by the Legislature, will improve Hawaii's foreclosure process and will revise various provisions in Act 48 (May 5, 2011) which is Hawaii's new mortgage foreclosure law. I agree conceptually with the Task Force's recommendations.

2. However, because of irreconcilable differences among the Task Force members, the Task Force was unable to make recommendations to correct some of the more problematic provisions in Act 48, including, but not limited to:

a. Hawaii Revised Statutes ("HRS") Sec. 667-60, which states: "Any foreclosing mortgagee who violates this chapter shall have committed an unfair or deceptive act or practice under section 480-2." This section should be repealed. 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.

b. HRS Sec. 667-85, which 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.

c. HRS Sec. 667-59, which provides in part: "A foreclosing mortgagee shall be bound by all agreements, obligations, representations, or inducements made on its behalf by its agents including but not limited to its employees, representatives, mortgage servicers, or persons authorized by a foreclosing mortgagee or lender pursuant to an affiliate statement recorded in the bureau of conveyances pursuant to section 667-58." A foreclosing mortgagee should only be bound by "written" rather than alleged oral agreements, obligations, representations, or inducements.

3. The Task Force split evenly on (and accordingly did not adopt) my 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 HRS §667-5 of Part I of HRS Chapter 667 when the moratorium in Act 48 (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. In this regard, Act 48: (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 pursing a deficiency against certain owner-occupants.

4. Because of the increasing costs being charged by certain newspapers of daily circulation in Hawaii to publish notices of judicial and non-judicial foreclosure auctions, a statutory alternative that should be considered by the Legislature is to allow these notices to be posted on a centralized website maintained by a state government agency.

MARVIN S.C. DANG for Hawaii Financial Services Association

EXHIBIT "A"

Mililani Town Association

95-303 Kaloapau Street
Mililani Town, HI 96789
Phone (808) 623-7300

January 31, 2012

Senator Rosalyn Baker, Chair
Senator Brian Taniguchi, Vice-Chair
Committee on Commerce and Consumer Protection
State Capitol
Honolulu, HI 96813

VIA E-Mail: CPNtestimony@capitol.hawaii.gov

Re: S.B. No. 2429/OPPOSE – Relating to Foreclosures
Hearing: Wednesday, February 1, 2012, 9:00am Conf Room 229

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

My name is Eric Matsumoto, Vice-President of the Mililani Town Association (MTA). I have served in MTA leadership capacities on the board for 25 of the last 32 years. MTA encompasses 16,000 plus units involving both single family residences and numerous townhouse project sub-association members.

We oppose this measure for the following reasons:

1. As a non-profit organization that is significantly different from the mortgage lenders, this bill offers a non-judicial process that would help AOAOIs and PCAs, to more quickly resume the receipt of assessments from each homeowner as intended by statute and legal documents, respectively.

2. This bill runs contrary to the interests of associations by: allowing the lenders to be able to credit bid, thereby increasing cost and resulting in associations showing nothing for the dollars and time spent; handing over sale proceed to the lender, again short changing the associations; the long drawn out personal service process that would revert to the judicial process if the person cannot be found; etc .

We urge this bill be deferred.

Sincerely yours,

Eric M. Matsumoto
Vice-President, Board of Directors

Cc: Sen Kidani, Rep Lee, Rep Yamane

HAWAII FIRST, INC.
SB 2429
OPPOSITION

Community associations which in include condominiums, homeowner associations, and planned unit development, continue to be victims in proposed legislation regarding **Lender (emphasis added)** problems with delinquent mortgages. We recognize needs to correct the law but the task force's emphasis was related to "Lender" issues and ignored the unintended adverse consequences for community associations.

Community associations have no say nor do they generate any profits from the natural buying, selling, and mortgaging of real estate between Lenders and Buyers. Community associations simply collect at no profit money from homeowners to pay the basic necessities such as water, sewer, maintenance costs, and other common expenses of the association. It should be obvious that when one owner does not pay his/her share that the deficit created by that non payment is passed on to the other paying homeowners imposing a further hardship on these innocent homeowners in these difficult times. Often homeowners who live in a community association stop paying for their basic necessities provided by the association while they attempt to negotiate a solution with the Lender. This is patently unfair to the other homeowners and places an unfair burden on them.

The task force failed to adequately address the affect on community associations. Its proposed procedures can add **101 additional days** or a total of 176 total days or more under optimum conditions for an association to foreclose for non payment of its common expenses. Current legislation provides a $7,200 cap on recovery of association's fees paid only after the lender forecloses and it sells to a new purchaser (months or years later).

The process in SB 2429 severely and unfairly restricts an association from protecting its members from the adverse effect created by a homeowner who does not pay his/her share. Hawaii First, Inc. opposes SB 2429.

