

Honolulu, Hawaii

MAR 24 2011

RE: H.B. No. 1411
H.D. 2
S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committee on Commerce and Consumer Protection, to which was referred H.B. No. 1411, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO MORTGAGE FORECLOSURES,"

begs leave to report as follows:

The purpose and intent of this measure is to amend the mortgage foreclosure process by:

- (1) Repealing the original nonjudicial power of sale foreclosure process under part I of chapter 667;
- (2) Clarifying the alternate nonjudicial power of sale foreclosure process under part II of chapter 667;
- (3) Strengthening the laws governing mortgage servicers; and
- (4) Creating an alternative dispute resolution process for mortgage foreclosures.

Your Committee received testimony in support of this measure from the Office of Consumer Protection of the Department of Commerce and Consumer Affairs, Faith in Action for Community Equity, Catholic Charities Hawai'i, National Federation of Filipino American Associations, My Mommy Daycare and Academy, and nine private individuals. Your Committee received testimony in support of the intent of this measure from the Judiciary and Legal Aid Society of Hawai'i. Your Committee received testimony in



opposition to this measure from the Hawaii Bankers Association, Hawaii Credit Union League, Hawaii Financial Services Association, the Land Use Research Foundation of Hawaii, and the Mortgage Bankers Association of Hawaii. Your Committee received comments on this measure from the Division of Financial Institutions of the Department of Commerce and Consumer Affairs, Hawaii Association of REALTORS, Hawaii Chapter of the Community Associations Institute, and three private individuals.

Your Committee finds that that the number of residential mortgage foreclosures in Hawaii has increased so rapidly during this current period of economic recession that Hawaii has gained the unfortunate distinction of having one of the highest foreclosure rates in the nation. Your Committee further finds that the Mortgage Foreclosure Task Force created by Act 162, Session Laws of Hawaii 2010, proposed amendments to the foreclosure process that reflect the consensus of a diverse group of stakeholders in the mortgage foreclosure process. Your Committee also finds that additional amendments to the mortgage foreclosure process have been proposed by professionals in the industry based on best practices from throughout the country.

Your Committee finds that implementing much-needed reforms to the mortgage foreclosure process will protect Hawaii's residents from predatory practices by lenders and will help many homeowners avoid foreclosure or mitigate damages when foreclosure is inevitable. Finally, your Committee finds that the alternative dispute resolution process for nonjudicial foreclosures contained in this measure is modeled on the highly successful foreclosure mediation program implemented by the Nevada state legislature.

Your Committee has amended this measure by:

- (1) Reorganizing its contents into five parts for clarity;
- (2) Adding a purpose section to reflect the findings of the Legislature and the contents of the measure;
- (3) Retaining the original nonjudicial power of sale foreclosure process found in part I of chapter 667 in order to allow the Mortgage Foreclosure Task Force to make recommendations regarding this process in its scheduled report to the Legislature prior to the Regular Session of 2012;



- (4) Deleting provisions related to foreclosure of liens for unpaid assessments by condominiums and planned community associations;
- (5) Deleting amendments to the statutory purpose of the Center for Alternative Dispute Resolution;
- (6) Adopting language regarding the mandatory alternative dispute resolution process and the conversion of nonjudicial foreclosures to judicial foreclosures recommended by the Mortgage Foreclosure Task Force;
- (7) Providing that the mandatory alternative dispute resolution process for foreclosures shall terminate on June 30, 2016;
- (8) Specifying that conversion to judicial foreclosure and mandatory alternative dispute resolution are mutually exclusive remedies for mortgagors in a foreclosure action;
- (9) Specifying that the Center for Alternative Dispute Resolution shall annually report to the Legislature on the progress and outcomes of the mandatory dispute resolution program;
- (10) Providing a three-month moratorium on all foreclosure actions to allow for the implementation of the alternative dispute resolution and judicial conversion provisions of this measure;
- (11) Making conforming amendments to related statutory sections; and
- (12) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

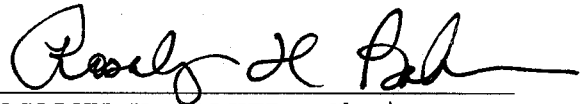
Your Committee notes that the amendments to the provisions of this measure implementing the Mortgage Foreclosure Task Force recommendations and establishing an alternative dispute resolution process for nonjudicial foreclosures incorporate the language of S.B. No. 652, S.D. 1, and S.B. No. 651, S.D. 1, respectively, which your Committee previously heard and recommended for passage of Second Reading. Your Committee also notes that it declined to repeal the original nonjudicial power of sale foreclosure process



as recommended by some consumer advocates and others in deference to the Mortgage Foreclosure Task Force, which has reported that it plans to consider this issue in the coming year. Your Committee further notes that the Mortgage Foreclosure Task Force was directed by Act 162, Session Laws of Hawaii 2010, to continue its work through June 30, 2012 and to submit a final report to the 2012 legislature. Finally, your Committee notes that the Mortgage Foreclosure Task Force has worked diligently and collaboratively to assist the Legislature on this important public policy matter.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1411, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1411, H.D. 2, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,



ROSALYN H. BAKER, Chair



The Senate
Twenty-Sixth Legislature
State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 1411, HD2	CPN, WAM	3-23-11		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
TANIGUCHI, Brian T. (VC)	✓			
GALUTERIA, Brickwood	✓			
GREEN, M.D., Josh	✓			
NISHIHARA, Clarence K.	✓			
SOLOMON, Malama				✓
SLOM, Sam		✓		
TOTAL	5	1	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes