

SB 234



NEIL AMBERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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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. 234, 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 testify regarding of Senate Bill No. 234, Relating to Mortgage Foreclosures. My name is Stephen Levins, and I am the Executive Director of the Office of Consumer Protection ("OCP"), representing the Department.

Senate Bill No. 234 seeks to require a mortgagee in possession of a foreclosed property to pay all costs or fees related to the property for which a lien may be placed and to maintain the foreclosed property in a certain condition until transfer to a subsequent purchaser and removes the cap on past-due association fees for a

mortgagee that takes possession of a foreclosed condominium.

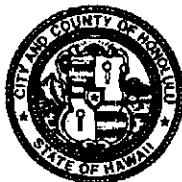
The Department supports the requirement that a mortgagee in possession maintain the pay all cost or fees related to the property for which a lien may be placed but takes no position, at this time, regarding the cap on past-due association fees.

The Department believes that it is critical that dwellings subject to foreclosure be adequately maintained throughout the entire foreclosure process. Physical deterioration of the property devalues other units in an association and adversely affects the general well being of the community and surrounding neighborhood. Consequently, to the extent that this measure supports appropriate maintenance, the Department is in support of it.

Thank you for providing me with the opportunity to testify on Senate Bill No. 234. I will be happy to answer any questions that the committee members may have.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

850 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
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PETER B. CARLISLE
MAYOR

DAVID K. TANOUE
DIRECTOR

JIRO A. SUMADA
DEPUTY DIRECTOR

February 2, 2011

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

Dear Chair Baker and Members:

**Subject: Senate Bill No. 234
Relating to Mortgage Foreclosures**

The Department of Planning and Permitting (DPP) **strongly supports** Senate Bill No. 234, which includes a requirement for the mortgagee in possession of a foreclosed property to maintain the property in a certain condition until transfer to a subsequent purchaser.

Our department is charged with the responsibility to enforce compliance with the City's codes and ordinances. This responsibility includes the issuance of a citation to parties associated with a property that has a violation of one or more of these codes. Our experience has shown that too often, mortgagees take no action to resolve code violations on a foreclosed property but rather are content to pass the matter on to a future owner. Since the transfer of a property may take an extended period of time, these violations, which may be matters related to health and safety, simply go unresolved. The requirements prescribed in this bill will help to make mortgagees accountable for the condition of properties acquired in a foreclosure sale.

In short, please approve Senate Bill No. 234. Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "David K. Tanoue", is written over a horizontal line.

David K. Tanoue, Director
Department of Planning and Permitting

DKT: jmf

Sb234/mortgage.doc

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

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
REGARDING SENATE BILL 234

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 on SB 234. 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.

While this bill seems to be a good-faith attempt to protect associations, the first part of it seems to be unnecessary under the current law. Section 514 B-146(b) already states:

The mortgagee of record or other purchaser of the unit shall be deemed to acquire title and shall be required to pay the unit's share of common expenses and assessments beginning:

- (1) *Thirty-six days after the order confirming the sale to the purchaser has been filed with the court;*
- (2) *Sixty days after the hearing at which the court grants the motion to confirm the sale to the purchaser;*
- (3) *Thirty days after the public sale in a nonjudicial power of sale foreclosure pursuant to section 667-5; or*
- (4) *Upon the recording of the instrument of conveyance;*

Moreover, that requirement applies regardless of whether a mortgagee actually takes possession of the property, so it provides more protection than the proposal in SB 234, which seems to require that the mortgagee actually have possession. In addition, if there are any problems with the condition of the unit, once the mortgagee becomes liable for the maintenance fees, the association can, if necessary, do the work and bill the costs back to the mortgagee. In other words, the burdens imposed by this bill

TESTIMONY REGARDING SENATE BILL 234

February 1, 2011

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already apply to the mortgagee as the de facto owner.

On that basis, it appears that, in this respect, this bill will provide less protection than the current law.

Finally, sections 4 and 5 of SB 234 seem to remove the \$3,600 limitation on a mortgagee's liability for maintenance fees that arose prior to the foreclosure and leave the limitation in place only for a subsequent purchaser of a unit.

In the past, associations have always tried to work with the lenders in adjusting the limitation on liability for pre-foreclosure maintenance fees, and these proposed changes would be a significant departure from the current law.

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 loops and flourishes.

John A. Morris

JAM:alt

G:\C\2011 Testimony SB 234 (02.01.11)



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1000 Bishop Street, Suite 301B
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Presentation of the Committee on Commerce and Consumer Protection
Wednesday, February 2, 2011 at 8:30 a.m.
Testimony on SB 234 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 234. HBA is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii.

