

SB 2472

JAN 22 2010

S.B. NO. 2472

A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

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

1 SECTION 1. Section 667-22, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§667-22 Notice of default; contents; distribution. (a)

4 When the mortgagor or the borrower has breached the mortgage
5 agreement, and when the foreclosing mortgagee intends to conduct
6 a power of sale foreclosure under this part, the foreclosing
7 mortgagee shall prepare a written notice of default addressed to
8 the mortgagor, the borrower, and any guarantor. The notice of
9 default shall state:

- 10 (1) The name and address of the current mortgagee;
- 11 (2) The name and last known address of the mortgagor, the
12 borrower, and any guarantor;
- 13 (3) The address or a description of the location of the
14 mortgaged property, and the tax map key number of the
15 mortgaged property;



- 1 (4) The description of the default, and if the default is
2 a monetary default, an itemization of the delinquent
3 amount shall be given;
- 4 (5) The action that must be taken to cure the default,
5 including the amount to cure the default, together
6 with the estimated amount of the foreclosing
7 mortgagee's attorney's fees and costs, and all other
8 fees and costs estimated to be incurred by the
9 foreclosing mortgagee related to the default by the
10 deadline date;
- 11 (6) The date by which the default must be cured, which
12 deadline date shall be at least sixty days after the
13 date of the notice of default;
- 14 (7) That if the default is not cured by the deadline date
15 stated in the notice of default, the entire unpaid
16 balance of the moneys owed to the mortgagee under the
17 mortgage agreement will be due, that the mortgagee
18 intends to conduct a power of sale foreclosure to sell
19 the mortgaged property at a public sale without any
20 court action and without going to court, and that the
21 mortgagee or any other person may acquire the
22 mortgaged property at the public sale; and



1 (8) The name, address, including electronic address, and
2 telephone number of the attorney who is representing
3 the foreclosing mortgagee; provided that the attorney
4 shall be licensed to practice law in the State and
5 physically located in the State.

6 (b) The notice of default shall also contain wording
7 substantially similar to the following in all capital letters:

8 "IF THE DEFAULT ON THE LOAN CONTINUES AFTER THE
9 DEADLINE DATE IN THIS NOTICE, THE MORTGAGED PROPERTY
10 MAY BE FORECLOSED AND SOLD WITHOUT ANY COURT ACTION
11 AND WITHOUT GOING TO COURT.

12 YOU MAY HAVE CERTAIN LEGAL RIGHTS OR DEFENSES.
13 FOR ADVICE, YOU SHOULD CONSULT WITH AN ATTORNEY
14 LICENSED IN THIS STATE.

15 AFTER THE DEADLINE DATE IN THIS NOTICE, TWO
16 PUBLIC SHOWINGS (OPEN HOUSES) OF THE PROPERTY BY THE
17 LENDER WILL BE HELD, BUT ONLY IF ALL MORTGAGORS
18 (OWNERS) OF THE PROPERTY SO AGREE. TO SHOW THAT ALL
19 OWNERS AGREE TO ALLOW TWO OPEN HOUSES BY THE LENDER,
20 ALL OWNERS MUST SIGN A LETTER SHOWING THEY AGREE. ALL
21 OWNERS MUST SEND THE SIGNED LETTER TO THIS OFFICE AT
22 THE ADDRESS GIVEN IN THIS NOTICE.



1 THIS OFFICE MUST ACTUALLY RECEIVE THE SIGNED
2 LETTER BY THE DEADLINE DATE IN THIS NOTICE. THE
3 SIGNED LETTER MUST BE SENT TO THIS OFFICE BY CERTIFIED
4 MAIL, REGISTERED MAIL, OR EXPRESS MAIL, POSTAGE
5 PREPAID AND RETURN RECEIPT REQUESTED.

6 IF THE SIGNED LETTER IS NOT RECEIVED BY THIS
7 OFFICE BY THE DEADLINE DATE, THE PROPERTY WILL THEN BE
8 SOLD WITHOUT ANY OPEN HOUSES BEING HELD.

9 EVEN IF THIS OFFICE RECEIVES THE SIGNED LETTER TO
10 ALLOW THE LENDER TO HOLD TWO OPEN HOUSES OF THE
11 PROPERTY, IF ALL OWNERS LATER DO NOT COOPERATE TO
12 ALLOW THE OPEN HOUSES, THE PROPERTY WILL BE SOLD
13 WITHOUT ANY OPEN HOUSES BEING HELD.

14 ALL FUTURE NOTICES AND CORRESPONDENCE WILL BE
15 MAILED TO YOU AT THE ADDRESS AT WHICH YOU RECEIVED
16 THIS NOTICE UNLESS YOU SEND WRITTEN INSTRUCTIONS TO
17 THIS OFFICE INFORMING THIS OFFICE OF A DIFFERENT
18 ADDRESS. THE WRITTEN INSTRUCTIONS MUST BE SENT TO
19 THIS OFFICE BY CERTIFIED MAIL, REGISTERED MAIL, OR
20 EXPRESS MAIL, POSTAGE PREPAID AND RETURN RECEIPT
21 REQUESTED. "




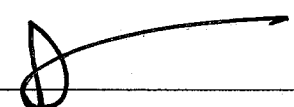
1 (c) The notice of default shall include a copy, signed by
 2 both the mortgagor and the mortgagee, of the original mortgage
 3 agreement and of any subsequent mortgage agreements, notes, or
 4 documents that amended or altered the terms of the original
 5 mortgage agreement.

6 [~~e~~] (d) The foreclosing mortgagee shall have the notice
 7 of default served on:

- 8 (1) The mortgagor and the borrower;
- 9 (2) Any prior or junior creditors having a recorded lien
 10 on the mortgaged property before the recordation of
 11 the notice of default under section 667-23;
- 12 (3) The state director of taxation;
- 13 (4) The director of finance of the county where the
 14 mortgaged property is located; and
- 15 (5) Any other person entitled to receive notice under
 16 section 667-5.5."

17 SECTION 2. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

19 SECTION 3. This Act shall take effect on July 1, 2010.

20  INTRODUCED BY: 

Michael J. Fuchs
Clarence W. ...
Michelle ...
Richard ...
Will ...
Randy ...
John ...
Clarence W. ...
Ann ...
Ann Hill

Shianne Chun Oakland
David V. Jay
Bunuel. Kohl



Report Title:

Non-Judicial Mortgage Foreclosures

Description:

Requires the mortgagee in a non-judicial mortgage foreclosure action to attach a copy of the original, signed mortgage agreement and any amendments thereto to the notice of default.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.





LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

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LAWRENCE M. REIFURTH
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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE
Regular Session 2010

Friday, February 5, 2010
9:00 a.m.

**TESTIMONY ON SENATE BILL NO. 2472 -- RELATING TO MORTGAGE
FORECLOSURES.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to comment on Senate Bill No. 2472, Relating to Mortgage Foreclosures. My name is Stephen Levins, and I am the Executive Director of the Department's Office of Consumer Protection ("OCP").

Senate Bill No. 2472 proposes to require the mortgagee in an alternate power of sale foreclosure procedure to attach a copy of the original, signed mortgage agreements and any amendments to the notice of default. Currently, there is no such requirement. One of the benefits of this proposal is that the mortgagor would be

Testimony on S.B. No. 2472
February 5, 2010
Page 2

assured of possessing the full mortgage contract that he or she is being accused of breaching. Although in most instances mortgagors probably would have had this information prior to the initiation of the foreclosure proceedings, there may be instances in which it can not be located, especially if the documents have been lost, misplaced or destroyed. Under these circumstances it would be particularly beneficial to the mortgagor to be provided with copies.

Thank you for this opportunity to testify on Senate Bill No. 2472. I will be happy to answer any questions that the Committee members may have.

LEGAL AID
SOCIETY OF HAWAII

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George J. Zweibel, Esq.
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M. Nalani Fujimori Kaina, Esq.
Executive Director

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

Hearing : Friday, February 5, 2010, 9:00 a.m.
State Capitol, Conference Room 229

IN SUPPORT OF SB 2472

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 SB 2472 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 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.

Requiring a copy of the mortgage documents and related amendments will only serve to clarify who actually possesses the right to foreclose and may make the power of sale foreclosure process more efficient. In some cases, a homeowner is foreclosed upon by a mortgagee who does not in fact hold the right to foreclose. In other cases mortgages have been sold and resold so many times that is unclear as to who actually has the right to foreclose on the property. By requiring the attachment of a copy of the original mortgage documents and any amendments, homeowners will know upfront who has the right and ability to foreclose on their homes and will prevent situations where the incorrect party is

foreclosing on a home. In turn this requirement will streamline the non-judicial foreclosure process and eliminate the need for so-called produce the note litigation.

Practically speaking, it makes sense to require that a mortgagee seeking to foreclose on someone's home provide the correct documentation that they actually have the right to foreclose.

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. SB 2472 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 SB 2472 its attempts to protect homeowners in the State of Hawaii. Thank you for the opportunity to testify.



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

February 5, 2010

The Honorable Rosalyn Baker, Chair and
Members of the Senate Committee on
Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

Re: Senate Bill 2472 Relating to Mortgage Foreclosures

Dear Chair Baker and members of the Senate Committee on Commerce and Consumer Protection:

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 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.



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Presentation to the Senate Committee on Commerce & Consumer Protection

Friday, February 5, 2010, at 9:00 am, Conf Rm 229

Testimony for SB 2472 Relating to Mortgage Foreclosures

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

My name is Neal Okabayashi for the Hawaii Bankers Association. We oppose SB 2472 which is another well-intended bill which would hurt homeowners.

The bill would require a lender to include a plethora of documents with their notice of default, and in our experience, the more paper you send a borrower, the more likely the borrower will not read it or miss the essential information which is the action that the borrower must undertake to cure the default.

We also note that this bill assumes certain facts about loan documentation which is incorrect. Many lenders document residential mortgage loans on Fannie Mae or Freddie Mac forms and those forms provide for only the borrower's signature. Thus, the requirement that we provide a copy of loan documents signed by both the mortgagor and mortgagee is inconsistent with marketplace realities, and thus renders the requirement moot.

Most importantly by requiring copies of all written agreements which modify a note, passage of this bill would hinder loan modification programs to help homeowners. We submit that this Committee should support efforts by lenders to help homeowners rather than by passing well-meaning legislation which has the opposite effect.

Not all loan modification programs are reduced to writing. Sometimes, the agreement can be oral and informal. For example, if a borrower says I can pay you in full in two months, we sometimes note that in our files rather than drafting a written agreement, or one drafted by a lawyer which only hurts the borrower because of costs. Basically, the foregoing example is a two month deferral of due dates in the promissory note. If we had

to reduce such an informal agreement to writing, that would be a disincentive to loan modification programs.

The reality is that a vast majority of foreclosures result from unemployment or underemployment (for example, loss of second job). It is best to let banks have the flexibility to help borrowers because we have the motivation and financial expertise to help.

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

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February 5, 2010

Sen. Rosalyn H. Baker, Chair,
and members of the Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 2472 (Mortgage Foreclosures)**
Hearing Date/Time: Friday, February 5, 2010, 9:00 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.

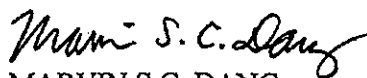
The purpose of this Bill is to require the mortgagee in an alternate power of sale foreclosure procedure to attach a copy of the original, signed mortgage agreement and any amendments thereto to the notice of default.

1. This Bill states that the mortgage has to be signed by the mortgagor (borrower) and the mortgagee (lender). In actuality, only the mortgagor signs the mortgage.

2. The borrower/mortgagor already gets a copy of the loan documents after the loan is made. Additional copies of the loan documents should only be given on the borrower's request, and not automatically with the notice of default.

3. 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 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

(MSCD/hfsa)

baker4 - Cathy

From: Lori Enriquez [queenofbenefits@gmail.com]
Sent: Sunday, January 31, 2010 7:05 PM
To: CPN Testimony
Subject: Testimony for SB 2472

Testimony for SB 2472

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. This bill should read the original signed note, not signed mortgage agreement. With out the original signed note the mortgage companies have no standing to foreclose in non-judicial foreclosures, but they do it all the time. Here and across the country we have had to deal with a company called MERS.when having foreclosures pending on our properties. They have been found to have no standing by four State supreme court rulings. During my mortgage difficulties I had a forensic loan audit done by Hawaiian Alliance and it exposed numerous federal violations on my loan. A qualified written request was sent to the lender under RESPA code and in the response I recieved back, documentation of the note transferring many times and a mortgage company, that I had never heard of was the supposed owner of the note. Because my loan has been securitized and sold many times, I do not even know who the note holder is and I do not know if the servicing company has the right to foreclose on me. (the servicer tried to foreclose on me.) It is very important that when a foreclosure notice is served that it is authenticated that the person who has the original note is the party that is foreclosing. Other wise it is a fraud foreclosure and our Hawaii families do not even know they are victims of a fraudulent act against them. Please stop the bleeding of our families here in hawaii . If you are interested I have attached a case about MERS <http://www.webofdebt.com/articles/mers.php>

Mahalo!

Aloha

SB 2472

In support of Bill 2472, this most definitely needs to pass. There are far too many lenders that have no clue where the original documents are and then use scare tactics to intimidate borrowers. We must act now to make lenders accountable. They make us prove we made a payment; they should be made to produce original documentation.

We must take a stand to make the lenders produce original documentation in order to qualify validity. I believe this wasn't an oversight, it was greed. We have been unsuccessful after 3 years of working with an out of state lender on my mother's behalf, to be provided with original documentation on her mortgage. Because a new lender acquired to previous lender, the paper trail appears to be non-existent. We have had a forensic audit done and the numerous infractions and/or missing documentation has met with deaf ears by the previous lender as well as the new lender who acquired the previous lender in January 2009. Her present mortgage payment exceeds her monthly fixed income. Attempts to save her from foreclosure are ongoing and emotionally and financially draining to say the least. We worked with an attorney in California trying to get an adjusted payment, and all they will do is a Making Homes Affordable trial of three months for \$200 less than the required payment. Answers on how the lender gave my mother a refinance mortgage payment almost equal to her fixed income are non-existent. To date we have "no explanation."

A task force on a state level would surely help by talking to the borrowers in order to assess the mega problems arising. We must get a hold of these dire circumstances before our homeless population exceeds our in home populace.

Testimony for CPN 2/5/2010 9:00:00 AM SB2472

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Donna R Walker
Organization: Individual
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Submitted on: 1/31/2010

Comments:
Please see attached testimony.