

**HB 304**

**LEGAL AID**  
SOCIETY OF HAWAII

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**The Honorable Robert N. Herkes, Chair**  
**The Honorable Glenn Wakai, Vice Chair**  
**House Committee on Consumer Protection and Commerce**

**Hearing : Monday, February 1, 2010, 2:00 p.m.**  
**State Capitol, Conference Room 325**

**IN SUPPORT OF HB 304**

**Chair and Members of the Committee:**

My name is Ryker Wada, representing the Legal Aid Society of Hawai'i ("LASH"). I am advocating for our clients who include the working poor, seniors, citizens with English as a second language, disabled, other low and moderate income families who are consumers and families facing default and foreclosure on their homes. We are testifying in support of HB 304 as it may strengthen protections for consumers in the State of Hawaii.

I supervise a housing counseling program in the Consumer Unit at the Legal Aid Society of Hawaii. The Homeownership Counseling Project provides advice to individuals and families about homeownership issues. Specifically the project provides information on how to prepare yourself before purchasing a home, what to do if you are in danger of losing your home through foreclosure and issues relating to predatory mortgage lending.

HB 304 seeks to provide more time for a defaulting homeowner facing foreclosure, by increasing the required time between assessment and judgment, and the time after contact is made with a homeowner before filing a notice of default under HRS 667. Additionally timelines would presumably be increased for differing times required under the power of sale portion of HRS 667.

As HB 304 is written, no specifics are given for the increased timelines. Mortgages that are foreclosed using the power of sale, generally speaking, happen much more quickly than mortgages that are foreclosed under the more traditional judicial approach. In general, any increase in time required before negative action is taken toward a homeowner may allow for more time for that homeowner to cure any default they might have. Because specifics have not been filled in, LASH would caution this Committee from lessening any timelines for foreclosure actions.

The Legal Aid Society of Hawaii supports the bill, and its efforts to protect the consumers in the State of Hawaii.

**Conclusion:**

We appreciate these committees' recognition of the need to protect consumers in the State of Hawaii. HB 304 attempts to strengthen protections for consumers by requiring mortgage lenders to provide more time before instituting varying foreclosure proceedings. We support HB 304 its attempts to protect homeowners in the State of Hawaii. Thank you for the opportunity to testify.

[REDACTED]

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**From:** Lori Enriquez [REDACTED]  
**Sent:** Sunday, January 31, 2010 4:10 PM  
**To:** CPCtestimony  
**Subject:** Testimony on HB 304 relating to foreclosures

HB 304 Relating to Foreclosures

Lori Enriquez  
PO Box 1518  
Pahoa, HI 96778

Aloha! My name is Lori Enriquez and this subject is very personal to me as I was in foreclosure not to long ago due to unforeseen circumstances. I lost all my income about a year ago due to a partnership dispute and being terminated from the County of Hawaii, when they could not place me through their return to work program for injured workers and my workers compensation was terminated and has still not been reinstated. My husband owns his own construction company here in Puna where we are from. He purchased a brand new backhoe in 2006. The machine is our lifeline for survival. His backhoe was under warranty for 3 years and right around the same time my income stopped the backhoe warranty expired and the company refused to extend the warranty. The machine has been in the shop over and over and over for the very same problem, thus we have lost business and we were unable to pay our bills. The backhoe is in the shop again, we have a loaner for the first time in four years, as now the shop nrealizes that something has been wrong with the machine since we purchased it brand new and that it is not self supporting as it should be. . I tried to work with the mortgage company, before they posted in the paper. its called a non judicial foreclosure. It really is a bad law that we have in Hawaii. The mortgage companies have all the rights and we the borrower have none. I had no ability through the non judicial foreclosure process to mediate or find a solution, it was three times printed in the paper and then the potential to auction of my family home, all because we lost our income. I did not know until the day before the auction if the judicial foreclosure had been postponed. I had many sleepless nights and cried for hours and hours. My home is still not safe from the non- judicial foreclosure. Every month it goes up on the auction block only to have the auction postponed another month while I am in a forbearance/ modification process that probably wont work anyways. As modifications have not been a solution. Please repeal the HRS 667. Mahalo



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Presentation to the House Committee on Consumer Protection & Commerce

Monday, February 1, 2010, at 2:00 pm., Room 325

Testimony for HB 304 Relating to Foreclosures

TO: The Honorable Robert N. Herkes, Chair  
The Honorable Glenn Wakai, Vice Chair  
Members of the House Committee on Consumer Protection & Commerce

My name is Neal Okabayashi, and I represent the Hawaii Bankers Association. We oppose HB 304 because it is not needed and more importantly, it is likely to exacerbate the problem of homeowners instead of helping them as this bill intends. This bill seeks to extend foreclosure dates which may appear, at first blush, be helpful to help those in need. However, this bill will have the opposite effect of accelerating foreclosure time tables and hurt the very ones the bill seeks to help.

We are aware of the foreclosure activity in our nation. Hawaii has been fortunate in that we have escaped many of those travails, in part, because local banks were prudent and avoided nontraditional mortgages which make it difficult to work out a delinquent loan. That Hawaii has been relatively unfortunate is of no consequence or importance to one who has been struck by an economic event which has led to a defaulted home loan. In recognition of these adverse times, Hawaii banks have been very active in trying to assist those who want and need help with their delinquent loans.

Banks are impacted adversely by foreclosures as well; obviously nowhere close to the same scale as a borrower. Banks make money by making loans and having borrowers repay them. When borrowers do not repay their loans, we do not make money. It is an urban myth that banks want to take the borrower's property. We do not. That would only increase our loss. If the homeowner cannot sell the property to pay off the loan, what makes anyone think the bank can do that?

The primary reasons for consumer loan default have not changed: unemployment/underemployment or a reduction in income due to loss of a second job or furlough, health care costs and divorce. We know that homeowners in Hawaii will do their utmost to

preserve their homes, and that is evidenced by lower default rates for home mortgages than for unsecured debt such as credit cards.

What has changed is the extent of banks efforts to avoid foreclosure. Banks try to contact delinquent borrowers. If we are able to talk to them, we are able to help them. If we are not able to talk to them, we are unable to help them and because time does not improve the effect of unemployment/underemployment, health care costs and divorce, we are forced to undertake foreclosures. Because time does not improve the three factors of unemployment/underemployment, health care costs and divorce, extending the time frame for foreclosure as this bill seeks to do will not help homeowners.

We should also remember that in Hawaii, many of the mortgages are sold to mainland investors, mainly Fannie Mae and Freddie Mac, and to an extent, the process is controlled by the owner of the mortgage.

However, the real problem of helping borrowers is the inability to talk story with them. Last year, Vikram Pandit, the head of Citicorp, one of the largest mortgage producers in the nation said the biggest obstacle to foreclosure mitigation was getting the borrower to talk to Citicorp.

Every bank handles their delinquent loans differently but to give this Committee a flavor of the effort we put into trying to make things work, let me give you an overview of the process. Within 15 days of the delinquency, we call the borrower to try to establish dialogue and find out the reasons for the delinquency, and ways we can help. If there is no response, 45 days after delinquency, a demand letter is sent out which gives them 30 days to bring the loan current. If there is still no response, then foreclosure ensues but by this time, the loan is 4 months late. If the borrower talks to us, we can use this pre-foreclosure period to try to help the borrower.

If this bill is passed, it will mean that the actual foreclosure process will be delayed. This means more months that the loan is delinquent. To avoid that undesirable situation, is likely that the foreclosure will commence earlier which means less time to assist the borrower.

Banks employ a variety of techniques to help borrowers. There are several loan modification programs. Many lenders use the HAM guidelines which stands for the Home Affordable Modification Program which is a program that is supervised by the U.S. Treasury. All loan modification decisions are made by the US Treasury. This is probably the largest loan modification program which applies to Fannie and Freddie purchased loans.

Other loan modification techniques include reamortizing the loan, interest rate reduction, reduction of monthly payments, deferral of loan payments – the decision is based on the borrower's financial situation and his budget. It is a special challenge when the borrower is unemployed.

The reality is that for some borrowers, the best solution is to sell the house. If they are willing to do so, we do give them some time to accomplish the task.

The best solution for struggling homeowners is a vibrant economy. Not only does this mean jobs, even if the job may not be sufficient to pay the loan, it also means rising home prices that can, at least, mean a successful sale of the home for a fresh start. The second best solution is for borrowers to contact their lender at the first sign of trouble. Almost every, if not all, credit counselors would advise that. We cannot engage in loan modification conversation to help a borrower if they are not talking to us. Our estimate is that we have been able to help a majority of the borrowers that we actually spoke with. The worst possible solution is to elongate foreclosure periods which means greater losses for the banks or the person who bought the loan which simply means less time to work with a borrower so we might help them.

# HAWAII FINANCIAL SERVICES ASSOCIATION

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February 1, 2010

Rep. Robert N. Herkes, Chair  
and members of the House Committee on Consumer Protection & Commerce  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **House Bill 304 (Foreclosures)**  
**Hearing Date/Time: Monday, February 1, 2010, 2:00 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. Financial services loan companies make mortgage loans and other loans.

The purpose of this Bill is to provide a vehicle to allow more time to a defaulting mortgagor (borrower) facing foreclosure.

The HFSA **opposes this Bill as drafted**. This testimony is based, in part, on my experience as an attorney who has actively done foreclosures for 32 years since 1978.

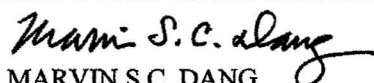
1. Section 1 of this Bill states that if there is a judicial foreclosure of real property, the court shall allow at least an unspecified number of days between the "assessment" and "judgment". We don't believe there should be a statutory time constraint for this phase of the judicial foreclosure. A judicial foreclosure is an equitable proceeding. For this reason, if a mortgagor (borrower) shows good cause to the judge why there should be a delay in the foreclosure, the judge already has the power to stay, i.e. delay, the appointment of a foreclosure commissioner or the confirmation of a sale of the property.

2. Section 2 of this Bill provides that in a power of sale (non-judicial) foreclosure of real property, the mortgagee (lender) shall allow at least an unspecified number of days after "contact" is made with the mortgagor (borrower) before "filing" a "notice of default". It's not clear from this Bill what is a "notice of default" for a non-judicial foreclosure and where that notice is "filed". And it's not apparent why this provision would apply to non-judicial foreclosures, but not to a judicial foreclosures.

3. A lender should not be constrained by a statutory time restriction as contemplated by Section 2 of this Bill. A foreclosure action is the last option for a lender because it's a "lose-lose" situation. That's why during the first two or three months when a loan is in delinquent, the lender attempts to contact its mortgagor (borrower) to work on alternatives to foreclosure. But there are instances where contact cannot be made despite the best efforts of the lender. And there are situations where after contact is made, the borrower is realistically unable to bring the loan current or to work with the lender to modify the loan terms. Additionally, if the loan is a Fannie Mae or Freddie Mac loan, there are time frames that the lender must follow to move the account to foreclosure. Creating a statutory delay in the process is not warranted.

4. Sections 3 through 7 of this Bill make changes to Part II of Chapter 667 of the Hawaii Revised Statutes ("HRS"). Part II is the "Alternate Power of Sale Foreclosure Process". 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 essentially unusable and unworkable. As a result, no lender today uses the Part II alternate power of sale process which are in HRS Sections 667-21 through 667-51. Instead, all non-judicial foreclosures are initiated under the provisions in HRS Sections 667-5 through 667-10, much of which was first enacted 136 years ago in 1874.

We are willing to work with your Committee to revise this Bill if necessary. Thank you.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association



*Mortgage Bankers Association of Hawaii*  
*P.O. Box 4129, Honolulu, Hawaii 96812*

February 1, 2010

The Honorable Robert Herkes, Chair and  
Members of the House Committee on  
Consumer Protection and Commerce  
State Capitol, Room 325  
Honolulu, Hawaii 96813

Re: House Bill 304 Relating to Foreclosures

Dear Chair Herkes and members of the House Committee on Consumer Protection and  
Commerce:

I am Rick Tsujimura representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of real estate lenders in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, and other financial institutions. The members of the MBAH originate the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending.

MBAH opposes House Bill 304 Relating to Foreclosures, which seeks to extend foreclosures. We believe this is bad policy and will compound an already difficult situation by delaying foreclosures and increasing costs to the borrower. We concur with many of the observations of the Hawaii Bankers Association contained in their testimony and will not repeat them here.

We do draw the committee's attention to the seminal issue which is delaying foreclosures. While it may seem emotionally satisfying to delay a lender's foreclosure, the reality is that delaying foreclosures inevitably leads to more costs for the borrower and ultimately the borrowing public. There are already available many opportunities for borrowers to engage with their lenders to work out a solution to their inability to pay their mortgage. But for many borrowers the best solution is a sale of the property. By communicating their difficulties in making payment borrowers will be able to reach some conclusion as to the best available alternatives to solving their issues. Delaying foreclosure will not solve the underlying fiscal problems, only exacerbate them.

For these reasons we request that the committee hold this measure. Thank you for the opportunity to present this testimony.





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Testimony to the House Committee on Consumer Protection and Commerce  
Monday, February 1, 2010 at 2:00 p.m.

Testimony opposing HB 304, Relating to Foreclosures

To: The Honorable Robert Herkes, Chair  
The Honorable Glenn Wakai, Vice-Chair  
Members of the Committee on Consumer Protection and Commerce

My name is Stefanie Sakamoto and I am testifying on behalf of the Hawaii Credit Union League, which represents approximately 810,000 credit union members across the state.

We are in opposition to HB 304, Relating to Foreclosures. Our primary concern regarding this measure is the impact it will have on lengthening the foreclosure process. This is particularly troubling at a time when the real estate sales are so soft and market prices of residential real estate are falling. Under such conditions, the longer it takes for the property to be auctioned, the less the collateral will be worth. Consequently, the lender could suffer a larger loss, and the borrowers could be faced with a larger deficiency balance in the event the property is sold for less than the borrowers' mortgage obligations. Even if there is positive equity, the borrowers will realize less equity in a declining market.

Thank you for the opportunity to testify.