This bill requires a mortgagee in possession of a foreclosed property to pay all costs or fees related to the property for which a lien may be placed and to maintain the foreclosed property in a certain condition until transfer to a subsequent purchaser; removes the cap on past-due association fees for a mortgagee that takes possession of a foreclosed condominium.

The current amount of \$3,600 was raised from \$1,800 in the 2009 Legislative Session. We already agreed to a 100% increase a little over 18 months ago.

Increasing the losses that lenders incur on condominium foreclosures, may have the unintended consequence of restricting future loans to the condominium market. This in turn could have the negative effect on condo sales and purchases since lenders may require higher down payments to offset potential losses &/or higher interest rates to compensate for the added risk. If mortgage terms are tightened it may affect the value to these properties if prices have to be lowered in order to encourage sales.

It is our understanding that there may not be agreement among the association advocates regarding this legislation and request that this bill be held.

Thank you for the opportunity to provide our testimony.

A handwritten signature in black ink, appearing to read 'Gary Y. Fujitani', written over a horizontal line.

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 234 Relating to Mortgage Foreclosures

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 234 Relating to Mortgage Foreclosures. 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 234 (Mortgage Foreclosures)**
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.

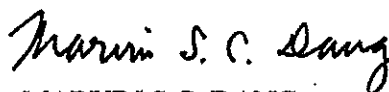
The purpose of this Bill is to: (1) require a mortgagee in possession of a foreclosed property to pay all costs or fees related to the property for which a lien may be placed; (2) maintain the foreclosed property in a certain condition until transfer to a subsequent purchaser; and (3) remove the cap on past-due association fees for a mortgagee that takes possession of a foreclosed condominium.

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 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 234) 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.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association



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 234/SUPPORT INTENT

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

I chair the CAI Legislative Action Committee. CAI supports the intent, but not the language, of SB 234.

Mortgagees assiduously avoid taking possession of foreclosed property. Thus, the conditions under which mortgagees would theoretically be burdened by the provisions of SB 234 would rarely exist.

Hawaii Revised Statutes Section 514B-146(b) prescribes when the purchaser at auction is "deemed to acquire title" and Section 514B-146 already prescribes a mortgagee's financial obligations to the condominium. Thus, it is unclear that SB 234, as written, advances any important goal.

In practical effect, SB 234 would work to relieve mortgagees of their obligations to pay common expenses during their tenure as an owner. That is precisely the opposite direction from how CAI perceives that policy should go.

CAI will be delighted if the legislature chooses to impose the apparently intended responsibilities onto mortgagees who are deemed to acquire title (rather than on those who take possession). Still, it is notable that subsection (c) of the various proposed sections provides another unwarranted out for mortgagees, because that language is open to interpretation.

Mortgagees often, indeed almost routinely, seek to avoid the payment of common expense obligations during their tenure as owner. Subsection (c) could be construed to suggest that if mortgagees are successful in avoiding their payment obligations

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

until they sell the unit, then their payment obligation ends. Existing law is preferable to the proposed language.

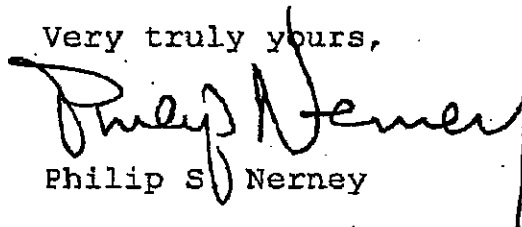
Similarly, section 5 of SB 234 gives the appearance of removing the \$3,600 cap on the special assessment provided for in H.R.S. Section 514B-146(h), but, in practical terms the language would not result in the imposition of a payment obligation on a mortgagee. Thus, the advantage of the proposed language is not evident.

CAI strongly supports the elimination of the \$3,600 cap on the special assessment provided for in H.R.S. Section 514B-146(h). CAI proposes that the final sentence of the existing Section 514B-146(h) simply be deleted from the statute.

Since mortgagees underwrite risks, and price their products accordingly, it is appropriate to shift the burden of assuring the payment of condominium common expenses onto lenders. No lender should make a loan to someone who cannot afford all of the expenses incident to the ownership of property, including condominium common expense payments.

Mortgagees disserve consumers by placing them into homes they cannot afford. The consequences of that behavior should be imposed on mortgagees.

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 SB234

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 234 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 SB234 Mahalo.

Al Denys

Testimony for CPN 2/2/2011 8:30:00 AM SB234

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 SB234

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, HI 96706

Phone: 808 685-0111

E-mail: jdodson@ebgca.net

Submitted on: 2/1/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB234

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 SB234

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 SB234

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 SB234

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 SB234

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 SB234

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 SB234

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: