

JAN 28 2009

A BILL FOR AN ACT

RELATING TO FORECLOSURES.

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

1 SECTION 1. The legislature finds that Hawaii is facing an
2 unprecedented threat to its state and local economies because of
3 skyrocketing residential property foreclosure rates in Hawaii.
4 Residential property foreclosures increased two hundred thirty
5 per cent in 2008. In 2008, more than three thousand two hundred
6 properties were lost to foreclosure in Hawaii. Further,
7 according to the Pew Charitable Trust, one in twenty-nine Hawaii
8 homeowners are expected to experience foreclosure by the end of
9 2010, exceeding the United States average of one in thirty-three
10 homeowners. The ripple effects of these foreclosures are
11 projected to hit more than half of Hawaii's homeowners and cost
12 more than \$4,000,000,000 in lost property value.

13 Under specified circumstances, mortgage lenders and
14 servicers are authorized under their pooling and servicing
15 agreements to modify mortgage loans when the modification is in
16 the best interests of investors. Generally, that modification
17 may be deemed to be in the best interests of investors when the



1 net present value of the income stream of the modified loan is
2 greater than the amount that would be recovered through the
3 disposition of the real property security through a foreclosure
4 sale.

5 It is essential to the economic health of Hawaii for the
6 State to ameliorate the deleterious effects of continued
7 foreclosures of residential properties by temporarily modifying
8 the foreclosure process to require mortgagees, successors, and
9 their authorized agents to contact borrowers and explore options
10 that could avoid foreclosure.

11 This Act is a temporary measure that will require early
12 contact and communications between mortgagees, successors, and
13 their authorized agents and certain borrowers to explore options
14 that could avoid foreclosure by facilitating the modification or
15 restructuring of loans in appropriate circumstances. This Act
16 shall also provide necessary and appropriate notices to renters
17 who are unintended victims of the foreclosure crisis.

18 SECTION 2. Chapter 667, Hawaii Revised Statutes, is
19 amended by adding three new sections to part III, to be
20 appropriately designated and to read as follows:

21 "§667-A Avoidance of foreclosure. (a) Sections 667-5 and
22 667-21 notwithstanding, a mortgagee, as defined in section 667-



1 21(b), may not give notice of the mortgagee's intention to
2 foreclose the mortgage, pursuant to section 667-5(a)(1), or
3 serve a notice of default, pursuant to section 667-22(c), until
4 thirty day after satisfying the requirements of this section.

5 (b) The mortgagee shall contact the mortgagor, as defined
6 in section 667-21(b), in person or by telephone in order to
7 assess the mortgagor's financial situation and explore options
8 for the mortgagor to avoid foreclosure.

9 During the initial contact, the mortgagee shall advise the
10 mortgagor that the mortgagor has the right to request a
11 subsequent meeting and, if requested, the mortgagee shall
12 schedule the meeting to occur within fourteen days. The
13 assessment of the mortgagor's financial situation and discussion
14 of options may occur during the first contact, or at the
15 subsequent meeting scheduled for that purpose.

16 The mortgagor shall be provided the toll-free telephone
17 number made available by the United States Department of Housing
18 and Urban Development to contact a United States Department of
19 Housing and Urban Development certified housing counseling
20 agency.

21 Any follow up meeting, at the request of the mortgagor, may
22 occur telephonically.



1 (c) Any subsequent notice of the mortgagee's intention to
2 foreclose or a notice of default filed, pursuant to section 667-
3 5 or 667-22, shall include a declaration from the mortgagee
4 that:

5 (1) It has contacted the mortgagor as required by this
6 section;

7 (2) Has tried with due diligence to contact the mortgagor
8 as required by this section without success; or

9 (3) The mortgagor has surrendered the property to the
10 mortgagee.

11 (d) If a mortgagee has already given its notice of its
12 intention to foreclose or recorded a notice of default prior to
13 the effective date of this Act, and did not subsequently file a
14 notice of rescission, then the mortgagee, as part of the notice
15 of sale filed pursuant to section 667-5(d), or the affidavit
16 after public sale recorded pursuant to section 677-33, shall
17 include a declaration that either:

18 (1) States that the mortgagor was contacted to assess the
19 mortgagor's financial situation and to explore options
20 for the mortgagor to avoid foreclosure; or

21 (2) Lists the efforts made, if any, to contact the
22 mortgagor in the event no contact was made.



1 (e) A mortgagee's loss mitigation personnel may
2 participate by telephone during any contact required by this
3 section.

4 (f) A mortgagor may designate a United States Department
5 of Housing and Urban Development certified housing counseling
6 agency, attorney, or other advisor to discuss with the
7 mortgagee, on the mortgagor's behalf, options for the mortgagor
8 to avoid foreclosure. Contact made at the direction of the
9 mortgagor shall satisfy the contact requirements of this
10 section. Any loan modification or workout plan offered at the
11 meeting by the mortgagee shall be subject to approval by the
12 mortgagor.

13 (g) A notice of intention to foreclose may be filed or
14 notice of default may be recorded, pursuant to section 667-5 or
15 667-23, when a mortgagee has not contacted a mortgagor as
16 required by this section; provided that the failure to contact
17 the mortgagor occurred despite the due diligence of the
18 mortgagee. For purposes of this section, "due diligence" shall
19 require and mean all of the following:

20 (1) A mortgagee shall have first attempted to contact a
21 mortgagor by first-class mail that includes the toll-
22 free telephone number made available by the United



1 States Department of Housing and Urban Development to
2 find a certified housing counseling agency;

3 (2) After the letter has been sent:

4 (A) The mortgagee shall have attempted to contact the
5 mortgagor by telephone at least three times at
6 different hours and on different days. Telephone
7 calls shall have been made to the primary
8 telephone number on file;

9 (B) The mortgagee may use an automated system to dial
10 mortgagors; provided that, if the telephone call
11 is answered, the call shall be connected to a
12 live representative of the mortgagee; or

13 (C) The mortgagee shall have satisfied the telephone
14 contact requirements of this paragraph if it
15 determines, after attempting contact pursuant to
16 this paragraph, that the mortgagor's primary
17 telephone number and secondary telephone number
18 or numbers on file, if any, have been
19 disconnected;

20 (3) The mortgagee shall have provided a means for the
21 mortgagor to contact it in a timely manner, including



1 a toll-free telephone number that would have provided
2 access to a live representative during business hours;

3 (4) The mortgagee has posted a prominent link on the
4 homepage of its internet website, if any, with the
5 following information:

6 (A) Options that may be available to mortgagors who
7 are unable to afford their mortgage payments and
8 who wish to avoid foreclosure, and instructions
9 to mortgagors advising them on steps to take to
10 explore those options;

11 (B) A list of financial documents mortgagors should
12 collect and be prepared to present to the
13 mortgagee when discussing options for avoiding
14 foreclosure;

15 (C) A toll-free telephone number for mortgagors who
16 wish to discuss options for avoiding foreclosure
17 with their mortgagee; and

18 (D) The toll-free telephone number made available by
19 the United States Department of Housing and Urban
20 Development certified housing counseling agency.

21 (h) The provisions of this section shall cease to apply
22 upon the occurrence of the following:



1 (1) The mortgagor has surrendered the property as
2 evidenced by either a letter confirming the surrender,
3 or delivery of the keys to the property to the
4 mortgagee;

5 (2) The mortgagor has contracted with an organization,
6 person, or entity whose primary business is advising
7 people who have decided to leave their homes on how to
8 extend the foreclosure process and avoid their
9 contractual obligations to mortgagees; or

10 (3) The mortgagor has filed for bankruptcy, and the
11 proceedings have not been finalized.

12 (i) This section shall apply only to loans made from
13 January 1, 2003, to December 31, 2008, inclusive, that are
14 secured by residential real property and are for owner-occupied
15 residences. For purposes of this section, "owner-occupied"
16 means that the residence is the principal residence of the
17 mortgagor.

18 §667-B Notice to resident. (a) Upon posting a notice of
19 intention to foreclose on the premises pursuant to section 667-
20 5(b) (2), and recording the notice of default pursuant to section
21 667-23, the mortgagee shall also mail the following notice, in
22 the manner and at the time required for posting the notice of



1 intention to foreclose or record the notice of default to the
2 mortgagor, or the mortgagor's agent, if any, at the address of
3 record concerning the premises that is the subject of the
4 foreclosure action containing substantially the following:

5 "Resident of Property Subject to Foreclosure Sale
6 a foreclosure process has begun on this property, that
7 may affect your right to continue to live in this
8 property. Twenty-one days or more after the date of
9 this notice, this property may be sold at foreclosure.
10 If you are renting this property, the new property
11 owner may either give you a new lease or rental
12 agreement or provide you with a sixty-day eviction
13 notice. However, other laws may prohibit an eviction
14 in this circumstance or provide you with a longer
15 notice before eviction. You may wish to contact a
16 lawyer or your local legal aid or housing counseling
17 agency to discuss any rights you may have."

18 (b) This section shall only apply to loans secured by
19 residential real property, and if the billing address for the
20 mortgage note is different than the property address.

21 §667-C Tenant's rights. (a) Chapter 521 notwithstanding,
22 a tenant in possession of a rental housing unit at the time the



1 property is sold in foreclosure shall be given sixty days
2 written notice to vacate the premises pursuant to this section
3 before the tenant or subtenant may be removed from the property
4 as prescribed by the provisions of chapter 521.

5 (b) This section shall not apply if any party to the
6 promissory note or mortgage that is being foreclosed remains on
7 the property as a tenant, subtenant, or occupant."

8 SECTION 3. Section 521-45, Hawaii Revised Statutes is
9 amended to read as follows:

10 **"§521-45 Limitation of landlord and management liability.**

11 (a) Unless otherwise agreed, a landlord who conveys premises
12 ~~[which]~~ that include a dwelling unit subject to a rental
13 agreement, in a good faith sale to a person not connected with
14 the landlord, discloses~~[r]~~ in writing~~[r]~~ in any form, ~~[of]~~ the
15 contract for the sale of ~~[such]~~ the premises, is relieved of
16 liability under the rental agreement and under this chapter as
17 to events occurring subsequent to the conveyance.

18 (b) The new owner who purchases the premises referred to
19 in subsection (a) is liable under the rental agreement and under
20 this chapter.

21 (c) In the event of a foreclosure of the premises subject
22 to a rental agreement, the successor in interest of the prior



1 landlord shall give the tenant a notice that, at the option of
2 the tenant to be exercised within seven days:

3 (1) The rental agreement may remain in full force and
4 effect; or

5 (2) The tenant shall vacate the premises within sixty days
6 of the notice.

7 [~~e~~] (d) Unless otherwise agreed, a person who is a
8 manager of premises [~~which~~] that include a dwelling unit subject
9 to a rental agreement is relieved of liability under the rental
10 agreement and under this chapter as to events occurring
11 subsequent to the termination of the person's management."

12 SECTION 4. The provisions of this Act are severable. If
13 any provision of this Act or its application is held invalid,
14 that invalidity shall not affect other provisions or
15 applications that can be given effect without the invalid
16 provision or application.

17 SECTION 5. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect upon its approval,
 2 provided that Section 667-A contained in section 2 this Act
 3 shall be repealed on December 31, 2012.

4 INTRODUCED BY:

Greg L. Hoan

David Ylge

Will Eyo

Bob Brown

Roody de Bak

Erzanne Chun Oakland

Joe Khan Jr

Bruce Kohb

Caro Fulmer



Report Title:

Foreclosures

Description:

Requires mortgagors and mortgagees to explore options to avoid foreclosure, including modification or restructuring of loans; effective on approval and repeals 12/31/2012. Requires notice of foreclosure be given to a tenant of the foreclosed property with the option to keep rental agreement in full force or vacate premises in 60 days.





HAWAII BANKERS ASSOCIATION

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Presentation to the Senate Committee on
Commerce and Consumer Protection
Thursday, February 12, 2009, at 8:30AM

Testimony for SB 1623 Relating to Foreclosures

TO: The Honorable Rosalyn H. Baker, Chair
The Honorable David Y. Ige, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection

My name is Neal Okabayashi and I testify for the Hawaii Bankers Association in opposition to SB 1623. While the intent of this bill is laudable, the consequences will be harmful to the people this bill is intended to help.

Hawaii has been very fortunate in avoiding the number of foreclosures prevalent in certain mainland states. In part, that has been due to the conservative lending of local banks but also in part to the strength of our economy. Unfortunately, as our economy deteriorates, we can expect foreclosures to increase because the reasons for loan defaults basically remain the same: job loss or underemployment, health issues, death and divorce – three factors worsened by economic downturns. Complicating this effort is that many nonbanks, as well as some banks, made nontraditional mortgages which has led to borrowers with no or little equity in a property or unable to make payments due.

During the heydays of mortgage lending, mainland lenders had the largest market share. For example, in 2006, the local lenders (primarily banks and credit unions) were about 27% of the market while mainland banks and nonbanks were about 55% of the market. Because of the turmoil in the credit markets and demise of certain mainland lenders, local banks and credit unions were about 50% of the market last year and mainland lenders were about about 35% of the market. Because of the imprecision of the figures provided by Title Guaranty, these figures are just estimates.

Thankfully, we are not well represented in foreclosures. Our sense is that, perhaps as a consequence of the large market share of mainland lenders during a time of low rates and high home prices, mainland lenders like Countrywide and WAMU (seized by federal banking regulators and sold to JP Morgan Chase) are much more involved in foreclosure proceedings than local lenders. Because some of the mainland lenders are federal savings banks, any laws which inhibit their ability to collect on their loans may be preempted by state law and then we would be left with a law applicable to those who are not the problem.

Lenders are actually very active in foreclosure mitigation programs because lenders are hurt by foreclosures and would prefer alternatives such as deferrals and loan modifications but because they must be decided on a case-by-case basis, we oppose any statutorily mandated programs. The net effect of a law that mandates pre-foreclosure procedures and timelines will only incentive lenders to begin the foreclosure proceedings earlier and undermine existing and future mitigation programs.

It should be noted that banks (meaning those that accept deposits) are all federally regulated whether they are chartered by the federal government or by a state government and are under greater scrutiny regarding lending and servicing operations, and under an obligation to perform such activities prudently to protect the bank and the depositors of the bank, as well as the FDIC. Forcing banks to act according to a statutory framework is counterproductive to such goal.

As Treasury Secretary Tim Geithner put it on February 10, 2009, in introducing the Financial Stability Plan, “. . . the recession is putting greater pressure on banks. This is a dangerous dynamic, and we need to arrest it.” Enacting laws such as this will add to the pressure on banks and thus should be avoided.

Secretary Geithner also announced that in a few weeks the details of a plan to address the housing crisis will be unveiled in a few weeks. It is widely anticipated that this foreclosure mitigation program will carry a price tag in the neighborhood of 50 billion dollars.

We do not want to work counter to the Geithner plan and thus rather than passing this bill, we should let the federal programs as well as the individual programs of banks take effect.

Lenders have not been waiting for the Geithner plan to be announced to take affirmative steps to conduct foreclosure mitigation.

Examples of steps already taken by banks include the following. We do contact delinquent borrowers (who often are mainland investors) to discuss options with them. Much of this is based on the Fannie Mae/Freddie Mac guidelines for selection of an appropriate workout program which starts with an indication by the property owner whether the owner wants to keep the property or not. Based on that indication, certain steps are taken.

The Fannie Mae/Freddie Mac approach mirrors the approach of the FDIC which seeks to keep a borrower in a home when the borrower is able and willing to make a reduced payment or to encourage a short sale or deed in lieu of foreclosure when the borrower is unable to make the reduced payment. To protect the owner of the loan, the FDIC requires that the cost of the modification be less than the cost of the foreclosure. The FDIC model follows the one used by the FDIC after taking over IndyMac.

We do notify borrowers of available consumer credit counseling agencies in Hawaii since that is required by federal law. Some lenders contact a tenant if the property is investor owned.

Banks also engage in a variety of other mitigation efforts. One alternative is forbearance if payment sources are identified. The forbearance may take the shape of lowering payments until the source of payment is made or some other alternative.

Another effort may be a modification of the loan, concentrated on lowering the monthly payment. This may take the form of extending the term of the loan, lowering the interest rate, reamortizing the loan – all of which reduces the monthly payment.

Try as we might, not all delinquencies can result in a successful workout. Studies by federal banking regulators revealed that 50% of loans modified became delinquent again. This is a function of a deteriorating economy. If a borrower is unemployed and unrealistically refuses to sell the property, the lender's alternatives are reduced. In Hawaii, just as in some mainland states such as California, many of the foreclosures are of investors, especially those in resort areas who relied on a rental income stream to pay the loan. Our sense, which is anecdotal, is that more than half of our foreclosures are investors.

As for banks, because we are regulated by a federal banking agency, we have less flexibility on loans made with a loan-to-value greater than 80%, meaning the down payment was less than 20%. In such cases, we are required to obtain private mortgage insurance from an insurer when we make the loan, and any modification must be approved by the insurer.

There are other programs. A coalition of mortgage servicers, lenders, housing counselors and investors have come together to form the Hope Now Alliance, which has produced a set of loan mitigation guidelines similar to the FDIC program.

The FHA has a program aimed at facilitating loan modifications called Hope for Homeowners.