Conference room: 229
Testifier position: Oppose
Testifier will be present: Yes
Submitted by: Richard Emery
Organization: Hawaii First, Inc.
E-mail: richard@hawaiifirst.com
Submitted on: 1/30/2012

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2012 3:32 PM
To: CPN Testimony
Cc: al@certifiedhawaii.com
Subject: Testimony for SB2429 on 2/1/2012 9:00:00 AM

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Al Denys
Organization: CAI-LAC
E-mail: al@certifiedhawaii.com
Submitted on: 1/30/2012

Comments:
Aloha,
As a memeber of the CAI-LAC, I would like submit testimony in opposition to SB 2429. As testified earlier on HB1875, Associations are non-profit entities operating on a zero-based budget to pay for all of their expenses. We are not lenders, we do not loan funds but need to protect the consumers (the rest of the members of the association who pay all of their assessments on a timely manner)from those that don't. We believe that SB 2442, an alternative bill, will positively impact on protecting all of the consumers affected by foreclsures etc.
Mahalo.
warmest aloha,
Al Denys

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Scott I. Batterman
Organization: AOAO 909 Kapiolani
E-mail: sib@paclawteam.com
Submitted on: 1/31/2012

Comments:
We oppose this bill to the extent it does not permit Community Associations to proceed under a power of sale, as provided for in SB2442.

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Kenneth F. Colucci
Organization: Golf Vllas at Mauna Lani AOAO
E-mail: ken.colucci@gmail.com
Submitted on: 1/30/2012

Comments:
SB2429 as structured has flawed provisions that negatively impact condominium associations. The Hawaii Chapter Community Associations Institute has offered a better thought out bill (SB2442) that seeks to be fair and offers non judicial options to AOAOs.

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Dante Carpenter
Organization: CCV, Phase 2, AOAO
E-mail: carpenterd@hawaiiantel.net
Submitted on: 1/31/2012

Comments:
This measure, while well-intended, does not support the best interests of condominium owners,nor thier rights and responsibilities under Chapter 514A & B, HRS.

Dante Carpenter, President
Country Club Village, Phase 2, AOAO
469 Units - 2,20 Story Hi-Rise Complex

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2012 3:07 PM
To: CPN Testimony
Cc: bill@hawaiifirst.com
Subject: Testimony for SB2429 on 2/1/2012 9:00:00 AM

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: William W. Spotts
Organization: Hawaii First
E-mail: bill@hawaiifirst.com
Submitted on: 1/30/2012

Comments:

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Gladys Hernandez-Kamalani
Organization: Hawaii First, Inc.
E-mail: gladys@hawaiifirst.com
Submitted on: 1/30/2012

Comments:

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Ken Bailey
Organization: Hawaii First Inc.
E-mail: ken@hawaiifirst.com
Submitted on: 1/31/2012

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2012 3:14 PM
To: CPN Testimony
Cc: jbillings@hawaiifirst.com
Subject: Testimony for SB2429 on 2/1/2012 9:00:00 AM

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Jonathan Billings
Organization: Hawaii First
E-mail: jbillings@hawaiifirst.com
Submitted on: 1/30/2012

Comments:

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Warren F. Wegesend, Jr.
Organization: Villages of Kapolei Association
E-mail: wwegesend@villagesofkapolei.com
Submitted on: 1/31/2012

Comments:

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Roy Dela Cruz
Organization: Certified Hawaii, Inc.
E-mail: roy@certifiedhawaii.com
Submitted on: 1/30/2012

Comments:

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Laurrie Zimmerman
Organization: Certified Hawaii
E-mail: laurrie@certifiedhawaii.com
Submitted on: 1/31/2012

Comments:

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Roger Exline
Organization: Individual
E-mail: rae@goskywest.com
Submitted on: 1/31/2012

Comments:
As an owner and a Board member in a condo association in Hawaii, I oppose SB2429. SB2442 is a more sensible and fair option to deal with the problem. Associations and the dues-paying-owners have been completely handcuffed by the banks that refuse to foreclose and the owners who have abandoned their units and are dodging all contact. Dues paying owners that are fulfilling their obligations are the ones being unfairly treated as the cost and time for an AOAO to foreclose force a substantial debt on the AOAO. While the AOAO now can recover $7200 (up from $3600) or six months dues whichever is less it does not come close to making the AOAO whole as dues rates for one year are in excess of $12,000. In our complex we have 5 units that have built up a total debt of over $160,000!!! Banks post foreclosure notices, but not one has followed through. This process just bleeds the AOAO dry and will likely end up with lower sales as lenders will not lend and new owners will not buy just because of a burdensome delinquency situation in that community. When that happens, property values will decline further and more owners will abandon their units just making the problem worse. Please consider the plight of us dues-paying-owners that are making every effort to fulfill our obligations even though our properties are worth substantially less than what we paid for them. We have received no bailouts or interest rate breaks from the government, yet we continue to do the right thing. Now it is time for government to help us out. Please vote down SB2429 and pass SB2442.

