

STAND. COM. REP. NO.

2851

Honolulu, Hawaii

MAR 20 2012

RE: H.B. No. 2019  
H.D. 1  
S.D. 1

Honorable Shan S. Tsutsui  
President of the Senate  
Twenty-Sixth State Legislature  
Regular Session of 2012  
State of Hawaii

Sir:

Your Committee on Commerce and Consumer Protection, to which was referred H.B. No. 2019, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO MORTGAGES,"

begs leave to report as follows:

The purpose and intent of this measure is to prohibit deficiency judgments to recover the remaining balance on mortgage loans for certain residential property sold in a foreclosure action or short sale.

Your Committee received testimony in support of this measure from the Office of Consumer Protection of the Department of Commerce and Consumer Affairs, Legal Aid Society of Hawaii, and two individuals. Your Committee received testimony in opposition to this measure from the Hawaii Bankers Association, Hawaii Financial Services Association, and Hawaii Credit Union League. Your Committee received comments on this measure from the Department of Commerce and Consumer Affairs, the Hawaii Association of REALTORS, and Anderson Lahne & Fujisaki LLP.

Your Committee finds that this measure is intended to prevent situations where a lender purchases a foreclosed property with a low bid, or agrees to sell a property at a price less than what is owed on the mortgage loan, and then seeks to recover in court the difference in sale price and mortgage owed from the prior homeowner. The difference in sale price and mortgage owed to a creditor is known as a deficiency.

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Your Committee further finds that deficiency judgments, or the right to seek a deficiency, may be sold to third parties who purchase the right to collect deficiencies at a deep discount. This often results in abusive debt collection practices by third parties who aggressively attempt to collect on deficiencies, regardless of a former homeowner's ability to pay.

Your Committee also finds that losing a home through foreclosure is devastating to homeowners and their families, and has lasting consequences. Credit scores of consumers who default on their mortgages and lose property through foreclosure fall significantly. A foreclosure stays on a consumer's credit report for seven years and makes obtaining a different mortgage extremely difficult. Your Committee finds that the added imposition of personal liability on a homeowner, with the indefinite threat of garnishing wages or seizing other assets, is not in the best interest of Hawaii consumers.

Your Committee notes that other states have strong anti-deficiency laws designed to protect buyers of residences whose homes subsequently go into foreclosure from liability to the lender in the event the proceeds from a foreclosure sale are not enough to satisfy the outstanding balance of a loan. California's anti-deficiency laws were first enacted during the Great Depression. Existing California law prohibits a secured lender, in certain circumstances, from pursuing a borrower for an unpaid balance when proceeds from a foreclosure sale do not fully pay the outstanding balance owed on the borrower's secured debt. Your Committee concludes that the State's homeowners would benefit if similar anti-deficiency protections were enacted in Hawaii.

Accordingly, your Committee has amended this measure by:

- (1) Requiring a court to find the fair market value of the real property or interest in real property prior to issuing a money judgment following a power of sale foreclosure;
- (2) Prohibiting deficiency judgments from being obtained when a purchase money lender forecloses on real property in certain circumstances;



- (3) Establishing the amount of attorney's fees and other costs a mortgagor may be required to pay in specific circumstances;
- (4) Prohibiting any deficiency judgment when the mortgagee has elected to foreclose under the power of sale contained in the mortgage;
- (5) Clarifying provisions that prohibit a mortgage holder from seeking to recover the remaining balance on a mortgage loan for certain residential property sold in a short sale;
- (6) Clarifying that anti-deficiency protections do not apply if the mortgagor is a corporation, limited liability company, limited partnership, or political subdivision of the State;
- (7) Clarifying that any purported waiver of the anti-deficiency protections contained in this measure is void and against public policy;
- (8) Deleting language that would have added a new section to part I of chapter 667, Hawaii Revised Statutes, prohibiting deficiency judgments on foreclosure actions; and
- (9) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

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. 2019, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2019, H.D. 1, S.D. 1, and be referred to the Committee on Judiciary and Labor.



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

*Rosalyn H Baker*

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.:* <b>HB 2019, HD1</b>	Committee Referral: <b>CPN, JDL</b>	Date: <b>3-14-12</b>		
<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				
<b>Members</b>	<b>Aye</b>	<b>Aye (WR)</b>	<b>Nay</b>	<b>Excused</b>
BAKER, Rosalyn H. (C)	✓			
TANIGUCHI, Brian T. (VC)	✓			
GALUTERIA, Brickwood	✓			
GREEN, M.D., Josh	✓			
NISHIHARA, Clarence K.	✓			
SOLOMON, Malama	✓			
SLOM, Sam				✓
<b>TOTAL</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>1</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
<b>Distribution:</b> Original                     Yellow                     Pink                     Goldenrod File with Committee Report                     Clerk's Office                     Drafting Agency                     Committee File Copy				

\*Only one measure per Record of Votes