The Federal Reserve System has taken unprecedented steps to reduce the short term interest rates which has an indirect downward push on mortgage rates. Such steps, along with President Obama's stimulus plan which is intended to reduce unemployment or at least reduce the rate of unemployment, will improve the economic climate which is the best foreclosure mitigation program. The Federal Reserve also announced its plan to purchase up to 600 billion dollars in mortgage related debt which has the impact of lowering mortgage rates, which would have two beneficial effects: increase housing prices and reduce mortgage rates, both of which will help borrowers refinance their loans. The stimulus plan about to go to conference also includes a tax credit for homebuyers which would help stabilize and provide an upward lift to home prices, thus helping existing homeowners.

Mitigation programs must have two prongs. One is to increase the ability of borrowers to refinance loans, and the Federal Reserve and this administration have taken those steps. The other is exploring modification of the loan or forbearance, and the lenders have taken those steps.

While lenders are actively pursuing mitigation strategies, we are mindful that we are in an economy that is not conducive to mitigation. Housing prices have dropped which impacts those who paid less than 20% down but in some cases, even those who did pay 20% down. Chairman Ben Bernanke testified before Congress on December 4, 2008 that the available evidence indicates the two most important factors in default are affordability (which depends on both the income of the borrower and the monthly payment) and the borrower's equity in the property. Thus, for those with little or no equity in the property, or even underwater, there are challenges to resurrecting the loan and a bill such as this does not improve the situation.

We are in the midst of the worst economy since the depression. Lenders are actively attempting to help. Passage of measures such as this create downward pressures on lenders and the last thing we need to do is to pressure the financials of a lender who at the heart of our economic system. At the end of the day, the best foreclosure mitigation program is to jump start the economy and create jobs.



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Testimony before the Senate Committee on Commerce and Consumer Protection
Thursday, February 12, 2009 at 8:30 a.m.

Testimony opposing SB 1623, Relating to Foreclosures

To: The Honorable Rosalyn Baker, Chair
The Honorable David Ige, Vice Chair
Members of the Committee

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 SB 1623. 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.

As such, passage of this measure would hurt financial institutions, and would in turn, adversely affect consumers.

Thank you for the opportunity to testify.

HAWAII FINANCIAL SERVICES ASSOCIATION

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February 12, 2009

Senator Rosalyn H. Baker, Chair

and members of the Senate Committee on Commerce and Consumer Protection

Hawaii State Capitol

Honolulu, Hawaii 96813

Re: **Senate Bill 1623 (Foreclosures)**

Hearing Date/Time: Thursday, February 12, 2009, 8:30 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 under the Code of Financial Institutions (Chapter 412, Article 9 of the Hawaii Revised Statutes).

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

The purpose of this Bill is to require mortgagors and mortgagees to explore options to avoid foreclosure, including modification or restructuring of loans. It also requires notice of foreclosure be given to a tenant of the foreclosed property with the option to keep rental agreement in full force or vacate premises in 60 days.

We have read a draft of the testimony to be submitted by the Hawaii Bankers Association. We concur with the points made about the efforts of banks to affirmatively work with borrowers to avoid foreclosures. In fact, financial services loan companies do the same things.

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 additional comments:

1. During the first 120 days in which a loan is in default, lenders generally make reasonable attempts to contact the mortgagor (borrower) and to work on alternatives to foreclosure. A lender should not be forced to follow a rigid statutory procedure when a lender is working with a mortgagor (borrower) to avoid foreclosure on a defaulted loan.

2. This Bill imposes a multitude of additional requirements on lenders that are onerous and contain traps for the unwary.

3. This Bill requires the mortgagee (lender) to mail to a tenant in possession of the subject property a notice of the tenant's rights after the auction (i.e. the tenant can enter into a new rental agreement with the new property owner or vacate the property in a specified number of days). We recommend that this Bill be revised to allow the notice to be posted at the property (rather than mailed).

4. 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. We recommend that this Bill be revised to state that after the foreclosure sale is held and after title to the real property has changed to the new owner, any rental agreements should be converted to a month-to-month tenancy. 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 any existing tenant can try to agree on a longer rental term.

Senator Rosalyn H. Baker, Chair

and members of the Senate Committee on Commerce and Consumer Protection

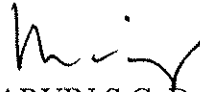
February 12, 2009

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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.

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

Thank you for considering our comments.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

(MSCD/hfsa)

George J. Zweibel, Esq.
President, Board of Directors

M. Nalani Fujimori, Esq.
Interim Executive Director

The Honorable Rosalyn H. Baker, Chair
The Honorable David Y. Ige, Vice Chair
Senate Committee on Commerce and Consumer Protection

Hearing : Thursday, February 12, 2009, 8:30 a.m.
State Capitol, Conference Room 229

IN SUPPORT OF SB 1623

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 and other low and moderate income families who are consumers. We are testifying in support of SB 1623 as it would 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 and what to do if you are in danger of losing your home through foreclosure. In the past Fiscal Year we serviced more than 200 clients in our Project and more than 70 in the past 2 months.

SB 1623 seeks to temporarily amend HRS 667 to require that a mortgagee contact a homeowner facing foreclosure and give them options to avoid foreclosure. SB 1623 also seeks to give tenants of foreclosed properties notice of the proposed foreclosure.

In some cases, homeowners who are faced with foreclosure simply do not have enough time to complete all that is required by the mortgagee in order to save their homes. SB1623 would create a vehicle by which homeowners would be allowed more time to save their homes, and provided their options by the own mortgagee.

Currently, tenants who live in properties that have been foreclosed on lose any and all rights related to their stay in their property. In many cases tenants know absolutely nothing of any foreclosure proceedings until after the sale has occurred. This then leaves tenants in the dangerous position of having little to no time to vacate the property. Renters lose all the consumer protections that they have

previously been entitled to under the landlord tenant code, including the right of notice to terminate their tenancy. Many investors who buy foreclosed properties immediately act to kick out these disenfranchised renters, leaving them with no time to collect their possessions and find new shelter.

LASH anticipates a growing number of foreclosures in the coming years as the so-called exotic mortgage products mature and consumers are not able to keep up with their adjusted mortgage payments or find a suitable refinance. With the growing number of foreclosures, there will only be an increase in the number of homeowners and tenants who are harmfully displaced by the foreclosure process.

The Legal Aid Society of Hawaii supports SB 1623 and its efforts to protect homeowners and renters from a swift foreclosure process.

Conclusion:

We appreciate these committees' recognition of the need to protect consumers in the State of Hawaii. SB 1623 attempts to strengthen protections for consumers by giving homeowners more time to find appropriate solutions to their potential foreclosure problems. We support SB 1623 and its attempts to protect homeowners and renters in the State of Hawaii. Thank you for the opportunity to testify.

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair

Senator David Y. Ige, Vice Chair

HEARING ON SENATE BILL 1623

DATE: Thursday, February 12, 2009

TIME: 8:30 a.m.

PLACE: Conference Room 229

State Capitol

415 South Beretania Street

TESTIMONY

Senator Rosalyn H. Baker, Chair; Senator David Y. Ige, Vice Chair; members of the COMMITTEE ON COMMERCE AND CONSUMER PROTECTION; thank you for this opportunity to speak before you.

I am Rev. Mike Young, minister of the First Unitarian Church of Honolulu, a founding member of F.A.C.E. (Faith Action for Community Equity).

Imagine the expression on the face of the couple sitting across the desk from their loan officer or mortgage broker when they realize that they can buy that home of their dreams. Caught up in that delight, did they fully understand the details? Did they know what implications may have been left out or glossed over?

Many of those financial officers knew that the mortgage would be sold and bundled into one of the new investment instruments. They would make their commission and their institution would not be liable even if the loan defaulted. Now the institutions that ended up holding those mortgage based investment instruments don't really want to know what those pieces of paper are worth.

And, now that once delighted couple are facing the loss of their home, and in many cases the loss of their life savings. Should they never have accepted the loan?

Perhaps. Should they have anticipated the economic reversal, or the family emergency, that left them unable to make their mortgage payments? Maybe. But how many of us anticipated this past Fall of 2008?

Should the mortgage brokers and loan officers be held accountable for their part in putting so many families in debt over their heads? Many of us feel so.

However that may be, the state is faced with a situation that is in no one's best interest; not the families, not the financial institutions holding near worthless assets, and certainly not the tax paying citizens of the State.

SB 1623 will require that all reasonable efforts be made to negotiate restructuring of these loans so that our housing market can begin to become stabilized. It is in the interest of all concerned that our families caught in this unprecedented mess be given every opportunity and tool to sort out and minimize the impact. We may even want to strengthen this bill so that the use of every alternative to forecloser is required, especially in the case of owner occupied and renter occupied properties.

On behalf of our struggling families I, therefore, urge you to pass, and perhaps consider strengthening the requirements of, this bill.

Respectfully Submitted,
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