Roger Exline
916-208-8177

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Arthur Kluvo
Organization: Individual
E-mail: akluvo@gmail.com
Submitted on: 1/31/2012

Comments:
As you are aware, right now we have a huge backlog of Judicial Foreclosures with no end in sight. You took away the softer easier way by eliminating Non-judicial Foreclosures. Why are you throwing up more roadblocks to make it more difficult and more expensive for condominium associations to get relief from mostly deadbeat owners who are in default? Signed, treasurer for AOAO Cathedral Point and treasurer for Valley Rec Center. Art Kluvo

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Kevin Gagan
Organization: Individual
E-mail: ronin111@hawaii.rr.com
Submitted on: 1/31/2012

Comments:
If I understood some of what I read on this bill, I oppose this bill because it gives the associations too much legal control over a home owner who still has a mortgage and other financial obligations, and, perhaps, financial situations that are outside of the homeowner's control.

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Steve Glanstein
Organization: Individual
E-mail: steveghi@gmail.com
Submitted on: 1/30/2012

Comments:
When somebody doesn't pay their maintenance fee, the other 99% suffer. A good part of this dispute can be rectified if maintenance fees were collected AHEAD of the 1st mortgage. The banks are set up for this type of collection; they already do it for real property taxes and some do it for lease rent.

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: anne oleary
Organization: Individual
E-mail: anne@globalworldwidetraders.com
Submitted on: 1/30/2012

Comments:
I oppose SB2429 as it will be devistating to hard working taxpayers such as myself and my husband. I urge you to vote no on SB2429

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Karri Exline
Organization: Individual
E-mail: kse@goskywest.com
Submitted on: 1/31/2012

Comments:
Please pass SB2442 as it is a much fairer option for those of us that are dues-paying-owners.

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Mike Watson
Organization: Individual
E-mail: mike.watson@shell.com
Submitted on: 1/30/2012

Comments:
I am opposed to this legislation.

Regards,
Mike Watson

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: D Medeiros
Organization: Individual
E-mail: davidsotg@yahoo.com
Submitted on: 1/31/2012

Comments:
I oppose SB2429.

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Ralph F. Harris
Organization: Individual
E-mail: rfh@hawaii.rr.com
Submitted on: 1/30/2012

Comments:
SB 2442 is a better bill!

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2012 3:03 PM
To: CPN Testimony
Cc: shana@hawaiifirst.com
Subject: Testimony for SB2429 on 2/1/2012 9:00:00 AM

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Shana Maguire
Organization:
E-mail: shana@hawaiifirst.com
Submitted on: 1/30/2012

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2012 3:25 PM
To: CPN Testimony
Cc: Colleen@certifiedhawaii.com
Subject: Testimony for SB2429 on 2/1/2012 9:00:00 AM

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Colleen N. A. Iseri
Organization: Individual
E-mail: Colleen@certifiedhawaii.com
Submitted on: 1/30/2012

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2012 3:12 PM
To: CPN Testimony
Cc: Cheryl@certifiedhawaii.com
Subject: Testimony for SB2429 on 2/1/2012 9:00:00 AM

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Cheryl Jepsen
Organization: Individual
E-mail: Cheryl@certifiedhawaii.com
Submitted on: 1/30/2012

Comments:

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Joanne Taylor
Organization: Individual
E-mail: joanipt@hawaii.rr.com
Submitted on: 1/30/2012

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2012 2:54 PM
To: CPN Testimony
Cc: kcbch@aol.com
Subject: Testimony for SB2429 on 2/1/2012 9:00:00 AM

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Keith Brunner
Organization: Individual
E-mail: kcbch@aol.com
Submitted on: 1/30/2012

Comments:

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Bob Beardslee
Organization: Individual
E-mail: mbbt11@hotmail.com
Submitted on: 1/30/2012

Comments:

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Bay Pearson
Organization: Individual
E-mail: bay@hawaiifirst.com
Submitted on: 1/30/2012

Comments:

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Marcy Murphy
Organization: Individual
E-mail: Marcy@hawaiifirst.com
Submitted on: 1/30/2012

Comments:

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Ross Nashiro
Organization: Individual
E-mail: soar_n@hotmail.com
Submitted on: 1/30/2012

Comments:

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Roland Mina
Organization: Individual
E-mail: andy.pearl@gmail.com
Submitted on: 1/30/2012

Comments:

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Howard Jones
Organization: Individual
E-mail: harrisburg703@AOL.com
Submitted on: 1/30/2012

Comments:

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: William Hinshaw
Organization: Individual
E-mail: bc.hinshaw@sbcglobal.com
Submitted on: 1/31/2012

Comments:

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Grant Miller
Organization: Individual
E-mail: gmillersprint2@earthlink.net
Submitted on: 1/31/2012

Comments:

Testimony for CPN 2/1/2012 9:00:00 AM SB2429

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Willard W. Gusler Jr.
Organization: Individual
E-mail: BGRock24@aol.com
Submitted on: 1/31/2012

Comments: