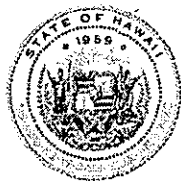


SB 1175



NEIL AMBERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

KEALI'I S. LOPEZ
INTERIM DIRECTOR

EVERETT KANESHIGE
DEPUTY DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Wednesday, February 2, 2011
8:30 a.m.

**TESTIMONY ON SENATE BILL NO. 1175, RELATING TO NONJUDICIAL
FORECLOSURE.**

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

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify regarding Senate Bill No. 1175, Relating to NonJudicial Foreclosure. My name is Stephen Levins, and I am the Executive Director of the Office of Consumer Protection ("OCP"), representing the Department.

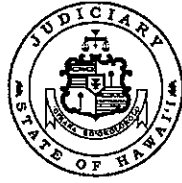
Senate Bill No. 1175 seeks to repeal authorization for nonjudicial power of sale foreclosure as contained in a mortgage instrument pursuant to section 667-5, Hawaii Revised Statutes, and requires a foreclosing mortgagee to utilize either the judicial foreclosure process or statutory power of sale foreclosure process containing additional

consumer protections found in part II of chapter 667, Hawaii Revised Statutes.

The Department believes that the committee should defer action on this measure. Although the mortgage foreclosure task force discussed the possibility of amending part II of chapter 667, of the Hawaii Revised Statutes, during its meetings, it ultimately determined that in view of the complexity of the issues associated with possible revisions to part II, it deemed it more appropriate to defer a thorough review until the 2011 calendar year. For that reason it was not included in the task force's proposed legislation, as reflected in Senate Bills Nos. 652 and 1074. See, pages 13-14 of the preliminary report of the mortgage foreclosure task force.

It is the intention of the chairperson of the task force to ask the task force to thoroughly examine this issue during its 2011 meetings.

Thank you for providing me with the opportunity to testify on Senate Bill No. 1175. I will be happy to answer any questions that the committee members may have.



THE JUDICIARY, STATE OF HAWAII

Testimony to the Senate Committee on Consumer Protection

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
(Wednesday, February 2, 2011, 8:30 a.m.)
State Capitol, Conference Room 229

by
Rodney A. Maile
Administrative Director of the Courts

Bill No. and Title: Senate Bill No. 1175, Relating to Non-judicial Foreclosures.

Purpose: Repeals authorization for non-judicial power of sale foreclosure as contained in a mortgage instrument pursuant to section 667-5, HRS, and requires a foreclosing mortgagee to utilize either the judicial foreclosure process or the statutory power of sale process containing additional consumer protections found in part II of chapter 667, HRS; makes conforming amendments.

Judiciary's Position:

The Judiciary expresses no opinion about the intent or purpose of this bill but is concerned to the extent that the bill could increase the Judiciary's caseload and impact our operations, without providing additional funding and resources.

It is our understanding that approximately 75% to 90% of foreclosures are currently proceeding non-judicially. *See, for example, attached Honolulu Star Bulletin article dated March 22, 2009 which was attached to the Preliminary Report of the Mortgage Foreclosure Task Force to the Legislature for the Regular Session of 2011 (indicating that non-judicial foreclosures account for at least 75% of foreclosure proceedings.)* A recent report indicates that the total number of foreclosure filings for January through December 2010 in Hawai'i was 14,224. *See attached StarAdvertiser article dated January 14, 2011 (citing statistics from RealtyTrac).* During this same time period, there were 1,331 judicial foreclosure filings statewide. If the RealtyTrac report includes both judicial and non-judicial foreclosures (which appears to be the case), approximately 12,893 cases or 90% of foreclosure cases proceeded non-judicially last year.



Senate Bill No. 1175, Relating to Nonjudicial Foreclosures
Senate Committee on Commerce and Consumer Protection
Wednesday, February 2, 2011
Page 2

We also understand that most of these non-judicial foreclosures have been proceeding pursuant to the process outlined in H.R.S. § 667-5 (as opposed to Part II of H.R.S. Chapter 667). If the non-judicial foreclosure process pursuant to H.R.S. § 667-5 were eliminated, applying the statistics from the Star Advertiser article dated January 14, 2011, the number of our cases could increase approximately 10 times.¹ (It is also important to note that Hawai'i has a larger share of condominiums and time share units compared to other states, which are also foreclosed upon, thereby adding to our case volume.)

Consequently, if this measure were to pass, additional funds and resources will be critical to enable the Judiciary to properly resolve the influx of judicial foreclosure filings. In view of the cuts the Judiciary has already taken and furlough days, it is important to stress how much this increase in our caseload will compromise our ability to expeditiously administer justice and serve the public not only in foreclosure cases but in our other cases as well.

