



The Judiciary, State of Hawai‘i
Ka ‘Oihana Ho‘okolokolo, Moku‘āina ‘o Hawai‘i

Testimony to the Thirty-Third Legislature, 2026 Regular Session

House Committee on Judiciary & Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Mahina Poepoe, Vice Chair

Thursday, February 5, 2026, 2:00 p.m.
State Capitol, Conference Room 325 & Via Videoconference

By
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WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1992, Relating to Foreclosures.

Purpose: Authorizes the public sale of a foreclosed mortgaged property or unit on a state website to be developed and maintained by the Judiciary. Requires the public notice of the public sale of the mortgaged property or unit to include the date, time, and website address of the sale if the sale is to be held on a state website. Appropriates funds.

Judiciary’s Position:

The Judiciary respectfully opposes this bill to the extent that it requires the Judiciary to develop and maintain a website to host non-judicial foreclosure sales.

In general, the foreclosure laws in the State of the Hawai‘i have two processes.

First, a court supervised process, commonly called a judicial foreclosure, is set forth in Part IA of Chapter 667.

Second, a non-court supervised process commonly referred to as a “non-judicial foreclosure” or a “power of sale.” The “power of sale” is a reference to a provision or clause in a contract allowing the foreclosing lender or apartment association to conduct a foreclosure sale on its own, without court supervision. This is a type of self-help remedy. “[A] nonjudicial



foreclosure, by its very nature, avoids the court system. Mount v. Apao, 139 Hawai‘i 167, 175, 384 P.3d 1268, 1276 (2016).

This bill seeks to amend the power of sale foreclosure processes in Parts II and VI of Chapter 667 — which involve non-judicial foreclosures.

It is inappropriate for the Judiciary to host public sales on non-judicial foreclosures. Notably, since 2011 and 2012, HRS §§ 667-25(b) and 667-95(b) have expressly prohibited non-judicial foreclosure sales on judiciary property. Both statutes provide that “no public sale shall be held on grounds or at facilities under the administration of the judiciary.” See generally 2011 Haw. Sess. Laws Act 48 & 2012 Haw. Sess. Laws. Act 182. The reasoning for these prohibitions, to not create an appearance of court sanctioning of nonjudicial foreclosure sales, also applies here. Any non-judicial foreclosure sales performed by a foreclosing mortgagee or lender should not bear the official appearance of being approved by the court by allowing a public sale at the courthouse when, in fact, the sale is not a court supervised process. See generally Preliminary Report of the Mortgage Foreclosure Task Force to the Legislature for the Regular Session of 2011 (Dec. 2010) at PDF 10 (explaining that the “use of court facilities might confuse the public about whether or not nonjudicial foreclosures are court-sanctioned.”). Also, legal issues arise in lawsuits regarding non-judicial foreclosures processes. For these reasons, the Judiciary is not the appropriate branch of government to host non-judicial foreclosure sales, whether on its properties or on a website it maintains.

The Judiciary defers to the Legislature on whether an executive department is more appropriate.

Thank you for the opportunity to testify on this measure.