



HB 522 Relating to Foreclosures

Committee on Housing

February 4, 2009
309

9:00 am

Room

The Office of Hawaiian Affairs supports the purpose and intent of HB 522.

The Hawaii Housing Policy Study Update, 2006 confirmed Hawaiians are more likely to be renters and most may face significant challenges because of their relatively low income per household member.

The Office of Hawaiian Affairs advocates for systemic changes to address the immediate needs of our citizens living in rental units that may be foreclosed and are given notice to vacate. Sufficient notice is a systemic change in law that can be applicable beyond the present economic situation of the real estate market. Sufficient notice is also realistic in addressing the time needed to locate another rental.

We recognize that physical solutions by themselves will not solve social and economic problems, but neither can economic vitality, community stability, and environmental health be sustained without a coherent and supportive physical framework.

Mahalo nui loa for the opportunity to provide this testimony.

HAWAII FINANCIAL SERVICES ASSOCIATION

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February 4, 2009

Rep. Rida Cabanilla, Chair
and members of the House Committee on Housing
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 522 (Foreclosures)**
Hearing Date/Time: Wednesday, February 4, 2009, 9:00 A.M.

I am the attorney for the Hawaii Financial Services Association ("HFSA"). The HFSA is the trade association for Hawaii's financial services loan companies which are regulated by the Hawaii Commissioner of Financial Institutions.

The HFSA wants to **comment** on this Bill.

The purpose of this Bill is to require mortgagees to provide notice to tenants of foreclosure and give them 45 days from the date of notice to vacate when their rental property is disposed of in a non-judicial foreclosure.

Based on my experience as an attorney in private practice who has actively handled foreclosures for 31 years since 1978, I would like to make the following comments:

1. It is important that a residential tenant know if his or her rental of a real property will be adversely affected by a foreclosure action against the owner/landlord's interest in that property. The tenant also needs to be given adequate notice before being required to vacate the property.

2. This Bill only applies to non-judicial (power of sale) foreclosures and not to judicial foreclosures. The description of this Bill is incorrect on the last page.

3. This Bill requires the mortgagee (lender) to give the tenant notice of a non-judicial (power of sale) foreclosure 45 days before the commencement of the non-judicial (power of sale) foreclosure. This provision is problematic.

Before starting a foreclosure and even during the foreclosure proceeding, the foreclosing mortgagee (lender) does not always know whether the real property being foreclosed on is occupied by a tenant. The foreclosing lender should not be the party responsible for giving notice of an upcoming or pending foreclosure to the tenant of the owner/landlord being foreclosed on. The owner/landlord should be the party responsible for giving the notice.

4. This Bill requires that the notice given to the tenant state "that the tenant has forty-five days to vacate the premises from the date the tenant receives the notice". This may result in a tenant prematurely or unnecessarily vacating the property because the foreclosure sale might not take place if the owner/landlord is able to reinstate the mortgage loan.

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5. Parts of this Bill would make changes to Part II of Chapter 667 of the Hawaii Revised Statutes ("HRS"). Part II is the "Alternate Power of Sale Foreclosure Provisions". I was involved in drafting Part II during the 1997 and 1998 legislative sessions. However, before the legislation passed in 1998, the legislature made certain changes to Part II that made it unusable and unworkable. As a result, no lender uses the Part II alternate power of sale provisions which are in the HRS Sections 667-21 through 667-51. Instead, all non-judicial foreclosures use the provisions in HRS Sections 667-5 through 667-10, much of which were first enacted 135 years ago in 1874.

I am willing to work with your Committee to revise Part II of Chapter 667 and this Bill as needed.

Thank you for considering our comments.



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(MSCD/hfsa)



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Presentation to the House Committee on Housing
Wednesday, February 4, 2009, at 9:00AM

Testimony for HB 522 Relating to Foreclosures

TO: The Honorable Rida Cabanilla, Chair
The Honorable Pono Chong, Vice Chair
Members of the House Committee on Housing

My name is Neal Okabayashi and I testify for the Hawaii Bankers Association. We oppose the bill as introduced because of the ambiguities in the language.

I will note that the lender does not necessarily know that the property is occupied by a tenant.

We do not oppose providing notice to the tenant. The problem is that it is unclear what constitutes notice and how must it be delivered. For example, is it sufficient to post the notice on the door to the dwelling. To us, that is a sufficient, good faith effort to notify.

With clarification of the notice requirements, we do not oppose the concept of providing notice to the tenant 45 days prior to the date the tenant may vacate the premises.

For these reasons, we oppose HB 522.