An example of how this measure would adversely impact our service to the public can be seen by examining the judicial filings in Maui. In the Second Circuit, approximately 710 felony criminal cases were filed last fiscal year. The four Circuit Court judges in Maui handle these cases, in addition to the domestic abuse jury trials, drug court, probation violations, and approximately 920 civil cases that were filed last year. A total of 1,977 cases were filed in the Circuit Court of the Second Circuit last fiscal year. From January to December 2010, there were approximately 288 judicial foreclosure cases in Maui. If this measure were to pass without providing for additional resources, this would significantly increase the number of judicial foreclosure filings and impede the Judiciary's ability to properly handle its caseload. As the attached January 13, 2011 Star Advertiser article indicates, "more than half the properties affected by foreclosure were on the neighbor islands." With criminal cases taking priority due to Constitutional requirements, the other cases would be delayed, further protracting the processing time. This is also complicated by the nature of foreclosure proceedings, which are often relatively complex.

Finally, in order to address the increased caseload, the Judiciary would need to receive approval and appropriations for additional judges, staff, and courtrooms, as well as for other administrative support. There would also be a delay in start up time, because even if those funds were allocated this Legislative session, it would still take time to hire staff for the new positions. Even with immediate attention, it would be an extensive length of time before the system could accommodate the change. The Judiciary, therefore, has serious concerns about the impact this change would have on its functions and capabilities in serving the public.

Thank you for the opportunity to testify on Senate Bill No. 1175.

¹ Please note that the numbers in our testimony are simply estimates, based on certain information recently gathered in a preliminary attempt to assess the potential impact on the Judiciary.

Hawaii Island Homes

Intents

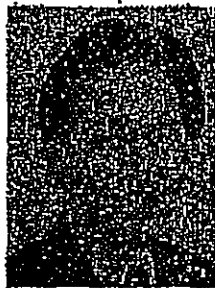
Rentals

Open Homes

* starbulletin.com/classifieds

Facing The Challenges Of Today's Real Estate Marketplace

Facing Foreclosure



Marvin S. G. Dang
Attorney and
Managing Member
Law Offices of
Marvin S. G. Dang, L.L.C.

Foreclosure is a financial disaster home owners hope they will never have to face. Not only does foreclosure mean the loss of their real property - probably their biggest personal investment - but their credit is severely damaged and chances of obtaining another mortgage loan substantially diminished.

Attorney Marvin Dang has handled foreclosures as an attorney for lenders for 30 years and as a commissioner for 28 years. He believes many foreclosures could be avoided if the home owner acknowledged potential problems before they reached crisis proportions, and contacted their lender to try to work out a solution.

He noted that there are many reasons why a borrower might be unable to continue making mortgage payments: loss of job, reduction in working hours and salary, huge medical bills, break-up of a marriage, an increase in the monthly mortgage payment, etc.

"Although there is no guarantee that a lender will make accommodations, chances are better that the lender will not start a foreclosure if the borrower contacts him with an explanation instead of simply halting payments," Dang said.

"Generally, lenders prefer to work out a 'win-win' solution rather than resort to foreclosure. The foreclosure process is costly and time consuming. It is a 'lose-lose' scenario. The only one who potentially benefits from a foreclosure is a buyer who manages to



pick up a foreclosed property at a bargain price at a foreclosure auction."

Dang explained that after one or two payments are missed, a lender will contact the borrower and mail out reminders to pay. If no mutual arrangement is made, a lender may refer the account to an attorney after three or four missed payments. But it could be sooner if the property is abandoned.

"Usually the first notification from the lender's attorney to the property owner is a letter confirming the default. This is sent out before the attorney begins the foreclosure proceeding. Once the borrower gets the attorney's letter, it still may be possible to work with the lender, so the property owner

should not ignore the letter," Dang said.

"If the borrower consults with a third party for assistance, it's also important to check the credentials of that person, as there are local and Mainland scam artists who have taken advantage of inexperienced Hawaii home owners with devastating results. It's best to talk with a Hawaii-based credit counseling service or a Hawaii real estate professional, rather than getting advice from the Internet. People can also meet with a bankruptcy attorney to decide what their best course may be."

Dang noted that in Hawaii there are two types of foreclosure actions, judicial and non-judicial. The judicial process is run through the court system. The lender files a complaint with the court regarding the delinquent loan and requests that the court allow the lender to foreclose on the mortgage on the real property. After the borrower is served with the complaint by a process server, the borrower needs to file a written answer with the court. If the borrower fails to respond, they will be in default as to the complaint.

The lender will ask the court to schedule a hearing to appoint a foreclosure commissioner to auction the property. At the hearing, the party being foreclosed on has an opportunity to tell the judge why a commissioner should not be appointed; for example, the property is in the process of being voluntarily sold and should close in a few months or the borrower is getting money to bring the loan current. If the judge is convinced that such a sale will close, or believes the loan can be reinstated, he or she may be willing to delay the foreclosure proceeding for a short period.

If the property owner is able to pay off the loan or bring it current, the foreclosure can be dismissed.

"In a judicial foreclosure, the commissioner

Continued on Page 2

Facing Foreclosure

Continued from page 1

who is usually either an attorney or a real estate professional, is accountable to and acts on behalf of the court...not on behalf of the lender," Dang said. "It will be the responsibility of the commissioner to get access to the property to inspect it. Generally, during the foreclosure, the commissioner will not evict the home owner or the tenant of the property. But any tenant will now need to pay rent to the commissioner and not to the landlord.

"The commissioner will hold two open houses at the property, usually on Saturdays and Sundays, and place ads in newspapers, such as the Honolulu Star-Bulletin. The ads must run once each week for three consecutive weeks announcing the date and time of the open houses and the date, time, and place of the auction. The last ad needs to appear at least two weeks before the auction is to be held. In Honolulu, the foreclosure auctions are held Monday through Friday beginning at 12 noon at the Eva Lani at First Circuit Court at 777 Punchbowl Street, where notices of upcoming auctions are posted. There could be more

than one property being auctioned at the same time by more than one commissioner."

According to Dang, anyone planning to bid at the auction will be required to show the commissioner before the auction proof of having a deposit in the form of a cashier's check or money order or cash, since the highest bidder needs to give the commissioner ten percent of the bid price at the end of the auction. The rules of the auction are announced by the commissioner and there is usually no upset price.

"Often the lender jumps in and bids at the auction," Dang said. "These lenders could be local and Mainland banks, credit unions, and other parties who may have bought the loan being foreclosed. Before they bid, lenders would have researched the condition and value of the property being foreclosed. Other bidders should do the same. The lender is not always the highest bidder. Investors and potential home buyers sometimes outbid the lenders.

"The highest bidder needs to understand that the judicial foreclosure sale is sub-

ject to court approval. After the auction, the commissioner will file a report with the court. The lender's attorney will schedule a court hearing to approve the sale, at which time the judge will ask if anyone wants to reopen the bidding for five percent higher than the auction price. Whoever is the highest bidder either from the first-public auction or at the reopening at the hearing is generally approved by the court. The winning bidder has about 35 days to come up with the rest of the money to close the sale. Upon closing, the foreclosure commissioner will sign a deed to convey the property in 'as is' condition to the buyer. When the deed is recorded at Bureau of Conveyances, the title to the property is transferred."

Dang said that the second type of foreclosure in Hawaii, the non-judicial foreclosure, was rarely held until the late 1990s but now accounts for about 75 percent or more of foreclosure proceedings here.

"There are several basic differences between a non-judicial foreclosure and a judicial procedure," Dang pointed out. "A judicial foreclosure can take six to nine

months, whereas a non-judicial foreclosure takes two to three months since there are no court filings, no open houses, and no hearings. However, one similarity is that a newspaper ad announcing an auction will be required to run in a local newspaper once each week for three consecutive weeks, the last ad to appear at least two weeks prior to the auction. The notice of the non-judicial foreclosure sale needs to be mailed to the borrower and should be served by a process server. The notice must be posted on the property. No open houses are required to be held at the property, and there is no opportunity to inspect it in advance of the auction.

"For non-judicial foreclosures the auction and bidding procedures are similar to those of a judicial foreclosure. However, a non-judicial foreclosure auction is conducted by the lender's attorney or representative rather than a court appointed commissioner. At the conclusion of the non-judicial auction, the buyer pays the ten percent deposit. The rest of the sales price must be paid within thirty days

after the auction. Once the sales price is paid, the buyer will get a deed and becomes the owner of the property after the deed is recorded at the Bureau of Conveyances.

"For both judicial and non-judicial foreclosures, the new owner, that is, the successful bidder, is responsible for obtaining possession of the property. The new owner can keep the occupants there or can ask them to move out. In cases where occupants refuse to move, the new owner may need to go to

court to ask the judge to issue an order to evict them."

"The entire foreclosure process could possibly be avoided if the borrower simply phoned the lender before missing that first payment," Dang said. "And people who find themselves facing possible foreclosure should keep in mind that, even if the foreclosure is started, it can be delayed and the auction can be postponed if the borrower is able to work out an arrangement with the lender."

Star Advertiser

Foreclosure filings hit new high

Figures show 38 percent more Hawaii properties were affected last year compared with 2009

By Andrew Gomes
 POSTED: 01:30 a.m. HST, Jan 13, 2011

Lenders pursued or completed foreclosure against a record number of Hawaii properties last year.

There were 12,425 properties statewide affected by foreclosure last year, which was 38 percent more than the 9,002 properties in 2009 and more than triple the 3,525 properties in 2008, according to the latest report from RealtyTrac, a real estate data company.

NO PLACE LIKE HOME
Hawaii's monthly foreclosures over the past year, including the year-over-year percentage gain:

2010	MONTH	TOTAL	CHANGE
	December	1,000	-34.8%
	November	377	+0.6%
	October	1,271	+37.4%
	September	1,617	+66.9%
	August	1,629	+87.5%
	July	980	-6.1%
	June	1,000	+41.6%
	May	1,055	+29.3%
	April	1,474	+115.5%
	March	1,097	+51.5%
	February	972	+81.0%
	January	1,302	+286.4%
	Total	14,224	+42.9%

BY THE NUMBERS
Five Hawaii communities with the most properties in foreclosure last year.

ZIP CODE	AREA	FORECLOSURES
96740	Kailua-Kona	1,244
96753	Kilauea	905
96706	Ewa Beach	867
96761	Lahaina	646
96707	Kapolei	609

Source: RealtyTrac

Most of the properties were homes, though RealtyTrac doesn't exclude commercial real estate from its foreclosure data. If all the properties affected by foreclosure were homes, the total last year would represent 2.42 percent of all homes in the state, up from 1.8 percent the year before.

The growing number reflects the state's continuing struggle with economic recovery, and has strained families.

But so far foreclosures haven't reached epidemic proportions seen in states such as Nevada, Arizona and Florida.

"We've been relatively fortunate," said Jon Mann, a Honolulu real estate agent. "We haven't really been impacted as significantly as some mainland markets."

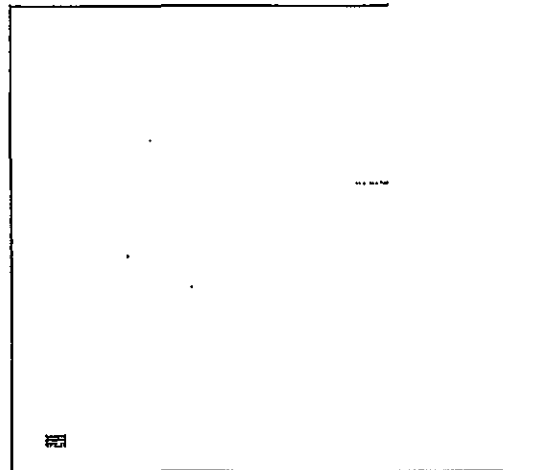
Hawaii's foreclosure level was close to the national average — 2.23 percent of housing affected by foreclosure last year — though Hawaii's rate was 11th highest.

The worst problem is in Nevada, where 9.42 percent of homes were affected by foreclosure last year. The lowest rate was 0.13 percent in Vermont.

In Hawaii, more than half the properties affected by foreclosure were on the neighbor islands, where many out-of-state investors bought vacation homes during the real estate boom in the mid-2000s.

On the Big Island, there were foreclosure filings against 3,370 properties last year, representing 4.23 percent of homes.

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Star Advertiser

Maui had 2,675 properties with foreclosure filings, or 4.05 percent of homes.

be counted on the same property in different months.

Kauai had 819 properties with foreclosure filings, or 2.75 percent of homes.

Oahu had the most properties affected by foreclosure but the lowest rate -- 5,561 properties representing 1.65 percent of the housing market.

Real estate industry watchers caution that foreclosures could put downward pressure on housing prices if an overbearing number of foreclosed homes wind up on the market.

On Oahu, there were close to 3,200 single-family homes and condominiums on the market at the end of last year.

Mann said about 15 percent to 20 percent of the inventory was owned by lenders or homeowners trying to avoid foreclosure through short sales.

Whether the percentage will rise is hard to tell because not all homes that enter foreclosure are sold. Some owners work out their mortgage difficulties. In other cases, foreclosure can drag on for more than a year.

