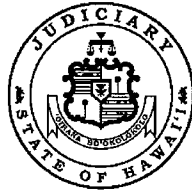


SCR 170



The Judiciary, State of Hawaii

**Testimony to the Twenty-Fifth State Legislature, Regular Session of 2010
Senate Committee on Commerce and Consumer Protection**

The Honorable Rosalyn H. Baker, Chair
The Honorable David Y. Ige, Vice Chair
Tuesday, March 23, 2010, 9:30 a.m.
State Capitol, Conference Room 229

by

Elizabeth Kent
Director
Center for Alternative Dispute Resolution

Bill No. and Title: Senate Concurrent Resolution No. 170; Requesting the Provision of Mortgage Foreclosure Mediation Services to Hawaii's Homeowners and Lenders

Purpose: Requests the Hawai'i State Judiciary to review and assess foreclosure mediation programs in other states; the feasibility and estimated costs of establishing and operating an independent foreclosure mediation program and of establishing a foreclosure mediation program within the existing Center for Alternative Dispute Resolution or expanding the Center's services to include foreclosure mediation. Requires the Hawai'i State Judiciary to submit a report of finding and recommendations to the 2012 Legislature.

Judiciary's Position:

The Judiciary supports use of mediation in appropriate foreclosure actions. However, the Judiciary does not believe that the study requested in this concurrent resolution is necessary for the following reasons and therefore requests that this resolution be held.

The Judiciary agrees that mediation can provide a useful forum for homeowners and lenders to find solutions. In fact, a foreclosure mediation pilot project already exists in the Circuit Court on Hawai'i Island for judicial foreclosure cases. This program grew out of the Access to Justice Commission and its work and is headed by Big Island judges, Judge Ronald Ibarra and Judge Greg Nakamura. Additionally, the Mediation Center of the Pacific trained mediators on Oahu to assist with judicial and non-judicial foreclosure cases.



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The Judiciary has been monitoring other states' programs and looked at the feasibility of establishing a program within the Judiciary. Currently the Center for Alternative Dispute Resolution oversees the Judiciary's POS contract with Mediation Centers of Hawai'i, Inc. (MCH). MCH in turn has contracts with six community mediation centers to provide mediation throughout the state. This means that parties can take their cases to the community mediation centers and receive affordable and quality mediation services. Additionally, judges may refer cases to the community mediation centers.

Thus, two different methods and processes already exist for foreclosure mediation in Hawai'i. To date, not many parties have taken advantage of foreclosure mediation. When, and if, they do, the Judiciary will be in a good position to evaluate the two alternatives to see which works better. In the meantime, the Judiciary requests that this concurrent resolution be held because the Judiciary has already accomplished the tasks that are addressed in the resolution.

Thank you for the opportunity to testify on this measure.

Presentation of the Committee on Commerce and Consumer Protection

Tuesday, March 23, 2010 at 9:30 a.m.

Testimony on S.C.R. 170 Mortgage Foreclosure Mediation Service

In Opposition

TO: The Honorable Chair Rosalyn H. Baker
The Honorable Vice Chari David Y. Ige
Members of the Committee

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying on behalf of HBA on S.C.R 170. HBA is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii.

It is our understanding that SB 2373 is requesting the Hawaii State Judiciary to provide mortgage foreclosure mediation services for Hawaii's homeowners and their lenders. Further the resolution encourages the Judiciary to review and assess foreclosure mediation programs in other states; determine feasibility and cost; and determine feasibility and cost for establishing program within the existing center for Alternative Dispute Resolution or expanding the Center's service to include foreclosure mediation.

Lenders do not want to foreclose on homeowners. Therefore, lenders will work with willing borrowers to keep them in their homes. Most lenders participate in the Federal Home Affordable Modification Program or have their own modification programs to help troubled homeowners stay in their homes.

However, it is our experience that most residential owner occupants are unable to make their mortgage loan payments due to unemployment or underemployment. So in most cases foreclosure medication does not really solve the underlying problem of loss of income.

It is a possibility, if a foreclosure mediation program is implemented, lenders may initiate foreclosure sooner due to the additional time mediation would add to the foreclosure process. So instead of focusing on working with borrowers in the early stages of delinquency, lenders may opt to start the foreclosure process sooner, which really does not benefit homeowners.

If mediation cannot solve the underlying problem of non-payment due to loss of income, then the added time will only add to the cost of foreclosure. Clearly added costs do not benefit the homeowner.

Additionally, funding a program that does not solve the underlying cause of foreclosure, further burdening the resources of an already burdened judiciary and opening up the possibility of mediation being used as a delaying tactic by borrowers that do not have the means to make mortgage payments, are a few of the issues to also consider.

Thank you for the opportunity to provide our testimony.