



Collection Law Section

Chair:
Steven Guttman

Vice Chair:
William J. Plum

Secretary:
Thomas J. Wong

Treasurer:
Arlette S. Harada

Directors:
Annette Chock
Marvin S.C. Dang
David C. Farmer
Steven Guttman
Arlette S. Harada
James Hochberg
Elizabeth A. Kane
William J. Plum
David B. Rosen
Mark T. Shklov
Thomas J. Wong

Reply to:

STEVEN GUTTMAN, CHAIR
220 SOUTH KING STREET, SUITE 1900
HONOLULU, HAWAII 96813
TELEPHONE: (808) 536-1900
FAX: (808) 529-7177 E-MAIL: sguttman@kdubm.com

February 2, 2009

The Honorable Representative Robert N. Herkes, Chair
Committee on Consumer Protection and Commerce
415 South Beretania Street
Honolulu, Hawaii 96813

The Honorable Jon Riki Karamatsu, Chair
Committee on Judiciary
415 South Beretania Street
Honolulu, Hawaii 69813

**Re: House Bill 976 Hearing Relating to Foreclosure on
Monday, February 7, 2009 at 2:00 p.m. in Conference
Room 325**

My name is Arlette Harada and I am a member of the Collection Law Section Board of Directors of the Hawaii State Bar Association. This testimony is only on behalf of the Collection Section and not the HSBA.

The Collection Section opposes the passage of House Bill 976. We urge you and your colleagues to vote against requiring the courts to give ninety days notice to mortgagors and subsequent mortgagees before entering judgments in foreclosure actions.

The current system provides sufficient notice to mortgagors, other mortgagees and others who may have an interest in the property of the intention to obtain a foreclosure judgment. In a judicial foreclosure, the foreclosing party must notify all parties with an interest in the property, including the owners and mortgagors of the foreclosure action. This usually is done by personal service of the owners and mortgagors or by leaving a copy of the complaint at the owner's place of residence with a competent person. A copy of the motion for foreclosure and the notice of the hearing also is mailed to the last known address of all of the parties. If a mortgagor or owner appears in court and demonstrates an intent to workout payment of the amounts owed with the foreclosing mortgagor, the courts usually grant an extension of 30-60 days before the judgment can be entered.

**House Bill 976 Hearing Relating to Foreclosure on Monday,
February 7, 2009**

Page 2

By mandating a 90 day period before judgment can be entered, the courts would be required to give the notice even where the owners who do not intend to fight the foreclosure and do not live at the property. In some instances, it is in the owners' interest for a foreclosure to proceed as rapidly as possible. For example, where the owner has filed for bankruptcy, the owner continues to be obligated on condominium and homeowner assessments incurred after the bankruptcy is filed until title to the property transfers to a new owner.

Other parties such as condominium, homeowner associations and lessors also have an interest in the mortgage foreclosure proceeding as rapidly as possible. Typically, owners who are not paying their mortgage also stop paying their maintenance fees and lease rent. A judicial foreclosure takes anywhere from eight months to several years to conclude depending on the difficulty of service on the owners and mortgagees and other factors. The proposed bill would add to the already lengthy process.

Furthermore, there are many instances where there are tenants in the apartment. If a judgment cannot be entered for ninety days, the owners can continue to collect rent from the tenants during that 90 day period although they may have no intention to make any payments toward their mortgages, association fees or lease rent. This would operate as a windfall to these owners at the expense of the mortgagees, homeowner associations and lessors. If a judgment is entered and a foreclosure commissioner is appointed, the commissioner's duties include collecting the rent from the tenant which is then applied as the court may order.

There also might be equal protection issues. Basically, owners who have mortgages would be entitled to greater protections from foreclosure than owners who do not have mortgages but are being foreclosed by someone other than a mortgagee, such as a lessor or condo association.

In addition, the bill lacks clarity. In a judicial foreclosure, there are two times in a case where "judgment" is entered, at the time the decree of

**House Bill 976 Hearing Relating to Foreclosure on Monday,
February 7, 2009
Page 3**

foreclosure is entered and after the confirmation of sale when a deficiency judgment may be entered. Since the bill speaks of judgments in foreclosure cases, the wording would seem to apply both to when the decree of foreclosure is entered and when the confirmation of sale and deficiency judgment is sought. This might add several three month periods to the time line for conclusion of a judicial foreclosure. The bill also provides for the ninety day notice period in foreclosures but is not clear whether the provision also would apply to foreclosures by non-mortgagees such as lessors and homeowner associations.

Again, the Collection Sections urges the Committee to vote against requiring that the court give ninety days notice prior to entering a judgment in a mortgage foreclosure. If you have any questions, I would be happy to answer them or you may reach me at 523-0702.

Very truly yours,



ARLETTE S. HARADA

G:\111003 F drive offload\TRANSFER\ASHLTR HB 976 testimony.wpd