Mann notes that some additional inventory won't necessarily hurt the market because present inventory is relatively tight.

Hawaii's foreclosure problem is expected to worsen this year, according to local foreclosure attorneys.

There was a lull in the past two months, but the industry attributes that to lenders holding up cases to address improper processing issues raised a few months ago.

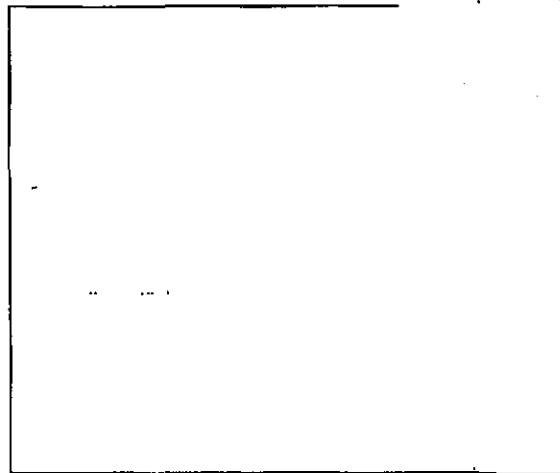
The number of foreclosure filings in December was 1,000. That was down 35 percent from 1,302 in the same month last year but was up from 877 in November.

Lenders filed a flurry of new foreclosure cases last month -- 163 default notices, which according to RealtyTrac was the highest number in more than a year.

The bulk of filings last month were auction notices and lender repossessions.

RealtyTrac numbers for the full year are different in that they count properties going through foreclosure. The monthly counts are foreclosure filings, which can

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1001 Bishop Street, Suite 780
Honolulu, Hawaii 96813-3410
February 1, 2011

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
REGARDING SENATE BILL 1175

Hearing Date: WEDNESDAY, February 02, 2011
Time : 8:30 a.m.
Place : Conference Room 229

Sen. Baker and Members of the Committee,

My name is John Morris and I am testifying against SB 1175 as currently written. I have been involved with condominiums since 1988, when I served as the first condominium specialist with the Hawaii Real Estate Commission (from 1988 to 1991). Since then, I have served as an attorney advising condominium associations and spent almost 20 years trying to collect delinquencies for them.

This bill proposes to force anyone wishing to conduct a nonjudicial foreclosure to use part II of chapter 667. Although part II of chapter 667 has been in existence for more than a decade, no one has used it because of the language found in H.R.S. Section 667-31(a), which reads as follows: "*(a) After the purchaser completes the purchase by paying the full purchase price and the costs for the purchase, the mortgaged property shall be conveyed to the purchaser by a conveyance document. The conveyance document shall be in a recordable form and shall be signed by the foreclosing mortgagee in the foreclosing mortgagee's name. The mortgagor or borrower shall sign the conveyance document on his or her own behalf.*" (Emphasis added.)

No mortgagor or borrower is likely to ever sign the conveyance document that extinguishes the person's ownership interest. Part II should not be considered as a potentially viable alternative to Part I unless H.R.S. Section 667-31(a) is amended to eliminate the requirement that the foreclosed party sign the conveyance document.

In fact, the mortgage foreclosure task force indicated that it had not had time to fully consider the use of part II and any changes that might have to be made to make it more effective. Therefore, in that respect, it seems that this particular bill may be premature.

TESTIMONY REGARDING SENATE BILL 1175

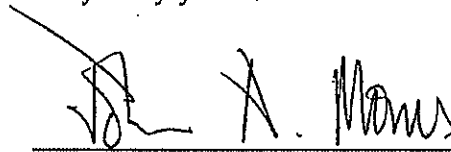
February 1, 2011

Page 2

On that basis, I respectfully suggest that this bill be held.

Please contact me at 523-0702 if you have any questions. Thank you for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "John A. Morris". The signature is written in a cursive style with some stylized flourishes. A horizontal line is drawn below the signature.

John A. Morris

JAM:alt

G:\C\2011 Testimony SB 1175 (02.01.11)



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FAX:
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1000 Bishop Street, Suite 3018
Honolulu, HI 96813-4203

Presentation of the Committee on Commerce and Consumer Protection
Wednesday, February 2, 2011 at 8:30 a.m.
Testimony on SB 1175 Relating to Mortgage Foreclosures

In Opposition

TO: The Honorable Chair Rosalyn H. Baker
The Honorable Vice Chair Brian T. Taniguchi
Members of the Committee

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in opposition to SB 1175. HBA is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii.

