

SB2472

SD1



P.O. Box 976
 Honolulu, Hawaii 96808
 February 22, 2010

Honorable Brian T. Taniguchi
 Honorable Dwight Y. Takamine
 Commerce and Consumer Protection
 415 South Beretania Street
 Honolulu, Hawaii 96813

Re: SB 2472/OPPOSED

Dear Chair Taniguchi, Vice-Chair Takamine and Committee Members:

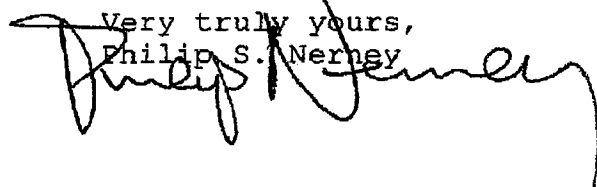
I chair the CAI Legislative Action Committee. CAI opposes SB 2472 in its current form.

CAI is concerned that, as written, SB 2472 could be construed to apply to non-judicial foreclosures conducted by condominium associations. That would be problematic because condominium associations hold a lien priority below mortgages.

When a condominium association conducts a non-judicial foreclosure, clear title is not conveyed as a result if there is a mortgage. Title is conveyed "subject to" the mortgage, which means that bidders only bid a small fraction of the value of the unit. Thus, it is important to clarify that SB 2472 is not intended to apply to non-judicial foreclosure sales by condominium associations.

Hawaii Revised Statutes Section 514B-146(a) provides that a condominium association lien may be foreclosed "by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board, in like manner as a mortgage of real property." That remedy is essential to enable condominium associations to complete foreclosures of units that are in default of the obligation to pay maintenance fees.

CAI respectfully requests that language be inserted to clarify that the proposed changes do not apply to non-judicial foreclosures conducted by condominium associations, or, for that matter planned community associations and cooperatives.

Very truly yours,
 Philip S. Nerney


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February 23, 2010

Sen. Brian T. Taniguchi, Chair,
and members of the Senate Committee on Judiciary and Government Operations
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 2472, Senate Draft 1 (Mortgage Foreclosures)**
Hearing Date/Time: Tuesday, February 23, 2010, 10:00 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. Financial services loan companies make mortgage loans and other loans.

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.

The purposes of this Bill are to: (a) require the notice of intent to foreclose that includes notice of the availability of mortgage counseling; (b) require a foreclosing mortgagee to provide a copy of the promissory note and mortgage documents upon request; and (c) specify that a public sale price of seventy per cent of assessed value is fair and reasonable.

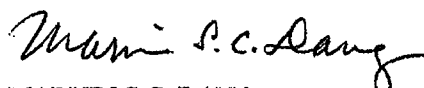
While the intent of this Bill seems laudatory, this Bill as drafted is a "work in progress". Its scope in Sections 1, 2 and 3 should be limited to non-judicial foreclosures by mortgage lenders of owner-occupant residential properties. Foreclosures by condominium associations should not be included.

Section 1 of this Bill concerns the notice of the availability of mortgage counseling. Any inconsistencies and duplication between the notice requirement in this Bill and in the federal Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(c)(5)) need to be resolved. Leasehold property should be included (not just fee simple property). This Section only apply to nonjudicial foreclosures (and not judicial foreclosures).

Section 2 requires the mortgagee (lender) to provide a copy of the promissory note and mortgage document if requested by the mortgagor. Clarification is needed as to: whether every mortgagor can separately make the request, whether a borrower or guarantor who is not a mortgagor can make the request, when is a foreclosure considered "commenced", what happens if the request is made for the first time after the foreclosure is "commenced", and the effect of a mortgagor not signing for the certified or registered mail.

Section 3 states that an auction price of 70% of the real property tax assessed value of the fee simple property is fair and reasonable. Revisions are needed to: determine how leasehold property will be valued (e.g. by a broker price opinion or appraisal), explain how the 70% calculation is computed when a junior mortgagee (lender) is foreclosing on property that is "subject to" senior liens (such as real property taxes and a first mortgage), determine why the word "consumer" is needed in this Section but in no other section, and explain what happens to a nonjudicial foreclosure proceeding when the auction price does not reach the 70% minimum price (e.g. whether the nonjudicial foreclosure proceeding have to start over again).

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



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

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Presentation to the Senate Committee on Judiciary and Government Operations

Tuesday, February 23, 2010, at 10:00 am, Conf Rm 016

Testimony for SB 2472 Relating to Mortgage Foreclosures

TO: The Honorable Brian T. Taniguchi, Chair
The Honorable Dwight Y. Takamine, Vice Chair
Members of the Senate Committee on Judiciary and Government Operations

My name is Neal Okabayashi for the Hawaii Bankers Association. We support SB 2472, SD 1 if amendments are made to the text to provide an SD 2.

On page 3, line 22, we recommend that "initiate" be substituted for "commence" to be consistent with the new section 667- set forth on page 1. In line 5, the word "initiating" is used and for consistency purposes, we recommend the same word.

We note that to the extent that an Association of Apartment Owners is initiating the foreclosure, there will be no promissory note and mortgage, and thus this amendment would be inapplicable to them.

As for section 3 of the bill which seeks to set a reasonable and fair standard for the sales price at a nonjudicial foreclosure sale, at first we suggested using tax assessed valuation but because it is available only for fee simple but not leasehold property, we do not think it will be useful. Thus we recommend the following language to replace the new language on page 5, lines 5 through 8, which allows for the use of an appraisal or broker's price opinion to set the value. Broker's price opinion is used more and more as a means of evaluating the value of real property.

"A public sale price of seventy per cent of the fair market value of the [latest real property tax assessed value of a fee simple] mortgaged property owned and occupied by a consumer as established by an appraisal or broker's price opinion shall be reasonable and fair."



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

February 23, 2010

The Honorable Brian Taniguchi, Chair and
Members of the Senate Committee on
Judiciary and Government Operations
State Capitol, Room 16
Honolulu, Hawaii 96813

Re: Senate Bill 2472, SD 1 Relating to Mortgage Foreclosures

Dear Chair Taniguchi and members of the Senate Committee on Judiciary and
Government Operations:

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 Senate Bill 2472, SD 1 Relating to Mortgage Foreclosures. Fannie Mae and Freddie Mac (and any investor for that matter) dictate their documentation. To change this and require both parties to sign will be too costly to the lender and ultimately the borrower. It also moves the demand date normally 30 days to 60 days which may prompt lenders to send the demand sooner which ultimately starts the foreclosure sooner.

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

The Honorable Brian T. Taniguchi, Chair
The Honorable Dwight Y. Takamine, Vice Chair
Senate Committee on Judiciary and Government Operations

Hearing : Tuesday, February 23, 2010, 10:00 a.m.
State Capitol, Conference Room 016

IN SUPPORT OF THE INTENT OF SB 2472 SD1

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 the intent of SB 2472 SD1 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.

SB 2472 SD1 seeks to require that a mortgagee in a non-judicial, power of sale foreclosure attach a copy of the original, signed mortgage agreement and any amendments thereto to the notice of default.

The Legal Aid Society of Hawaii has worked in conjunction with other interested parties and supports a consolidated foreclosure bill which addresses concerns raised in SB2472 SD1.

The Legal Aid Society of Hawaii supports the intent of 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. SB 2472 SD1 attempts to strengthen protections for consumers by requiring mortgage lenders

to attach a copy of the original mortgage documents and related amendments to the notice of default. We support the intent of SB 2472 SD1 and its attempts to protect homeowners in the State of Hawaii. Thank you for the opportunity to testify.