

SB 784

**TESTIMONY IN SUPPORT OF THE INTENT OF
SB784 - RELATING TO REAL PROPERTY**

February 10, 2009 at 2:15 p.m.

The Legal Aid Society of Hawaii hereby provides testimony to the House Committee on Housing on SB784 – Relating to the Real Property, supporting the intent of the bill, but requesting amendments.

The Legal Aid Society of Hawaii provides free legal services to the low-income population of the State of Hawaii. In 2008, we received over 1,400 calls on housing related cases, approximately 600 of which dealt directly with landlord tenant issues. With the growing number of foreclosures in Hawai'i, we started to receive more calls in 2008 from tenants who were renting properties that were being foreclosed on. In many of these cases tenants are left in situations with no knowledge that a foreclosure is taking place, not knowing who to pay rent to, whether they will have a place to live after the foreclosure and not knowing what will happen to their security deposit.

We believe that this bill does aim to provide some of the initial protections needed by tenants facing eviction due to a foreclosure, however we believe that a comprehensive bill to protect tenants should require:

- (1) Notice to the renter that the property is being foreclosed on, including information on who rent should be paid to and a statement of their rights;
- (2) At least 30 days prior to the sale the owner shall provide notice on the date of the sale shall be sent to the tenant;
- (3) New owners to honor a lease that existed prior to the notice of foreclosure;
- (4) Owners to transfer the security deposit to the new owner or if deposit is not transferred, the tenant can use the security deposit as credit for one months rent;
- (5) Upon the approval of a sale at auction by a court pursuant to part I of chapter 667 or the recordation of the affidavit and conveyance document pursuant to section 667-33, notice be provided to the tenant by both the owner and new owner that the sale has been completed and that rent shall now be paid to the new owner.

As such, we would recommend that the committee replace the language of this bill with the attached revised bill which incorporates these five provisions.

Thank you for this opportunity to testify.

Sincerely,

Sheila P. Lippolt
Supervising Attorney
Housing Unit

Report Title:

Rental Agreement; Applicability After Foreclosure

Description:

Makes a mortgagee in possession or purchaser of residential rental property that has been foreclosed upon subject to a rental agreement between the previous landlord and a tenant.

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

S.B. NO. 784

A BILL FOR AN ACT

RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to address the situation of a residential tenant after a foreclosure of the tenant's rental unit. More specifically, this Act subjects the mortgagee in possession or purchaser of the rental unit to the rental agreement between the former landlord and tenant until the agreement expires.

SECTION 2. Section 521-45, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Unless otherwise agreed, a landlord who ~~[conveys]~~:

(1) Conveys premises ~~[which]~~ that include a dwelling unit subject to a rental agreement in a good faith sale to a person not connected with the landlord and discloses, in writing, in any form of contract for the sale of such premises; or

(2) Loses, because of a foreclosure sale or action, the landlord's interest in premises that include a dwelling unit subject to a rental agreement;

is relieved of liability under the rental agreement and under this chapter as to events occurring subsequent to the conveyance.

(b) The new owner who purchases or comes into possession of the premises referred to in subsection (a) is liable under the rental agreement until the agreement expires and under this chapter."

SECTION 3. Chapter 521, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . FORECLOSURE OF DWELLING UNIT

§521-A Notice of foreclosure; foreclosure sale. (a) Before the commencement of a tenancy, the landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall disclose to the tenant in writing if the dwelling unit being rented is the subject of a pending foreclosure action pursuant to chapter 667. If the dwelling unit is subject to a pending foreclosure action, the landlord or authorized person shall provide the tenant with a copy of:

(1) The decree of foreclosure pursuant to section 667-1;

(2) Notice of foreclosure pursuant to section 667-5; or

(3) Notice of default pursuant to section 667-22, together with a written notice substantially in the following form:

"As is set forth in the attached notice, this property is undergoing foreclosure. For more information on this action, you should contact the mortgagee, attorney of the mortgagee, or person responsible for issuing the attached notice

A sale at auction may or may not occur as a result of this foreclosure. Currently, the sale of this property has been set for _____ (time, date, and place) or no date for sale of this property has been established. You will receive written notice of the sale at least thirty days before it takes place.

If there is a sale of this property at auction, the following will occur:

If you entered into your rental agreement before _____ (date the foreclosure action was initiated), your current rental agreement shall remain in effect after the purchase, however the new owner is not required to renew the agreement after it expires.

If you entered into your rental agreement after _____ (date the foreclosure action was initiated) and the agreement included a notice of the foreclosure, your rental agreement will become a month-to-month rental agreement on the date a court approves the sale. The new owner may offer to honor your current rental agreement but is not required to do so. You may accept or reject any such offer.

If you entered into your rental agreement after _____ (date the foreclosure action was initiated) and the agreement did not include a notice of the foreclosure, within fourteen days after purchasing the home, the new owner must give you a written offer to honor your current rental agreement. If you do not accept that offer, your rental agreement will become a month-to-month agreement.

During the pendency of the sale, rent shall be paid to the owner with whom you have the rental agreement. Following the sale, both the owner and the new owner shall provide notice to you as to who and where your rent shall be directed. Your security deposit shall be transferred from the owner to the new owner.

Note: With a month-to-month rental agreement, pursuant to Chapter 521, the landlord may terminate the agreement by providing written notice of termination to the tenant at least forty-five days prior to the date of termination and the tenant may terminate the agreement by providing written notice of termination to the landlord at least thirty days prior to the date of termination."

(b) At least thirty days prior to a foreclosure sale, the landlord shall provide to the tenant a copy of the notice of foreclosure sale pursuant to part I of chapter 667 or public notice of public sale pursuant to section 667-27.

§521-B Leases, Foreclosure sale. (a) Except as provided in this section, any rental agreement for a residential property that is the subject of a foreclosure action shall remain into effect upon the approval of a sale at auction by a court pursuant to part I of chapter 667 or the recordation of the affidavit and conveyance document pursuant to section 667-33.

(b) If a tenant entered into a rental agreement after foreclosure begins and the tenant was not provided the notice of a foreclosure action or notice of sale as required by section 521-A, an owner who purchases the property at auction, within fourteen days after that purchase is concluded with the issuance of a court order pursuant to part I of chapter 667 or recordation of the affidavit and conveyance document pursuant to section 667-33, shall offer to honor the existing rental agreement. If the tenant does not accept that offer within fourteen days, the rental agreement shall convert to a month-to-month rental agreement.

§521-C Payment of Rent. (a) During the pendency of a sale, rent will continue to be paid to the landlord with whom the tenant has the lease.

(b) Upon the approval of a sale at auction by a court pursuant to part I of chapter 667 or the recordation of the affidavit and conveyance document pursuant to section 667-33, if the tenant is to remain in the property, notice shall be provided to the tenant by both the landlord and new owner as to who and where the rent shall be directed to.

§521-D Security Deposit. Upon notice of approval of a sale at auction by a court pursuant to part I of chapter 667 or the recordation of the affidavit and conveyance document pursuant to section 667-33, if the tenant is to remain in the property, the owner shall transfer to the new owner the security deposit previously paid by the tenant; if the security deposit is not transferred the tenant may use the previously paid security deposit as a credit toward one month's rent.

§521-E Remedies. If a landlord or a successor in interest either fails to provide the written notices as required by section 521-A, fails to honor a rental agreement as required by section 521-B; or fails to provide notice to the tenant as to whom rent shall be directed to as required by section 521-C, or if a landlord fails to transfer the tenant's security deposit as required by section 521-D, a tenant may recover, in addition to any other remedy under law:

(1) The greater of the actual damages or one month's rent plus the security deposit amount and reasonable attorney's fees; or

(2) Obtain injunctive relief to enforce the rental agreement, or both."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2009.



February 9, 2009

The Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services
State Capitol, Room 016
Honolulu, Hawaii 96813

RE: S.B. 784 Relating to Real Property
Hearing date: February 10, 2009 @ 2:15 p.m.

Aloha Chair Chun Oakland, Vice Chair Ihara, Jr. and members of the Committee.

I am Myoung Oh, here to testify on behalf of the Hawai'i Association of REALTORS® (HAR) and its 9,600 members. HAR **expresses concerns** regarding **S.B. 784** which requires tenants of rental property be given sixty days written notice to vacate when the rental property is sold in foreclosure.

The companion to this bill, H.B. 331 was heard on February 4, 2009, and Chair Cabanilla sought feedback after the hearing from various stakeholders to address their concerns with the bill. We submitted our suggested amendments to the Committee, and the bill is scheduled for decision making on Wednesday, February 11, 2009 at 10:30 a.m.

As with H.B. 331, HAR has some concerns with S.B. 784 as written, including the following:

1. Property managers are not in a position to receive notice of foreclosure proceedings and should not be required to provide information unknown to them; and
2. The bill does not address the issue of what happens to a tenant's security deposit with the original landlord, if a new lease or rental agreement is created between the tenant and a new owner. The responsibility for delivering and/or accepting the security deposit should be clarified.

If this Committee is inclined to pass the bill, HAR suggests the following amendments:

1. The rights and responsibilities of the mortgage lender, landlord, property manager, and/or new owner should be clearly specified;
2. Notice requirement should 45 days, rather than 60 days. 45 days is the same number of days notice a landlord must give to terminate a rental agreement;
3. An effective date of November 1, 2009 should be specified so that HAR may review and revise its Rental Agreement and other forms accordingly.

Mahalo for the opportunity to testify.

HAWAII FINANCIAL SERVICES ASSOCIATION

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February 10, 2009

Senator Suzanne Chun Oakland, Chair
and members of the Senate Committee on Human Services
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 784 (Real Property)**
Hearing Date/Time: Tuesday, February 10, 2009, 2:15 P.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 that tenants of rental property be given sixty days written notice to vacate when the rental property is sold in foreclosure. It requires that tenants of rental property be notified when foreclosure proceedings have begun on the rental property.

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. 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.

3. This Bill requires the new owner of the foreclosed property to give 60 days prior notice to vacate the property. This provision is problematic.

We recommend instead that after the foreclosure sale is held and after title to the real property has changed to the new owner, the tenant's rental agreement should be converted to a month-to-month tenancy. The new owner who purchases the real property from a foreclosure sale should not be bound to a rental agreement that is longer than month-to-month. Under the Residential Landlord Tenant Code, a month-to-month tenant needs to be given 45 days advance notice to vacate. That seems reasonable and should apply here. Of course, the new owner and the tenant can try to agree on a longer rental term.

I am willing to work with your Committee on any revisions to this Bill.

Thank you for considering our comments.


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