The purpose of this bill is to repeal authorization for nonjudicial power of sale foreclosure as contained in a mortgage instrument pursuant to section 667-5, HRS, and requires a foreclosing mortgagee to utilize either the judicial foreclosure process or the statutory power of sale foreclosure process containing additional consumer protections found in part II of chapter 667, HRS.

Your Mortgage Task Force addressed the issue of nonjudicial foreclosures by providing recommendations to this Legislature. The recommended legislation provides meaningful improvements for borrowers facing non-judicial foreclosure in the areas of notice, elimination of deficiency judgments for qualified homeowners and a process to convert to judicial foreclosure.

We incorporate by reference the testimony separately submitted by the Hawaii Financial Services Association.

Thank you for the opportunity to provide our testimony and we request this bill be held.

A handwritten signature in black ink, appearing to read 'Gary Y. Fujitani', with a long horizontal line extending to the right.

Gary Y. Fujitani
Executive Director



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

January 31, 2011

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

Re: Senate Bill 1175 Relating to Nonjudicial Foreclosure

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.

The MBAH opposes Senate Bill 1175 Relating to Nonjudicial Foreclosure. The Mortgage Bankers Association of Hawaii strongly feels that these bills relating to the matter of foreclosures should be vetted as part of the mortgage foreclosure task force since both consumer and lender groups are represented and can work on the details of each bill to come to a consensus. We feel that the bills, as presented, have merit but include processes which may potentially cause harm to consumers and lenders.

Thank you for the opportunity to present this testimony.

HAWAII FINANCIAL SERVICES ASSOCIATION

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

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

Fax No.: (808) 521-8522

February 2, 2011

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 1175 (Nonjudicial Foreclosure)**
Hearing Date/Time: Wednesday, February 2, 2011, 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. Financial services loan companies make mortgage loans and other loans.

The HFSA **opposes** this Bill.

The purpose of this Bill is to: (1) repeal the authorization for nonjudicial power of sale foreclosure as contained in a mortgage instrument pursuant to section 667-5, HRS, and (2) require a foreclosing mortgagee to utilize either the judicial foreclosure process or the statutory power of sale foreclosure process containing additional consumer protections found in part II of chapter 667, HRS; makes conforming amendments.

This testimony is based, in part, on my role as the Vice Chairperson of the Hawaii Mortgage Foreclosure Task Force ("Task Force"). I served as a member of the Task Force as the designee of the HFSA. This testimony is also based on my experience as an attorney who has actively done foreclosures for nearly 33 years since 1978.

The Task Force, which was created by Act 162 of the 2010 Session Laws of Hawaii, issued its 2011 Preliminary Report to the Legislature. The Task Force's recommendations are contained in other bills, such as Senate Bill 652. We believe that the recommendations of the Task Force are substantive and provide meaningful improvements to the non-judicial foreclosure process. The recommendations are the result of consensus by the 17 Task Force members who represented diverse, and in some instances opposing, interests.

The provisions in this Bill (Senate Bill 1175) are not part of the Task Force's recommendations.

The HFSA believes that only the recommendations of the Task Force should be adopted by the Legislature. Any other issues can continue to be reviewed by the Task Force over the remainder of this year as the Task Force considers other recommendations for the 2012 Legislature.

We recommend that the contents of this Bill be deleted, and this Bill be used as a vehicle to address the following issue:

Judicial foreclosure auctions and non-judicial foreclosure auctions in the State have usually been held at court locations. On the Big Island, they have been held at a State building (Hilo) and a public park (Kona). Late last year, the Department of Accounting and General Services stated that it would not allow foreclosure auctions at the State building in Hilo. The Judiciary took the position

that it will not approve the use of any court facilities in the entire State for the purpose of conducting non-judicial foreclosure auctions. The Judiciary was concerned
SB 1175
Hawaii Financial Services Association testimony
Page 2

that the public would be confused about whether or not non-judicial foreclosures are court-sanctioned. In Hilo, there is an additional issue of whether the non-judicial foreclosure auctions can be conducted on public sidewalks adjacent to court buildings and other State buildings.

This issue, which was not voted on by the Task Force, is urgent enough that it needs to be addressed legislatively this session to codify what has been a general practice. Unless this problem is corrected, non-judicial foreclosure auctions might have to take place at numerous, inconvenient locations. This could discourage members of the public who would want to attend and bid at the auctions. It is in the interest of both the lenders and the borrowers to have members of the public bidding at non-judicial foreclosures.

The legislative wording to correct this problem is simple. **This Bill should be amended to state that the auction, i.e. the public sale, should be allowed to take place at a court building in the county where the property is located, subject only to reasonable conditions on the time, place and manner of the public sale.**

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

Thank you for considering our testimony.



MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association

(MSCD/hfsa)



P.O. Box 976
Honolulu, Hawaii 96808

January 31, 2011

Honorable Rosalyn H. Baker
Honorable Brian Taniguchi
Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

Re: SB 1175/OPPOSED

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

I chair the CAI Legislative Action Committee. CAI opposes SB 1175.

CAI advocates for separate foreclosure authority, to be included in the condominium statute itself so that condominiums will be distinguished from mortgagees. Still, for the present, condominiums foreclose "in like manner" as a mortgage foreclosure so CAI opposes the elimination of the Part I non-judicial foreclosure process.

SB 1175 does not address the reason why Part II has essentially never been used. H.R.S. Section 667-31(a) reads as follows: "(a) After the purchaser completes the purchase by paying the full purchase price and the costs for the purchase, the mortgaged property shall be conveyed to the purchaser by a conveyance document. The conveyance document shall be in a recordable form and shall be signed by the foreclosing mortgagee in the foreclosing mortgagee's name. The mortgagor or borrower shall sign the conveyance document on his or her own behalf."

No mortgagor or borrower is likely to ever sign the conveyance document that extinguishes the person's ownership interest. Part II should not be considered as a potentially viable alternative to Part I unless H.R.S. Section 667-31(a) is amended to eliminate the requirement that the foreclosed party sign the conveyance document.

Honorable Rosalyn H. Baker
Honorable Brian Taniguchi
January 31, 2011
Page 2 of 3

CAI also objects to the proposed requirement to serve notice as though it were a judicial summons. The expeditious and economical foreclosure of association liens should be promoted. Otherwise, the association is to be burdened by the default of the owner plus by the expensive and time-consuming process of seeking to serve owners who have quite often left the jurisdiction and/or are in hiding.

Existing notice requirements satisfy due process and are reasonably calculated to give notice of the foreclosure to the defaulting party. Those requirements should not be changed for condominiums.

By way of illustration, it is useful to consider how parties evading service can profit by their actions. First, the process server must attempt service. Assume that takes thirty days. It might be more or less.

Upon failing to accomplish service, in Hawaii or wherever on the planet the owner might be, then one must next attempt service by certified mail. Defaulting owners rarely sign for certified mail from foreclosing creditors. Thus, attempts to serve by certified mail will often be fruitless.

H.R.S. Section 634-36, referred to in the definition of "served" in section 7 of SB 1175, provides that "the return receipt signed by the defendant shall be filed with the affidavit" when service is made by certified mail. Without the signed return receipt, H.R.S. Section 634-36 goes on to provide that:

If the defendant cannot be found to serve or mail the summons and the facts shall appear by affidavit or otherwise to the satisfaction of the court, it may order that service be made by publication of summons in at least one newspaper published in the State and having a general circulation in the circuit in which the action has been instituted, in such manner and for such time as the court may order, but not less than once each week in four successive weeks, the last publication to be not less than twenty-one days prior to the return date stated therein unless a different time is prescribed by order of the court.

Honorable Rosalyn H. Baker
Honorable Brian Taniguchi
January 31, 2011
Page 3 of 3

What this means is that the creditor must file an ex parte motion. Leaving aside delays caused by furloughs, courts have heavy case loads. An ex parte motion for service by publication might easily take thirty days to process.

Upon receipt of an order enabling service by publication, and assuming that counsel can immediately act without any delay, then a very expensive newspaper ad will be placed once each in four successive weeks. The last publication must be not less than twenty-one days prior to the return date established by the court.

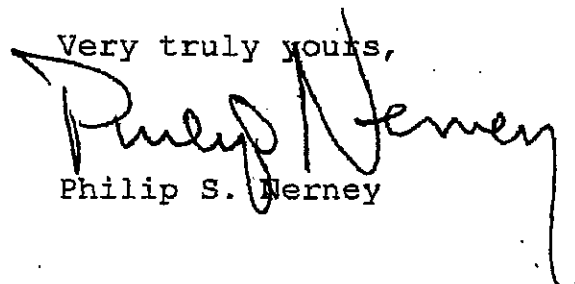
The court quite reasonably schedules the return date far enough out in time to accommodate delay in getting the ad placed, and to accommodate its own calendar, so the process often takes more than the minimum amount of time.

The point of the story is that the requirement of serving notice in the manner of a judicial summons can easily add four to six months to the process. Since the notice to be "served" is the notice of default, that notice will long since be outdated by the time service is effectuated through these torturous means.

Honolulu has one general circulation newspaper. The present cost to publish notice of a non-judicial foreclosure three (not four) times in the Honolulu Star Advertiser is close to \$1,000.00, and the cost to publish the ad necessary under Part II to serve by publication four times is presumably comparable.

For these and other reasons, CAI opposes SB 1175.

Very truly yours,



Philip S. Nerney

Senator Baker,

I am a Board member and long time owner at Kamole Beach Royale in Kihei.
I am writing in opposition to all legislation currently being considered which makes the collection of delinquent dues or other assessments more difficult, or impossible.

Legislative efforts have all been in the direction of providing a “break” or easing the burden for a person in trouble with their unit. But when this happens the burden is shifted to the others owners, who themselves may just be “holding on”.

Associations do not have a well of money to draw from. All the money we receive is from owners and is used to maintain the facility, take out the garbage, pay the light bill and many others, as well as to maintain the State Mandated Reserves. Board members volunteer their time and incur personal expenses.

THERE IS NO EXTRA MONEY for the Association to draw from. If someone does not pay their share the other owners need to make it up – it’s that simple. In other states, like Florida, where the foreclosure rate in some cases is 30% – 50% the remaining owners cannot pay the share of others and the whole process feeds on itself to put more people into trouble.

I sincerely and respectfully urge you to consider the real Impact on Associations and listen to organizations such as CAI and management Companies who understand the issues and problems with operating Condo’s.

Respectfully Submitted,

George Jacobson
Currently off Island 509-546-1754

Testimony for CPN 2/2/2011 8:30:00 AM SB1175

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Jim Dodson

Organization: Ewa by Gentry Community Association

Address: 91-1795 Keaunui Drive Ewa Beach

Phone: 808 685-0111

E-mail: jdodson@ebgca.net

Submitted on: 2/1/2011

Comments:

Hawaii is a "prior lien theory" state. This law will negatively impact every common interest development in the state and seeks to discriminate against a single class of ownership.

Testimony for CPN 2/2/2011 8:30:00 AM SB1175

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Gordon Langston

Organization: Individual

Address:

Phone:

E-mail: flashgordon10t@aol.com

Submitted on: 1/28/2011

Comments:

Member of the board of directors at Kahana Reef and I oppose the legislation.

Testimony for CPN 2/2/2011 8:30:00 AM SB1175

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Tim Baier

Organization: Pearl Regency Home Owners Association

Address: Aiea, HI

Phone:

E-mail: timlid.baier@att.net

Submitted on: 1/29/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1175

Conference room: 229
Testifier position: oppose
Testifier will be present: No
Submitted by: Al Denys
Organization: Individual
Address:
Phone: 306-9180
E-mail: adenys@hawaii.rr.com
Submitted on: 1/31/2011

Comments:

I am against SB 1175 as it will preclude community associations from trying collect delinquent fees from homeowners and will increase the maintenance fees from those homeowners who are in good standing because of the added expense in collecting those delinquent fees. Also the shortcoming in collected maintenance fees revenues, which are used to pay for the maintenance of the property will result in higher maintenance fees to pay for the day to day operations of the association. Please do not approve SB1175 Mahalo.

Al Denys

Testimony for CPN 2/2/2011 8:30:00 AM SB1175

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: John E Patton

Organization: Individual

Address: WAILUNA CONDO COMMUNITY Aiea

Phone:

E-mail: jpatton@uci.edu

Submitted on: 1/30/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1175

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Glen Hilton

Organization: Individual

Address:

Phone:

E-mail: glenhilton2@netscape.net

Submitted on: 1/31/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1175

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Earl Park

Organization: Individual

Address: 75-6009 Alii Dr., Unit H-2 Kailua Kona, Hawaii

Phone:

E-mail: parkj052@hawaii.rr.com

Submitted on: 1/29/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1175

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Timothy Baier

Organization: Individual

Address:

Phone:

E-mail: timlid.baier@att.net

Submitted on: 1/29/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1175

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Patrick J. Wardell

Organization: Individual

Address: 3833 L. Honoapiilani Rd Lahaina, HI

Phone: 808 3443755

E-mail: pwardell@uplink.net

Submitted on: 1/28/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1175

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: GARY M. YAKABU

Organization: Individual

Address:

Phone:

E-mail: gmyak@hawaiiantel.net

Submitted on: 1/31/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1175

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: JOE ALMEIDA

Organization: Individual

Address: 94-314 MAIAOHE PLACE

Phone: 623-7991

E-mail: J55547@AOL.COM

Submitted on: 1/31/2011

Comments: