



THE JUDICIARY, STATE OF HAWAII

Testimony to the House Committee on Consumer Protection and Commerce
Representative Robert N. Herkes, Chair
Representative Ryan I. Yamane, Vice Chair

and

House Committee on Judiciary
Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair

Wednesday, March 16, 2011, 2:00 p.m.
State Capitol, Conference Room 325

by
Elizabeth Kent, Director
Center for Alternative Dispute Resolution

Bill No. and Title: Senate Bill No. 651, S.D. 2, Relating to Mortgage Foreclosures.

Purpose: The purpose of the bill is to create a mandatory foreclosure dispute resolution process conducted through the center for alternative dispute resolution within the Judiciary to avoid or mitigate the damages of foreclosure.

Judiciary's Position:

The Judiciary supports the intent of the bill -- facilitating the resolution of foreclosure disputes, whether by action or by power of sale, of residential real property that is occupied by the mortgagor as a primary residence. However, there are significant concerns that must be addressed, both of a general and specific nature, before the Judiciary can support the process outlined in this bill. Most notably, sufficient financial resources must be provided to implement the process.



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General Concerns

Sufficient financial allocation to run an effective program. The bill provides for a foreclosure dispute resolution special fund to be administered by the Judiciary; makes an initial appropriation for the establishment of the program; and provides that fees collected from the mortgagors and mortgagees be deposited into the special fund. While the amount of the initial appropriation has been left blank, the start-up costs must include sufficient funds to contract for program design, staff, workspace, and related overhead expenses. The Center for Alternative Dispute Resolution (Center), like other Judiciary programs, has absorbed serious cuts in both budget and staff. There is not sufficient staff, budget, or workspace to absorb the foreclosure dispute resolution program within current allocations.

The fees charged to the parties would generate \$400 per case. There is a funding mechanism in the bill that would require the payment of an unspecified fee upon the filing of certain documents, and those fees would be placed into the foreclosure dispute resolution special fund. These fees, which will be collected by entities other than the Center (which will administer the program), must be set high enough to generate sufficient income to cover the costs of the program. It is expected that this program would be costly to run, certainly considerably more than \$400 per case.

Section 10 of the bill allows for an initial appropriation from the general fund to be repaid upon receipt of sufficient moneys to sustain the program. This initial appropriation must be sufficient to cover program costs, as it will take time for the fees noted above to accumulate to a point at which the fund will be adequate to support the program.

Impact of a moratorium. The Judiciary anticipates that if the moratorium is implemented, there would be a large number of cases at the start of the program and filed in the courts when the moratorium ends. If there are an overwhelming number of cases when the program starts up, there may be delays and unanticipated impacts on court operations as well, to the detriment of the public. More about the Judiciary's concerns about court operations is contained in testimony in response to Senate Bill 652, S.D. 2.

One way to address this concern regarding this program would be to add a section stating that the program is only available to foreclosure actions commenced after the effective date of the Act. House Bill 1411, H.D. 2 addressed it by requiring owner occupants to choose between a conversion to a judicial foreclosure action or dispute resolution, but the Judiciary is opposed to conversion unless adequate funds are provided, as can be seen from the Judiciary's testimony in opposition to Senate Bill 652, S.D. 2. Though we would like to assist in the currently pending actions, without sufficient funding, we will be unable to provide effective assistance.



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Particularity that may be better addressed by court rules. Many provisions of the bill are quite detailed, and enactment of this kind of detail might hamper the program's ability to be flexible and to make appropriate changes between legislative sessions. The Judiciary suggests that many of the programmatic details may be better addressed by Supreme Court rules or through procedures adopted by the Center. The Judiciary also notes that this draft variously refers to rules enacted by different judicial entities (e.g., the Chief Justice and the Supreme Court). The Judiciary suggests that the proper entity to formulate the rules would be the Supreme Court and notes that there are procedures for enactment of Supreme Court rules that allow for input from the public.

Imposition of extraordinary duties on the Center that can be better performed by the parties or other entities. There are numerous provisions of the bill that impose duties on the Center for which it has no staffing or expertise. In most cases, the parties are well-equipped to assume these duties.

For instance, Section 667-D(c) would require that all foreclosure proceedings be stayed effective upon receipt by the Center of a notice of election to pursue dispute resolution. However, the Center does not currently file and process public documents, so it is unclear how other entities would know that such a stay had been effected. Similarly that same section requires the Center to determine the appropriate entity (the court, bureau of conveyances, and/or the land court) if a mortgagor elected to waive dispute resolution or fails to give notice within a specific time. There are other examples of this throughout the bill, as noted below. The Judiciary suggests that whenever possible, the burden of notification and notice should be on the parties to the dispute and not on the Center or its designee.

Specific Concerns

Form of dispute resolution (Section 667-A, page 3, line 13 and throughout the bill). This bill contemplates a process of dispute resolution not defined elsewhere in the Hawaii Revised Statutes or commonly used in Hawaii. However, the term "facilitator" has many other meanings and thus may lead to confusion. The Judiciary suggests substituting the term neutral instead.

Certain important terms not included in the definitions provisions (Section 667A, page 3). The Judiciary notes that this bill does not define the terms "owner occupant," "primary residence," and "residential property," and these terms are essential to the interpretation of the bill.

Center or its designee (Section 667-B(b), at page 4, line 3). In order to increase options for delivery of all services, the Judiciary suggests that the term "or its designee" be inserted into the next draft of this bill. This would permit the Center to contract with neutrals and others to provide dispute resolution and other services that may become necessary.



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HUD approved local housing counsel agency (Section 667-C(b), at page 4, line 18). It is very important for mortgagors to receive as much information as possible about their options in order to prepare for their dispute resolution session. One potential bottleneck in this system will be if there are not sufficient HUD approved counselors to provide services to mortgagors. Therefore, the Judiciary suggests that contact information for all HUD approved counseling agencies in Hawaii be provided in the Notice of Dispute Resolution in order to provide more options for mortgagors.

Parties provide notice to each other as well as the Center (Section 667-C(b)(4), at page 5. The notice should note either that the mortgagor has to provide this information to the mortgagee as well, or the last phrase should be deleted so that it is clear that the information must be provided as part of participation in the program.

Notification to the Center that a party elects to participate (Section 667-D). Pursuant to the current draft, the Center will learn of a mortgagor's election to participate in dispute resolution when the mortgagor contacts the Center. Without information from the mortgagee that an action was initiated, it will be challenging to determine the time frame for timely return of the notice, as well as information about the parties involved in the action. Additionally, there is no provision stating that the court, bureau, or land court need to be notified of the participation in dispute resolution, although there is a requirement of notice of waiver or failure to respond within the time specified. Again, without knowing when an action is commenced by the mortgagee, the Center will not be able to determine if the response is untimely. The Judiciary suggests that the determination of an untimely response should fall on the parties and not the Center.

Additionally, the provisions that require the Center to notify the court, bureau of conveyances, and land court raise issues. These entities may not have an open case or file, so there may be questions about where to file the documents that the Center sends to them, and it is possible that they would not be placed in the correct file because no such file had been created.

Sharing of information (Section 667-E(b), at page 7, line 3). This provision states that the mortgagor and mortgagee must provide the Center with certain materials. This is a section that seems overly specific, with material that may be better left to Supreme Court rules. However, should the Legislature decide to keep the language, then it should be made clear that the parties must also share this information between and among themselves as well in order that they may prepare for the session.

Site and time allotted to session (Section 667-E(c), at page 7). If the Legislature needs to specify the length of time for each session, the Judiciary suggests that the session length be three rather than four hours. That would allow a neutral to conduct two sessions in a day. Also, the Judiciary suggests deleting reference to the site for the session.



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Notification of failure to comply with program rules (Section 667-E (d) and (e), at pages 7-8). These sections place the burden on the neutral to determine and notify the appropriate entity -- the court, bureau of conveyances, or land court -- of a parties' failure to meet the requirements of this process. The Judiciary notes that this provision requires strict compliance on the pain the non-compliant party loses rights to relief. Requiring strict compliance may be a trap for unsophisticated homeowners and provide grounds upon which to challenge the neutral who is not strict. For instance, must a neutral impose sanctions if a party fails to attend a session due to illness or because the party was in an accident on the way to the session? This is an example of sections that would be better left to Supreme Court rule. Additionally, the burden of notification should be on the parties and not on the Center or the neutral. The Center's role should be limited to supplying or filing such a report, with notification to the proper entity to be undertaken by the parties.

The Judiciary also notes that there may need to be imposition of lesser sanctions for noncompliance with other Program rules.

Notification of compliance with program rules (Section 667-E(f), at page 8). This section requires the neutral to notify the appropriate entity when the parties have met the requirements of the program. As with the sections above, the Center's role should be limited to supplying or filing such a report, with notification of the proper entity to be left to the parties.

Timing for notification of agreement prior to dispute resolution session (Section 667E-(g), at page 9, line 9). The Judiciary suggests deletion of the requirement of two days notification of settlement. Often parties settle just prior to a scheduled date, and all settlements should be encouraged. Settlement, even on the eve of a session, will save the parties and the neutral time.

Outcome of dispute resolution (Section 667-F(a), at page 9, line 17). The Judiciary suggests that the term "settlement agreement," which is a commonly used term, be substituted for the term "resolution document." This bill does not specify who should file this document with the appropriate entity, and the Judiciary, which is not problematic; the Judiciary notes that this obligation should fall upon the parties.

Filing of temporary modification agreement (Section 667-F(b), at page 10, line 13). As in the section above, the obligation of filing this document should fall on the parties.

Confidential materials (Section 667-G, at page 10). This section states that the public does not have a right to review "personal financial information" and "other sensitive personal information," neither of which are defined, presumably excluding this information from Chapters 91 and 92. The Judiciary suggests that this provision be further clarified so that it is clear that the open records law does not apply to the parties' submittal of their personal records and documents.



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Other charges included in fee (Section 667-I, at page 11, line 4). It is not clear if other charges may apply to the \$400 filing fee. For instance, it is not uncommon in alternative dispute resolution for there to be a nominal charge for participation by telephone to address additional administrative costs associated with use of the telephone. The Judiciary assumes that the party who participates by phone would incur the cost of the call, but may this charge be added to the fees. Also, the Judiciary assumes that the \$400 covers solely participation in the program and will be allocated to the foreclosure dispute resolution program, and that the \$400 does not cover other costs associated with filing a complaint, recording an affidavit, or recording a conveyance document, which fees are also deposited into the foreclosure dispute resolution special fund. Mortgagees may argue that they are being charged twice, for filing foreclosure documents and participating in the dispute resolution process. It also must be clarified that these charges are separate from those associated with filing a complaint in the court.

Rulemaking entity (Section 667-K, at page 11, line 17). The Judiciary suggests that the proper rule making entity is the Hawaii Supreme Court.

Rules re special fund (Section 667-L, at page 12, line 20). It is unclear what type of rules the Legislature anticipates will be adopted regarding distribution of moneys from the special fund.

Only one assessment per property (Section 667-I, at page 13, line 10). The provision notes that there shall be only one assessment per subject property, regardless of the number of filings related to that property. The Judiciary suggests that perhaps the intent of that provision was to apply to run with the parties on that particular piece of land while they are in a dispute related to that land, rather than with the land. If, for instance, the land changes hands, are the parties exempt from the filing fee because one had been imposed on that land earlier?

As a logistical matter, the Judiciary notes that determining a one-time fee will place a significant burden on court filing clerks and land court staff, and that they do not currently have a method to implement such a limited assessment.

Start up time required (Section 12, at page 24). The Judiciary estimates that it would take a minimum of six months to implement this program. The current draft establishes a moratorium on all foreclosure actions for property located in Hawaii for a period of six months after the effective date of the bill. It is unclear what effect is contemplated by creating a moratorium which expires before the proposed foreclosure dispute resolution program can be operational. The Judiciary also notes that this draft contains a defective start date of July 1, 2050, for the Act.

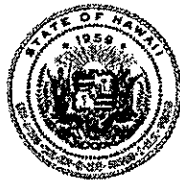
Sunset date. The bill does not contain a sunset date; the Legislature may want to consider a sunset date of two years.



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Choice between conversion to judicial foreclosure or dispute resolution. The Judiciary requests that the Committee consider adding a provision similar to the provision in H.B. 1411, H.D. 2, requiring an owner occupant of residential property to choose between filing a judicial foreclosure and pursuing dispute resolution.

Thank you for the opportunity to testify on this bill.



NEIL AMBERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE HOUSE COMMITTEES ON CONSUMER PROTECTION &
COMMERCE AND JUDICIARY

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Wednesday, March 16, 2011
2:00 p.m.

**TESTIMONY ON SENATE BILL NO. 651, S.D. 2, RELATING TO MORTGAGE
FORECLOSURES.**

TO THE HONORABLE ROBERT N. HERKES AND GILBERT S.C. KEITH-AGARAN,
CHAIRS, AND RYAN I. YAMANE AND KARL RHOADS, VICE CHAIRS,
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify in support of Senate Bill No. 651, S.D. 2, Relating to Foreclosures. My name is Stephen Levins, and I am the Executive Director of the Office of Consumer Protection ("OCP"), representing the Department.

Across our nation, mediation has rapidly grown in popularity as a means to avoid foreclosure. Jurisdictions throughout the United States have implemented various forms of mediation in response to the foreclosure crisis. These include programs

operating under the auspices of the judiciary in Nevada, New Jersey, Ohio, Florida, Connecticut, Indiana, Maine, New York, and Vermont, as well as programs established independent of the judiciary in the states of California, Oregon, Maryland, and Michigan. Despite some procedural differences, all of these programs have several features in common. They are designed to bridge the communication gap between loan services and homeowners, a gap that has often been cited as the major obstacle to effective loss mitigation. They do this by requiring active participation by a representative of the servicers with full authority to consider all loss mitigation options.

Senate Bill No. 651, S.D. 2, establishes in Hawaii an opt-in mediation program as a means to avoid unnecessary foreclosures. The program is based on one currently in use in Nevada, one of the most successful models currently operating in the United States. Senate Bill No. 651, S.D. 2 salient features include: having the Judiciary as the administrator of the program; suspending all pending foreclosure proceedings against the borrower until the mediation is completed; requiring that participants be fully prepared for the mediation proceeding; and mandating that the lender's representative have full authority to come to an agreement or have immediate access to someone who does.

In view of the high success rate of the program in Nevada, the Department is in strong support of the operation of a similar program in Hawaii.

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Despite being generally in strong support of this measure, the Department does have one significant concern, that being with the moratorium provision contained in Section 9 on page 23 of S.D. 2. The Department believes that implementation of a moratorium at this time may lead to unintended adverse economic consequences. In this regard, the Office of Consumer Protection defers to the expertise of the Division of Financial Institutions who is in a superior position to articulate them for the committee.

Thank you for providing me with the opportunity to testify on Senate Bill No. 651, S.D. 2. I will be happy to answer any questions that the committee members may have.



NEIL ABERCROMBIE
GOVERNOR

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PRESENTATION OF THE
DIVISION OF FINANCIAL INSTITUTIONS

TO THE
HOUSE COMMITTEES ON
CONSUMER PROTECTION & COMMERCE
AND
JUDICIARY

THE TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION OF 2011

Wednesday, March 16, 2011
2:00 p.m.

TESTIMONY ON S.B. NO. 651, S.D.2 RELATING TO MORTGAGE FORECLOSURES

THE HONORABLE ROBERT N. HERKES, CHAIR,
THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
AND MEMBERS OF THE COMMITTEES:

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions
("Commissioner") testifying on behalf of the Department of Commerce and Consumer
Affairs ("Department") in opposition to the mortgage foreclosure moratorium proposed
by Section 9 of Senate Bill No. 651, S.D.2.

While the Department's Division of Financial Institutions understands the thoughts behind a moratorium on mortgage foreclosures, the Division believes that consumers would like the State to take action in this situation.

An immediate effect of the moratorium will be a temporary stay of the foreclosure for hundreds of borrowers in default. The moratorium would offer only a brief relief for those borrowers. The unintended consequence may be a long term effect that may cause uneasiness in lending for financial institutions. Consider the following unintended consequences of a mortgage foreclosure moratorium.

The purview of the Division is to regulate financial institutions so that they operate in a safe and sound manner. In order to have financial institutions operate in a safe and sound manner, financial institutions cannot keep forestalling the foreclosure situation in certain circumstances. I would contend that all financial institutions would prefer to work with a borrower to find a solution that would enable a borrower to continue to make payments on the mortgage and stay in his or her home rather than have the financial institution take back the mortgage as a bank owned property.

For some borrowers, working out a loan is not an option if they do not have any income or have abandoned their property. In those situations, the banks should have the option to continue the foreclosure proceedings. An option for borrowers in this situation is a short sale. A short sale typically occurs when a homeowner can no longer afford their mortgage payment and the proceeds from the sale of their home will be insufficient to pay off all debts associated with the property. These debts can include

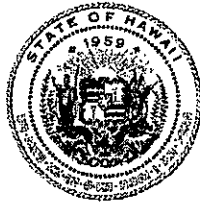
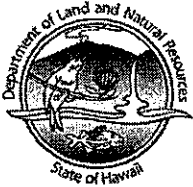
mortgages, liens, and closing costs that the seller may owe. The closing of the sale occurs within 14-21 days from the day the lender accepts the offer. The borrower is relieved of the debt and a new homeowner takes ownership of the home.

The last and probably most important unintended consequence is that the moratorium may negatively impact the safety and soundness of our financial institutions. The moratorium may cause bad loans to stay on the books of financial institutions, causing the financial institutions to reserve additional capital. The more bad loans there are on the books, the more capital needs to be reserved, leaving less capital available to make additional loans. The greater the amount of reserves, the more the federal and state regulators may determine financial institutions are at financial risk. Banks already have tightened their underwriting and the type of residential loans they make to potential borrowers. To the extent that the banks want to show regulators they are financially sound, the more conservative they will be in their lending practices.

While the Division is sympathetic to the mortgage foreclosure situation, it is also concerned about maintaining the financial stability of our local banks and allowing banks to continue to make residential loans to potential homeowners. Those advocating for a foreclosure moratorium are well intended, however, the Division believes the unintended consequences should be considered. Finding the right solution for all parties is the next step.

Thank you for the opportunity to testify. I would be pleased to respond to any questions you may have.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committees on
CONSUMER PROTECTION & COMMERCE
and
JUDICIARY**

**Wednesday, March 16, 2011
2:00 PM
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 651, SENATE DRAFT 2
RELATING TO MORTGAGE FORECLOSURES**

Senate Bill 651, Senate Draft 2 requires that a foreclosing mortgagee participate in dispute resolution process before carrying out a judiciary or nonjudicial power of sale foreclosure, creates a special fund to be expended by the Judiciary composed of fees for dispute resolutions and filing fees for Circuit Court foreclosure actions and documents related to foreclosures filed with the Land Court and Bureau of Conveyances to fund the Foreclosure Dispute Resolution Program, and requires that an agreement of the parties reached through dispute resolution be memorialized in a resolution document that shall be filed with the Court, the Bureau of Conveyances (Bureau), or the Land Court, as appropriate, and that shall be enforceable in a private contract action.

While the Department of Land and Natural Resources (Department) recognizes that this bill has merit, the Department has nonetheless has concerns with the role of the Bureau in the foreclosure and related dispute resolution process. The bill requires a stay of foreclosure proceedings to be in effect pending the outcome of the dispute resolution process and that notice be given to the Bureau if mortgagor elects to waive the dispute resolution process. The Department believes that it is unmanageable to expect the Bureau to comply with the requirements to determine if a foreclosure document may be filed with the Bureau. Further, this bill requires the Bureau to collect fees for deposit into the Foreclosure Resolution Special Fund. The Department opposes any further burden of collection activity placed upon the Bureau.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

March 13, 2011

To Whom It May Concern:

Dear Sir,

I wish to submit this letter in support to SB 651.

My uncle and aunt have been trying unsuccessfully to modify their mortgage loan with BoA for the past two some years. Both were hurt at the work place and have decreased in income. They are both receiving disability income and they are continuing physical therapy. Their incomes have decreased by almost one third. The doctors say that their health condition may be permanent.

Someone offered to help them do a mortgage loan modification and advised them to stop making the mortgage payment for three consecutive months to qualify for the loan modification. The people helping them advised my uncle this was a requirement by the bank. So they did not question the people. Income statement, bank statements, Federal Tax Returns, letter of hardship, monthly expense budget, consumer loan statements were submitted to the bank.

After some nine months pasted the mortgage loan modification have not materialized. Back and forth the communication went and the banks were always asking for more documentation. At the same time my uncle was making partial payments which the bank accepted.

After some months past the people helping my uncle stopped helping without any warning. It turns out that they file BK and the people locally that were helping were also nowhere to be found.

Uncle then proceeded to process the loan modification own their own. The bank did offer then a modification but the modification was a matter of \$200 some dollars difference from the original loan payment. This was not enough to help my uncle with the mortgage payment. The income they receive from the disability income is not enough to cover the mortgage the bank offered. Thus, after two months, uncle, was in default again.

I was asked to help them to work with the bank. We updated all the information, income, expense budget and the like. We were turned down because of insufficient income for the disability income. We asked the bank to post pond the sales date on the house.

We are trying a new approach to the situation by adding the son to help pay for the house mortgage payment. It's been two months now and the bank have not replied to our modification.

Why is it taking so long to help them out? These big banks were bailed out with our tax money and in return they were to help us out resolved our ailing home owners. Where is the help? Were we lead to politically believe they these banks will help at their choice? To help the fortune ones that do not need the help and NOT grant the home owners that disparately need this help?

Butch Paeste



P.O. Box 976
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March 14, 2011

Honorable Robert N. Herkes
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Consumer Protection and Commerce
415 South Beretania Street
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and

Honorable Gilbert S.C. Keith-Agaran
Honorable Karl Rhoads
Committee on Judiciary
415 South Beretania Street
Honolulu, Hawaii 96813

Re: SB 651 S.D. 2/COMMENTS

Dear Chair Herkes, Chair Keith-Agaran and Committee Members:

I chair the CAI Legislative Action Committee. CAI offers comments on SB 651 S.D.2.

Section 2 of the bill contains a proposed section 667-J, Applicability. That section rightly provides that: "this part shall not apply to actions by an association to foreclose on a lien for amounts owed to the association." CAI respectfully requests that the Committees consider adding "or other proceedings" following the word "actions."

The word "actions" might be construed to refer solely to *judicial* foreclosures. Adding the requested language would clarify that SB 651 S.D. 2 is solely focused on perceived concerns about mortgage lenders, and does not apply to associations in *judicial or non-judicial* settings.

Associations merely collect money from members to pay bills. There is no element of profit or underwriting present in the association setting. The failure, neglect or refusal of one owner to pay common expenses results in other consumers having to pay for the owner's default. Thus, anything that impedes an association's recovery harms consumers.

Honorable Robert N. Herkes
Honorable Gilbert S.C. Keith-Agaran
March 14, 2011
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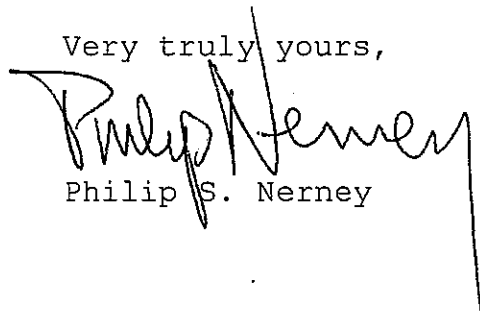
As written, Section 9 of S.B. 651 S.D. 2 provides for a moratorium on all foreclosures. The identified concerns, however, are inapplicable to association foreclosures.

CAI respectfully requests that the Committees consider adding one sentence to the end of Section 9, to read as follows: "The moratorium hereby established shall not apply to actions or other proceedings by an association, as defined in sections 514B-3 and 421J-2, to foreclose on a lien for amounts owed to the association."

The occasion for the legislature to consider a foreclosure moratorium relates to the practices of the *mortgage industry*. The efforts of non-profit associations to collect the money necessary to pay for utilities, insurance, maintenance, repair and other common expenses should be distinguished from the actions of the for-profit mortgage industry.

Indeed, the Committees should contemplate the unintended consequences and predictable harm to consumers that would result from a moratorium on foreclosures by associations. Please, therefore, amend SB651 S.D. 2 as requested.

Very truly yours,



Philip S. Nerney

Dear Committee Members,

Thank you for this hearing and for this opportunity to testify in **SUPPORT of SB 651**

I SUPPORT SB 651's call for mandatory mediation because The banks have been using lack of transparency and every possible loophole in the modification process to avoid modifications and force foreclosures,

- 1) Please make sure that this **mandatory mediation** is available to any families facing foreclosure who have not yet lost their home, and **Please allow the SIX MONTH FORECLOSURE MORITORIUM to take IMMEDIATE EFFECT**, so that nobody and Hawaii will illegally or unfairly lose their home while the program is put into place.
- 2). **Please require the banks and mortgage servicers to provide absolute proof that they have legal standing to pursue the foreclosure before the mediation can begin.** Similar to Arizona's Senate Bill 1259 and other states that are now introducing similar bills.

Require that they show chain-of-title proof of mortgage ownership and allow foreclosure sales to be voided if lenders can't produce the full chain of title. Allow reimbursement of lawyer fees for injunctions or court cases that fail to prove ownership.

Bankers should have NO objections because all this asks for is that Banks follow existing laws before foreclosing on someone's home!

Without proper chain of title, a mortgaged-backed security is NOT BACKED By a Mortgage, therefore, there is no right to foreclose!

You might owe money, but you have a right to pay that money to the proper party. Without PROPER chain of title, that debt can not be secured with your HOME!

Without proof, some other party could later show up with real proof and you would be liable again! And this HAS been happening!

The following abbreviated version of my story will clearly show how banks are committing fraud and causing innocent home owners in Hawaii to default, and than making it almost impossible to avoid illegal foreclosure. It also demonstrates why this bill must be STRONG enough to avoid loopholes for the bank and to PUNISH banks when they have acted unfairly and illegally.

I live with my husband, a Maui County Firefighter, and our son in Kihei.

We have been trying to get a HAMP loan modification from Bank of America since January of 2010.

1) Bank of America USED the Government HAMP program to cause us to default and put us into a situation where they can force foreclosure.

We feel betrayed by the government for allowing this, as the intention of HAMP was to help home-owners stay in their homes, not to CAUSE homeowners to default and leave them worse off than when they started and certainly not to increase Servicers income.

2) BANK OF AMERICA lied to us, multiple times, broke verbal agreements, sent incorrect mailings and notices and than gave conflicting advise about how to respond to those notices, and incorrect and conflicting advice and information so that any reasonable person would feel trapped and confused and blackmailed to do whatever they said for fear of losing their home.

We did what they asked in good faith and followed their instructions. BANK OF AMERICA has not acted in good faith, I don't believe they are acting in the best interest of their investor and I can't believe what they are doing is legal.

3) BANK OF AMERICA has directly broken several HAMP rules and requirements and has caused my family mental and financial harm, but there seems to be no enforcement or penalty for doing so.

4) Had BANK OF AMERICA not lied to us, if they had not told us verbally we were approved for HAMP Trial that would start in 30 days, we could have sold our home when it had a better market price. We would never have had to miss ANY payments and would have kept our excellent credit score.

After 14 months of fighting with my servicer, Bank of America, I recently sent them a new HAMP application with PROOF that I qualify for a HAMP modification, and have a POSITIVE NPV meaning it is in my investors best interest to modify my loan with HAMP. Servicer by law, must act in the best interest of investors. Services do not like to do this, because SERVICERS make more money by foreclosing , or stringing home owners along, as they keep all the extra fees.

Previously they claimed I had a NEGATIVE NPV, but now I have shown them proof that it is POSITIVE..

They now claim my investor will not allow an extension on the terms of my loan , as required by HAMP..

However, when I contacted my investor, BNY Mellon, they said" BNY Mellon is a Trustee therefore we do not physically own the loan or the property. We do not have any say in how the property is disposed, loan modifications, etc. This is the responsibility of the Servicer. Since Bank of America services the loan associated with the property, they are the direct and only contact in regards to your request. "

BNY Mellon says BOA decides and BOA says BNY Mellon decides!

I have sent a QWR to BOA asking for the name and number of the investor and name, address and phone number of an agent or party with authority to act on that owner or holder's behalf.

They tell me it is BNY Mellon (address but no number).

They are required by law to answer this QWR correctly, yet they ignore this law as well..

They continue to claim "my investor turned me down" and refuse to show me what trust my home is pooled in , or the contract that clearly describes how my loan can be modified, even though this is public record , and can be easily found if I know the name of the trust.

This lack of transparency is another way banks create more fraud that they use to deny modifications, which is why full chain of title and Pooling and service agreements must be shown PRIOR to mediation, in order to allow for a fair mediation and to prove any party has a legal right to foreclose in the first place!

This is my story but you can read the following references to see this is a huge and widespread problem involving fraud.

Georgetown Law Professor, Adam Levitin, in conjunction with Tara Twomey of National Consumer Law Center, two of the country's leading experts in the intricacies of mortgage servicing as related to loan modifications, have just published a 90-page research paper that represents "the first comprehensive overview of the residential mortgage servicing business,"
<http://scholarship.law.georgetown.edu/facpub/498/> and describes what I have written here.

**Please see: Written Testimony of Adam J. Levitin
Special Counsel to the Congressional Oversight Panel Before the House Financial Services Committee Subcommittee on Housing and Community Opportunity
"Robo-Singing, Chain of Title, Loss Mitigation, and Other Issues in Mortgage Servicing" November 18, 2010
<http://financialservices.house.gov/Media/file/hearings/111/Levitin111810.pdf>**

Thank You

**Marcy Koltun-Crilley
2962 Kauhale Street
Kihei, HI 96753
808-874-5644**

Testimony for SB651 on 3/16/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, March 14, 2011 12:59 PM

To: CPCtestimony

Cc: hinasurfing@hotmail.com

Testimony for CPC/JUD 3/16/2011 2:00:00 PM SB651

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Suzanne Kauhane

Organization: Individual

Address:

Phone:

E-mail: hinasurfing@hotmail.com

Submitted on: 3/14/2011

Comments:

I support SB651 call for mandatory Mediation because I am currently going into foreclosure with our home in Maui, regardless of many attempts to modify my loan with Central Pacific Bank and PHH mortgage. Making it available for all families facing foreclosure who have not lost their homes is an important point, so that the people of Hawaii have a chance to save their home from a possible unjust foreclosure. Banks and mortgage servicers must have to be able to provide absolute proof that they have legal standing to pursue the foreclosure before the mediation can begin. The banks and mortgage servicers are making it extremely difficult to modify the home loans. There are many stall tactics used by these companies, as well as non-truths being told to the homeowners so these companies can proceed forward to the foreclosure stage. I am hoping this bill SB165 will pass in enough time before our home is foreclosed on. Mahalo nui loa, Suzie Kauhane

Testimony for SB651

To Whom It May Concern:,

We have been trying to modify our mortgage for over two years with Senator Inouye intervening on our behalf three times now. Our home is in foreclosure having faced sales dates 4-6 times. We have been directed to the "Office of the President" several times and with our home being "in foreclosure" the bank is not accepting any payments from us. The bank's actions have put us further and further into arrears meaning that we have failed the Net Present Value test. At this point we don't know if we are actually getting any help or further into trouble in spite of repeatedly proving that we could maintain a modified mortgage.

I support SB651's call for mandatory mediation because Hawaii families need help with their foreclosure problems in part because of the recession and because the banks do not seem to be acting in fair and equitable ways, or getting anything done in a positive fashion.

Please make sure that this mandatory mediation is available to any family facing foreclosure who has not yet lost their home.

Please require the banks and mortgage servicers provide absolute proof that they have legal standing to pursue the foreclosure before the mediation can begin.

Thank you,
Frank R Loney

Testimony for SB651 on 3/16/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, March 14, 2011 11:39 AM

To: CPCtestimony

Cc: jcsim@hawaii.edu

Attachments: SB 651.doc (20 KB)

Testimony for CPC/JUD 3/16/2011 2:00:00 PM SB651

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Richard & Josephine Sim

Organization: Individual

Address:

Phone:

E-mail: jcsim@hawaii.edu

Submitted on: 3/14/2011

Comments:

We support SB 651's call for mandatory mediation because it will help us settle our loan modification loan in hopes to save our home. The loan modification process has too many barriers and gives homeowners lots of frustration and lost hope that we will lose our home to foreclosure. Please make sure that this mandatory mediation is available to any families facing foreclosure who has not yet lost their home. Please require the banks and mortgage servicers provide absolute proof that they have legal standing to pursue the foreclosure before the mediation can begin.

Testimony for SB651 on 3/16/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, March 14, 2011 8:07 AM

To: CPCtestimony

Cc: jodisussman33@gmail.com

Testimony for CPC/JUD 3/16/2011 2:00:00 PM SB651

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: jodi sussman

Organization: Individual

Address:

Phone:

E-mail: jodisussman33@gmail.com

Submitted on: 3/14/2011

Comments:

I'm a BoAm loan homeowner. Self employed, my income dropped dramatically when tourism and the economy tanked in 2008..I'm working hard to stay afloat...please help us not suffered foreclosures if possible...we wanna keep our homes, their value,good credit,livelihoods and work. Need help for little guy not for bank foreclosures. Mahalo

TESTIMONY OF Stephen E. Goldsmith, M.B.A.-Finance, Treasurer of
Hale Kanani Homeowners Association in Kihei

IN OPPOSITION OF SB651

BEFORE THE HOUSE COMMITTEES ON:

COMMERCE AND CONSUMER PROTECTION
Representative Robert N. Herkes, Chair
Representative Ryan I. Yemane, Vice Chair

JUDICIARY

Representative Gilbert S.C. Keith-Agaran, Chair
Gilbert S.C. Keith-Agaran, Vice Chair
Wednesday, 03-16-11 2:00PM conf. rm. 325

Aloha Chair Herkes, Chair Keith-Agaran, and Members of the
Committee:

I am in opposition of SB651.

I respectfully request that you do not pass SB651 SD2 or modify it
significantly.

As a condo owner in Kihei at Hale Kanani Condos and as its Treasurer
on the Homeowners board, foreclosures in Hawaii have been a
travesty. We still have units in our complex that haven't paid dues for
over two years because of an ineffective foreclosure process.

A six month moratorium would be devastating to our finances.
Currently, under Hawaii State law, you only allow us to collect the
lesser of six months of homeowners fees or \$3600.00 after a unit
comes out of foreclosure at the closing from the bank sale. This has
cost us tens of thousands of dollars!

If you consider passing this bill, you must pass a bill eliminating the
limits an association can collect after foreclosure or raising it many
fold. Please REMOVE the six month maximum limit as many are
taking 2 years or more to come out of foreclosure, and this bill will
turn it into 3 years! Also remove the \$3600 or raise it to at least
\$30,000.00. The new buyer would take this into account and stick it
to the bank by offering less, rather than all the existing owners in a
complex paying for it in special assessments or higher monthly fees to
cover the dues never paid.

In another complex where I am part owner, our dues are over \$900 per month, with several units in foreclosure over two years (owing over \$25,000.00), yet we can only collect \$3600 when they come out of foreclosure!

Some homeowners associations are going bankrupt. Please help the responsible owners who are keeping their associations going by passing a law eliminating the six month maximum and the \$3600 maximum. This is only benefiting the banks!

Mahalo for reading my testimony,
Stephen Goldsmith
Kihei, HI

CPCtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 13, 2011 11:41 PM
To: CPCtestimony
Cc: chandra_krown@yahoo.com
Subject: Testimony for SB651 on 3/16/2011 2:00:00 PM

Testimony for CPC/JUD 3/16/2011 2:00:00 PM SB651

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Chandra Krown
Organization: Individual
Address:
Phone:
E-mail: chandra_krown@yahoo.com
Submitted on: 3/13/2011

Comments:
I am in support of the bill

Thank You!
Chandra Krown

TESTIMONY OF NETRA HALPERIN, M.A.

IN STRONG SUPPORT OF SB651

BEFORE THE HOUSE COMMITTEES ON:

COMMERCE AND CONSUMER PROTECTION

Representative Robert N. Herkes, Chair

Representative Ryan I. Yemane, Vice Chair

JUDICIARY

Representative Gilbert S.C. Keith-Agaran, Chair

Gilbert S.C. Keith-Agaran, Vice Chair

Wednesday, 03-16-11 2:00PM conf. rm. 325

Aloha Chair Herkes, Chair Keith-Agaran, and Members of the Committee:

I am in strong support of SB651. Foreclosures in the state of Hawaii have reached epidemic proportions. Our rate of home loss has become one of the highest in the nation. This distressing experience has also contributed to stress-induced health problems, divorce and childhood trauma.

Nationwide, because of the repeal of the Glass-Steagall Act, and deregulation of the banking industry, and especially the mortgage lender sub-industry, there is little control of a business which has then taken advantage of millions of americans, including Hawaii residents.

Until appropriate regulations are enacted at the national level, the Hawaii government must protect its people from the fraudulent and unscrupulous practices of mainland banks such as Bank of America.

I have assisted a foreclosure defense attorney as a paralegal, by calling client homeowners who are undergoing the traumatizing experience of attempting to secure a loan modification. I've heard countless stories of numerous phone calls and letter from banks, asking for the same exact paperwork, of being told to rush paperwork to the bank in anticipation of an impending modification, only to have the property sold, out from under the homeowner, in the midst of the modification application.

Also, many of my client/mortgagors, not convinced that the servicer had the legal right to foreclose, have requested proof of official title from the bank, without any response. They have been told different information, often completely contradictory, from numerous representatives.

SB651 requires banks and other mortgage servicers to engage in face to face mediation with borrowers. In states such as Nevada, where the program has "teeth", this has been very successful. While this program is being set-up, the 6 month moratorium on foreclosures would stop thousands of families from unnecessarily losing their homes and their health and well-being.

I respectfully request that you pass SB651 SD2.

Mahalo for reading my testimony,

Netra Halperin, M.A.

Kihei, HI

(808) 359-1673

Testimony for SB651 on 3/16/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Sunday, March 13, 2011 11:41 PM

To: CPCtestimony

Cc: chandra_krown@yahoo.com

Testimony for CPC/JUD 3/16/2011 2:00:00 PM SB651

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Chandra Krown

Organization: Individual

Address:

Phone:

E-mail: chandra_krown@yahoo.com

Submitted on: 3/13/2011

Comments:

I am in support of the bill

Thank You!

Chandra Krown

To: House Committee **CPC/JUD**
March 16, 2011 Date, 2:00 PM, Conference Room #325

FROM: PATRICIA AND JOHNNY DIAZ, HOMEOWNERS 808-269-9062

RE: IN SUPPORT OF Bill #SB 651 RELATING TO MANDATORY MEDIATION

Chairs & Committee Members:

We support SB651 calling for mandatory mediation because without this mediation, the banks will continue to hide behind their frontline operators and proceed with foreclosures with no regard to opportunities for win-win solutions. Banks are not responding to our calls or correspondence.

In December 2009 my husband and I applied with Bank of America for the Making Homes Affordable Program after he was laid off from his construction job in February 2009. At that time, our mortgage payment of \$2000 was manageable with the help of unemployment benefits and savings, so we patiently waited for a response.

As months went by with no jobs in sight, our savings depleting and unemployment benefits exhausted, we began to contact Bank of America more frequently, then daily. Our calls, answered by operators with no knowledge or authority to help, were simply ignored with a reply to "call back". We called back, same answer to call back. Many times they would ask us to fax them our documents again and then would not confirm that they had received them.

After much frustration, we contacted Congresswoman Mazie Hirono and with her help we were assigned an underwriter who arranged for a temporary modification of 3 months. BUT here we are 7 months later and this underwriter cannot tell us whether Bank of America will be granting us a permanent modification or whether foreclosure proceedings are imminent. Either way we need to know something..

Please make sure that this mandatory mediation is available to any families facing foreclosure who have not yet lost their home because many of us are willing to pay them back every dime if they would just work with us on a creative solution. We are asking that they find a way to make their money in a way that helps us too.

Please require the banks and mortgage servicers provide absolute proof that they have legal standing to pursue the foreclosure before the mediation can begin so that consumers are protected against multiple claims and to enforce the integrity of recorded documentation.

Thank you for the opportunity to testify on this bill.



Patricia and Johnny Diaz
184 Hale Kai Street,
Kihei, Maui HI 96753

Testimony for SB651 on 3/16/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, March 14, 2011 4:11 PM

To: CPCtestimony

Cc: mac.cain.herren@me.com

Testimony for CPC/JUD 3/16/2011 2:00:00 PM SB651

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: David McCreight

Organization: Law Offices

Address:

Phone:

E-mail: mac.cain.herren@me.com

Submitted on: 3/14/2011

Comments:

I strongly support SB651 because I do loan mods for a living and I see all sorts of wildly distorted "misunderstands" from the lenders on why files are denied. The fact alone that it takes 6 mos. to a year to get an answer from some of these lenders is truly an insult to the borrowers who are hanging on and living in a world of unknowing and fear. For many of my clients their income has increased since we started this process and often times I find lenders do not update the info we provide them on a regular basis. Borrowers should have the right to sit face to face with a lender and explain their situation and why they are a good risk for modification. This should apply to people who are currently in a foreclosure situation and those struggling to stay afloat. Lastly, it should be essential for the lenders/investors to prove ownership in the homes they are foreclosing on. I was in the mortgage business for 25 years and I know MERS was the original owner of about 75% of the mortgages we did. These mortgages were, a lot of the time, not properly recorded and documented, thus the true ownership remains a cloud in many cases. Please help all of us to get a better understanding of this mortgage meltdown with all the toxic waste it has left in it's path. Mahalo, David

SB 651 - foreclosures - NEED mandatory mediation

cornelia soberano [llbmaui@yahoo.com]

Sent: Monday, March 14, 2011 8:47 PM

To: CPCtestimony

Cc: kim drew [kiharman@facehawaii.org]

support

Dear Legislators,

The Maui Filipino Working Group, a volunteer advocacy group,, urges you, on behalf of the many voiceless Filipino families who have fallen victim to our declining economy and are losing their homes. People's homes are being taken away without any semblance of fairness and with disregard for people's self-respect and dignity.

From my advocacy and community organizing, I am painfully aware of the problems within my own particular ethnic community. Homeowners deserve the opportunity to be heard and, given the imbalance of power between huge corporations and ordinary citizens--many of whom have limited English proficiency, no advocacy skills, fearful of challenging the system--it should be mandated in Hawaii, as has been successfully done in other jurisdictions, that there be a Court-appointed mediator to allow people to be heard, to help level the playing field.

And, in order to avoid any further problems that might lead to mortgagees escaping legal responsibility and accountability, mortgagees must be required to provide the Court reasonable proof that they have legal standing to pursue the foreclosure before the mediation can begin.

We urge you to do the right thing - you can help our families and stop the untold human suffering that have heretofore been inflicted on homeowners and their families.

Sincerely,

Cornelia A. Soberano, JD
Cell 298-3167

Maui Filipino Working Group
for progressive social change...

*Cofounders: Dr. Virginia Cantorna, RN, PsyD, Jeny Bissell, RN
Kim Compoc, MA, Cornelia Soberano, JD*

Testimony for SB651 on 3/16/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, March 14, 2011 9:39 PM

To: CPCtestimony

Cc: cindyalbury@hotmail.com

Testimony for CPC/JUD 3/16/2011 2:00:00 PM SB651

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Cynthia Albury

Organization: Individual

Address:

Phone:

E-mail: cindyalbury@hotmail.com

Submitted on: 3/14/2011

Comments:

I support SB 651's call for mandatory mediation because the banks and mortgage servicers, such as Bank of America, are not acting in good faith to modify loans and are instead, deceptively doing everything in their power to foreclose on properties occupied by families in distress.

I urge you to please make sure that this mandatory mediation is available to all families facing foreclosure who have not yet lost their home.

Please require that the banks and mortgage servicers provide absolute proof that they have legal standing to pursue a foreclosure before the mediation can begin.

Thank you.

Sincerely,

Cynthia Albury (Maui resident)

Testimony for SB651 on 3/16/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, March 14, 2011 9:42 PM

To: CPCtestimony

Cc: jonathanconrad1@gmail.com

Testimony for CPC/JUD 3/16/2011 2:00:00 PM SB651

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Jonathan Conrad

Organization: Individual

Address:

Phone:

E-mail: jonathanconrad1@gmail.com

Submitted on: 3/14/2011

Comments:

I can only imagine that the people or organizations that don't support this bill are the ones that financially benefit from foreclosures.

Testimony for SB651 on 3/16/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, March 14, 2011 10:56 PM

To: CPCtestimony

Cc: waioni@mauirealestatedreams.com

Testimony for CPC/JUD 3/16/2011 2:00:00 PM SB651

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Waioni
Organization: Individual
Address:
Phone:
E-mail: waioni@mauirealestatedreams.com
Submitted on: 3/14/2011

Comments:
TESTIMONY OF WAIONI D DICKISON, REALTOR(S)

IN STRONG SUPPORT OF SB651

BEFORE THE HOUSE COMMITTEES ON:

COMMERCE AND CONSUMER PROTECTION
Representative Robert N. Herkes, Chair
Representative Ryan I. Yemane, Vice Chair

JUDICIARY
Representative Gilbert S.C. Keith-Agaran, Chair
Gilbert S.C. Keith-Agaran, Vice Chair
Wednesday, 03-16-11 2:00PM conf. rm. 325

Aloha Chair Herkes, Chair Keith-Agaran, and Members of the Committee:

I am in strong support of SB651. Foreclosures in the state of Hawaii have reached epidemic proportions. Our rate of home loss has become one of the highest in the nation. This distressing experience has also contributed to stress-induced health problems, divorce and childhood trauma.

Nationwide, because of the repeal of the Glass-Steagall Act, and deregulation of the banking industry, and especially the mortgage lender sub-industry, there is little control of a business which has then taken advantage of millions of americans, including Hawaii residents.

Until appropriate regulations are enacted at the national level, the Hawaii government must protect its people from the fraudulent and unscrupulous practices of mainland banks such as Bank of America.

I have assisted clients who are undergoing the traumatizing experience of attempting to secure a loan modification. I've heard countless stories of numerous phone calls and letter from banks, asking for the same exact paperwork, of being told to rush paperwork to the bank in anticipation of an impending modification, only to have the property sold, out from under the homeowner, in the midst of the modification application.

Also, many of my client/mortgagors, not convinced that the servicer had the legal right to foreclose, have requested proof of official title from the bank, without any response. They have been told different information, often completely contradictory, from numerous representatives.

SB651 requires banks and other mortgage servicers to engage in face to face mediation with

<https://nodeexhc/owa/?ae=Item&t=IPM.Note&id=RgAAAAA313MOfQmhSJI5LJ95%2fbn0BwAh3oKo...> 3/15/2011

borrowers. In states such as Nevada, where the program has "teeth", this has been very successful. While this program is being set-up, the 6 month moratorium on foreclosures would stop thousands of families from unnecessarily losing their homes and their health and well-being.

I respectfully request that you pass SB651 SD2.

Mahalo for reading my testimony,
Waioni D. Dickison
Kihei, HI
(808)250-9567

ALAN ROSS

820 Olive Ave.
Wahiawa, HI 96786
(808)358-6967
Alanross1@yahoo.com

March 14, 2011

Committee on Consumer Protection & Commerce
Rep. Robert Herkes
Rep. Ryan Yamane

Wednesday March 16, 2011 2PM

SB651.SD2

I am writing in regards to the continuing hardship of communicating with a mainland bank which finances my home loan. The only way of contact is thru phone, e-mail, or fax when needing assistance. This made it extremely difficult to do my home modification with them because they have so many different departments that are spread through out the mainland states. In the past year while doing my modification I have spoken with at least a half dozen different employees and e-mailed or faxed at least a hundred individual pieces of paper to this particular bank. There have been many occasions that documents were lost or not received which complicated this difficult modification processes. I have given personal information to people I have not seen or met for the past year to modify my mortgage and continue up until today to do so. The results of this has been a lot of errors which I have a hard time getting them corrected, because I am not able to speak with the same person twice. In conclusion, home modification is a very difficult procedure in itself and by trying to do it over the phone makes it almost impossible, so please help the Citizens of Hawaii by passing this bill.

Thank you, Alan Ross



Mililani Town Association

95-303 Kaloapau Street
Mililani Town, HI 96789
Phone (808) 623-7300

March 14, 2011

Representative Robert Herkes, Chair
Representative Ryan Yamane, Vice-Chair
Committee on Consumer Protection and Commerce
State Capitol
Honolulu, HI 96813

VIA E-Mail: CPCtestimony@capitol.hawaii.gov

Representative Gilbert Keith-Agaran, Chair
Representative Karl Rhoads, Vice-Chair
Committee on Judiciary
State Capitol
Honolulu, HI 96813

Re: S.B. No. 651 SD 2/OPPOSE – Relating to Mortgage Foreclosures
Hearing: Wednesday, March 16, 2011, 2:00pm Conf Room 325

Dear Chairs Herkes and Keith-Agaran, Vice-Chairs Yamane and Rhoads and Committees Members:

My name is Eric Matsumoto, Vice-President of the Mililani Town Association (MTA). I have served in MTA leadership capacities on the board for 25 of the last 32 years. MTA encompasses approximately 16,000 units of both single family residences and numerous townhouse project sub-associations.

We oppose this measure as follows:

By imposing a moratorium on foreclosures punishes associations for actions by the lending industry, based on the issues identified in the bill. As written, a moratorium on foreclosures precludes associations from collecting revenues from owners, whether the owner is unwilling or unable to pay for the common expenses that are continuously incurred for such expenses as management services and staffing, maintenance, insurance, and utilities. The resulting shortfall then falls on the rest of the community to cover. As non-profits who do not choose the owners become the victims under this bill.

We would not oppose this bill if associations would be excluded, or as an alternative, if this bill recognizes the actions defined by 514B and 421J; foreclosures on liens for monies owed.

Based on the above, we request this bill be deferred, if the provisions above cannot be agreed upon to be incorporated.

Sincerely yours,

Eric M. Matsumoto
Vice-President, Board of Directors

Cc: Sen Kidani, Rep Lee, Rep Yamane

TESTIMONY OF DENNIS BLAIN
IN STRONG SUPPORT OF SB651
BEFORE THE HOUSE COMMITTEES ON:
COMMERCE AND COMSUMER PROTECTION
Representative Robert N. Herkes, Chair
Representative Ryan I. Yemane, Vice Chair

JUDICIARY
Representative Gilbert S.C. Keith-Agaran, Chair
Gilbert S.C. Kieth-Agaran, Vice Chair
Wednesday, 03-16-11 2:00PM conf. Rm 325

Aloha Chair Herkes, Chair Keith-Agaran, and Members of the Committee:

I am sorry I cannot attend this meeting in person, but I am in strong support of SB651. As I would be considered a person with strong finances, I too was almost caught up in a foreclosure nightmare. As my business partner became unable to pay the funds he owed me I too fell behind in mortgage payments. I was amazed at the non-judicial foreclosure process. Without any notice or say, my home, which still has lots of equity left in it (even at today's prices) could of been lost and sold for a fraction of its value. It is unheard of not to have at least an appraisal of a property done before it is sold. Sure, some properties may have little equity left in them, but the ones with lots of equity should not be sold for so little for many reasons. To sell a property for a considerable under value price will bring home prices down in general far faster than a property that is only worth its true value.

There should be at the very least "relief from forfeiture" laws in place to stop such a dramatic event. The banks do not care in the least the value of our home vs. the equity still in them. Homes with considerable equity should not be able to be foreclosed on as easily.

Please pass SB651 SD2.

Dennis Blain
Kihei, HI
(403) 246-1697

From: . Ramani <ramani001@hawaii.rr.com>
Date: March 14, 2011 9:40:15 PM HST
To: <http://www.capitol.hawaii.gov/emailtestimony/?measure=SB651>
Subject: SB651 SD2.

I have been trying to get a mortgage modification from the Bank of America for 1 yr with the assistance of an Attorney who I paid \$3995. First I was told I needed to show that I had 3mo worth of expenses in my bank account. And then after 6 mo I was told that I have too much money and that I needed to show that I have only enough money to cover 3 mortgage payments. First they would deny me because they were looking at old bank statements, and then they would deny me because they added up the figures wrong.

I was told by my rep that now if HAMP denies me again that the only modification that I can get through Bank of America is if I'm 60 days past due. I have never been willing to risk this as I have/had excellent credit and have heard horror stories re how they will tell people to be late and then end up foreclosing on them!

At the request of my rep I put a stop payment on my mortgage in mid Febr . . . intending to pay it on they last day of the month. Which I did. Only to find out that American Savings Bank also stopped payment on my phone charge on Feb 28th as well. Now that I've gotten a late charge reported to the credit bureau, I decided to see if my rep is right that BofA will give me the same modification that HAMP is offering but I have to be 60 days past due.

This stress is causing me to lose sleep and is destroying my peace of mind.

Hawaii's law needs to be changed to protect the homeowner.

I respectfully request that you pass SB651 SD2.

Ramani Ramani

3950 Kalai Waa #W101

Kihei, HI 96753

Just received this SB 651, SD2 Mortgage Foreclosures

Alaina deHavilland [alainadeh@hawaii.rr.com]

Sent: Tuesday, March 15, 2011 8:38 AM

To: CPCtestimony

Support

Is it too late to send my testimony regarding this?

We have been horribly affected by the criminal practices of Bank of America, who have in effect dragged us through two years of hell. We've also run up lawyers bills exceeding \$21,000.00, all the while being lied too, deceived, misled, ripped off and continually threatened through no fault of our own.

I feel very strongly about this and wish we, the public, had been informed earlier that this Committee was meeting. Every last one of those BOA people should be thrown in jail, the key thrown away and let the rats at them. They are the lowest scum that ever walked the face of the earth. There is NO excuse for what they have inflicted on thousands of people like us.

Mahalo,
Alaina de Havilland
808 324-0003



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Honolulu, Hawaii 96816

Phone: (808) 733-7060
Fax: (808) 737-4977
Neighbor Islands: (888) 737-9070
Email: har@hawaii Realtors.com

March 16, 2011

The Honorable Robert N. Herkes, Chair
House Committee on Consumer Protection & Commerce

The Honorable Gilbert S.C. Keith-Agaran, Chair
House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: S.B. 651, S.D. 2, Relating to Mortgage Foreclosures

HEARING: Wednesday, March, 16, 2011, at 2:00 p.m.

Aloha Chair Herkes, Chair Keith-Agaran and Members of the Joint Committees:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i and its 8,500 members. HAR supports the intent of S.B. 651, S.D. 2, Relating to Mortgage Foreclosures, but opposes Section 9, which places a 6 month moratorium on both judicial foreclosures by action and nonjudicial power of sale foreclosures.

HAR generally supports the provision for an alternative dispute resolution program in S.B. 651, S.D. 2. This concept is modeled after Nevada's voluntary mediation program. Other states including Maryland, Florida, and New Jersey have passed similar legislation requiring mediation prior to initiating a foreclosure action for those who own real property as their primary residences.

HAR recommends that, as part of the dispute resolution program, the Center for Alternate Dispute Resolution should be required to submit a report prior to the convening of the 2012 and 2013 Legislative Sessions. HAR believes that such a report will provide benchmarks to determine whether the mediation program meets its intended goals -- including the early facilitation of loan modifications or other loss mitigation actions, and the avoidance of foreclosure where possible.

HAR respectfully asks this Committee to consider deleting Section 9, which places a moratorium on all foreclosures. HAR believes that freezing foreclosures in Hawai'i is not a prudent step to take in this fragile housing market. A moratorium may motivate a borrower to stop making payments. Borrowers who stop making payments would face an increased financial risk of being deeper in debt, as more penalties and fees are incurred. The end result may be that these homeowners would be even less likely to recover from their situation.

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In addition, HAR believes that if a moratorium is implemented, a ballooning foreclosure backlog could create an unrecoverable imbalance in the market. This increase in market uncertainty could result in decreasing home prices and ultimately exacerbate the housing-market crisis.

HAR further believes that the cost of a moratorium will ultimately be borne directly by investors in mortgage-backed securities and mortgage servicing companies, and ultimately by American taxpayers, who now stand behind 90% of new mortgages, due to guarantees by Fannie Mae, Freddie Mac and the Federal Housing Administration.

Mahalo for the opportunity to testify.

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CPCTestimony@Capitol.hawaii.gov

To: Robert N. Herkes, Chair

Committee on Consumer Protection & Commerce

March 15, 2011 at 2:00 p.m.

From: Rev Alan Mark, State President of FACE

Re:sB 651,SD2

Chairperson Herkes and Members of the Committee:

My name is Alan Mark, I'm the senior pastor of the Kilohana United Methodist Church in Niu Valley and the State President of FACE – Faith in Action for Community Equity. I speak for our state organization that includes FACE Maui. We have 50 churches, temples, associations, and organizations island-wide. Our mission and purpose is to promote social justice and to better the quality of life for our people here and on the neighbor islands.

FACE is in full support of SB 651 that calls for mandatory mediation that will enable our families to keep their homes and keep their family in tack. We believe that this mandatory mediation be made available to as many families as possible, even those who have already received default notice or notice of foreclosure. As long as the family is still in their home, they deserve to participate in this mediation program.

We support this legislation that requires that banks and mortgage lenders provide absolute proof that they have legal standing to pursue the foreclosure before the mediation begins.

Having spent ten years as a trained conflict dispute mediator, I believe in mediation. It allows both parties to clarify their issues and provides for a process where lenders and the home owners can work out their differences and dispute. It is a fair and equity process for both family and lender. Mediation is a winning proportion for everyone.

Thank you for your kokua and support for our families in keeping their homes.



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**Testimony before the Committee on Consumer Protection & Commerce and Committee on Judiciary,
Hawaii House of Representatives, on S.B. 1233, Relating to Solicitation of Funds from the Public**

By:

John Lippincott
President

Council for Advancement and Support of Education

March 16, 2011

2:00 pm

Conference Room 325, State Capitol

Testimony of Lloyd Aoki
In Strong support of SB651

I am in strong support of bill SB651. foreclosures in the State of Hawaii has come to a point where it is now unbearable. I have been dealing with Bank Of America for over SEVEN months in trying to get some kind of relief. ie-loan modification or anything but I was told after SEVEN months that I do not qualify since I have not been late on any payments. Well the payments will start to become late if at all and thus I will lose my house due to the fact that BOA is not only unable but unwilling to help out their consumers, which I find so unbelievable. I am just your normal consumer trying to make ends meet but due to unforeseen circumstances I am at a point of no return and about to lose my house. I respectfully request that you pass SB651.

Mahalo,
Lloyd Aoki
Kihei, HI 96753
(808)281-8965



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

March 15, 2011

The Honorable Robert Herkes, Chair and
Members of the House Committee on
Consumer Protection and Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

The Honorable Gilbert Keith-Agaran, Chair and
Members of the House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

Re: Senate Bill 651, SD 2 Relating to Mortgage Foreclosures

Chair Herkes, Chair Keith-Agaran, Members of the House Committee on Consumer Protection and Commerce and Members of the House Committee on Judiciary:

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 651, SD 2 Relating to Mortgage Foreclosures. The MBAH does not support mandatory mediation because it creates costly processes that duplicate existing loss mitigation in a far more cumbersome manner. While there are a few jurisdictions that have implemented mandatory mediation, there is no empirical evidence that shows the effectiveness of such programs separate from the servicers' own loss mitigation efforts.

Lenders, however, often find mediation to be a foreclosure stall tactic that produces few positive results that are independent from their own loss mitigation efforts. Imposing mediation creates an expensive and bureaucratic process that is not necessary and confuses the loss mitigation process. Mediation programs are expensive, with direct fees to servicers and borrowers, duplication of requirements, increased investor, tax and insurance advances, duplication of foreclosure costs, technology and staffing time. These funds could be more wisely spent directly on loss mitigation efforts.

States should focus their efforts to encourage communications between lenders and borrowers to explore alternatives to foreclosure when borrowers are unable to afford their current mortgage payment. This could be achieved by state media campaigns.

Thank you for the opportunity to present this testimony.

Testimony for SB651 on 3/16/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, March 15, 2011 12:13 PM

To: CPCtestimony

Cc: Melbahawaii@gmail.com

Testimony for CPC/JUD 3/16/2011 2:00:00 PM SB651

Conference room: 325

Testifier position: support

Testifier will be present: Yes

Submitted by: Melba Amaral

Organization: Individual

Address:

Phone:

E-mail: Melbahawaii@gmail.com

Submitted on: 3/15/2011

Comments:

This Bill SB651 needs to be passed & fast. Too many families are loosing their homes UNNECESSARILY, DUE TO THE VILE PRACTICES THAT WALL STREET, BIG BANKS & OUR GOVERNMENT. To go against what your CONSTITUENTS need during the time of need & help, compromises the very reason WHY, YOU, as law makers were elected into office for. DO NOT FORGET WHY YOU ARE SERVING AS LAW MAKERS. YOU NEED TO DO THE RIGHT THING, BY PASSING THIS INTO LAW.

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

March 16, 2011

Rep. Robert N. Herkes, Chair
and members of the House Committee on Consumer Protection & Commerce
Rep. Gilbert S.C. Keith-Agaran, Chair
and members of the House Committee on Judiciary
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 651, SD2 (Mortgage Foreclosures)**
Hearing Date/Time: Wednesday, March 16, 2011, 2:00 P.M.

I am the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is a trade association for Hawaii's consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA opposes this Bill.

The purpose of this Bill is to: (1) require foreclosing mortgagees to engage in a dispute resolution process at the election of a mortgagor before carrying out a judicial or nonjudicial power of sale foreclosure; (2) authorize the supreme court to adopt rules for dispute resolution; (3) establish a special fund for foreclosure dispute resolution to be expended by the judiciary; (4) impose a moratorium on foreclosures for 6 months after effective date; and (5) make appropriation.

This testimony is based, in part, on my perspective 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 House Bill 879 and 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 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 during this session. 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.

There are untenable delays in the foreclosure process when mediation is inappropriate or unsuccessful, or when mediation only results in postponing foreclosures. The dispute resolution program in this Bill is based on the Nevada foreclosure mediation program. The experience of a national lender is that for Nevada, most of the borrowers with mediated agreements later default on those agreements.

As an attorney, I have been handling foreclosures which have been subject to the Hawaii State Judiciary's Foreclosure Mediation Pilot Project for the Third Circuit (Big Island) which began

Rep. Robert N. Herkes, Chair
and members of the House Committee on Consumer Protection & Commerce
Rep. Gilbert S.C. Keith-Agaran, Chair
and members of the House Committee on Judiciary
Testimony of Hawaii Financial Services Association
Senate Bill 651, SD2 (Mortgage Foreclosures)
Page 2

in November 1, 2009. It is my experience, and it is the experience of other foreclosure attorneys who have been involved with mediation as part of the Pilot Project, that few cases are appropriate for mediation, and the success rate for mediated cases is minimal.

A foreclosure of a delinquent mortgage loan is the last option for a mortgage lender. If a lender is not able to resolve the default with the borrower, the lender would want to have a foreclosure process that is not costly and not time consuming.

The number of foreclosures in Hawaii is affected by economic factors. Family problems (such as divorces) and medical expenses will always be factors in mortgage delinquencies. However, in a down economy, more borrowers will be unemployed or underemployed ... and they will be more likely to become delinquent in paying their mortgage loans. During the current down turn in Hawaii's economy, foreclosures have been increasing.

There should not be permanent legislative fixes to temporary problems. Hawaii will not always have the same amount of foreclosures as the present. In considering legislative solutions for foreclosures, the questions that must be asked are: Who are we helping? How do we help them? Who will be hurt by the legislation? Will there be unintended negative consequences?

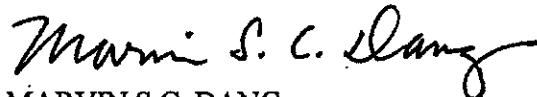
The medical adage of "do no harm" seems appropriate in dealing with Hawaii legislative solutions for foreclosures, such as the approach in this Bill:

- Don't make it harder for lenders to collect and foreclose. If the foreclosure process takes longer and becomes more costly and complex because of additional statutory foreclosure requirements, lenders might have to start the foreclosure process sooner for delinquent loans. This change will in turn increase the number of foreclosures. Mediation, or dispute resolution, can unproductively delay the foreclosure process.

- Don't harm Hawaii's economy. Don't harm the mortgage market. Don't make it harder for future borrowers get loans because of additional statutory foreclosure requirements which can result in borrowers having to pay higher interest rates and being required to make a larger down payment (such as 30%) so that there is a lower loan-to-value ratio (such as 70%).

- Legislative solutions in other states should not automatically be copied for Hawaii. Hawaii's unique situation is different from that in other states.

Thank you for considering our testimony.



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



LEGAL AID
SOCIETY OF HAWAII

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President, Board of Directors

M. Nalani Fujimori-Kaina, Esq. —
Executive Director

The Honorable Robert N. Herkes, Chair
The Honorable Ryan I. Yamane, Vice Chair
House Committee on Consumer Protection and Commerce

The Honorable Gilbert S.C. Keith-Agran, Chair
The Honorable Karl Rhoads, Vice Chair

Hearing : Wednesday, March 16, 2011, 2:00 p.m.
State Capitol, Conference Room 325

IN SUPPORT OF SB 651 SD2

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, and 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 651 SD2 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 651 SD2 would require that a foreclosing mortgagee engage in alternative dispute resolution process before going forward with a foreclosure, in order to prevent avoidable foreclosures in the State. Ideally this would create a much needed means of communication between distressed homeowners and loan servicers, by requiring good faith, supervised participation by a representative of the servicer who has the authority to approve appropriate loss mitigation options. Effectively this bill would provide further protections for families in Hawaii how are having difficulty with the default, foreclosure and loan modification process.

The Legal Aid Society of Hawaii supports the bill, and its efforts to protect the consumers in the State of Hawaii.

 LSC

www.legalaidhawaii.org
A UNITED WAY AGENCY

Conclusion:

We appreciate these committees' recognition of the need to protect consumers in the State of Hawaii. SB651 SD2 attempts to strengthen protections for consumers by requiring mortgage lenders to engage in mediation before instituting foreclosure proceedings. We support SB651 SD2 its attempts to protect homeowners in the State of Hawaii. Thank you for the opportunity to testify.

Testimony in Support of SB 651

Chair Robert N. Herkes, Committee on Consumer Protection and
Commerce

Chair Gil Keith-Agaran, Judiciary Committee

Dear Chairpersons Herkes and Agaran and Committee Members:

My name is Stanley Bain, I am a clergyperson serving churches in Hawai'i for the past 35 years and currently a leader and organizer with Faith Action for Community Equity (FACE).

It is my privilege to express my convictions driven by my commitment to work for a just society. I support the SB 651 call for mandatory mediation because the housing dilemma exacerbated by rampant foreclosures is deepening the economic crisis throughout our state. Homeowners need the opportunity to negotiate fair mortgage terms based on the present value of their homes rather than having to pay mortgages greater than their property is worth.

In perfecting the bill please make sure that mandatory mediation is available to any families facing foreclosure who have not yet lost their homes. Furthermore please require that banks and mortgage servicers provide absolute proof that they have legal standing to pursue the foreclosure before the mediation can begin.

Thank you for receiving my testimony and for your service to the people of Hawai'i Nei.

Yours truly,

The Rev. M. Stanley Bain

Testimony for SB651 on 3/16/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, March 15, 2011 2:02 PM

To: CPCtestimony

Cc: alainadeh@hawaii.rr.com

Attachments: BOA ltr to Gov 1 (59 KB)

Testimony for CPC/JUD 3/16/2011 2:00:00 PM SB651

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Alaina deHavilland

Organization: Individual

Address:

Phone:

E-mail: alainadeh@hawaii.rr.com

Submitted on: 3/15/2011

Comments:

Re: Countrywide/Bank of America

Loan initiated March 21st 2007

Monthly payments: \$3,458.50

The toll these last two years of dealing with these scoundrels at BOA has been enormous emotionally and financially. We have lost a tremendous amount of money, not only the thousands we've sent under threat to BOA but also in huge (to us) attorneys fees.

We have a small leasehold coffee farm in Kona, on land that my husband and I cleared, graded and planted 4000 coffee trees on in 2001. Since then we have raised a Kona coffee crop to award winning standards.

Our farm, while modest, helps support not only our family but many others in the community. Many families rely on the work available during the harvest and pruning season to pay their bills. In addition the farm workers receive fruit and vegetables from the farm that helps feed their children, and are also able to make extra hours repairing and maintaining the processing equipment and irrigation systems.

The hardship that the loss of our farm would cause to so many people is enormous.

Also living under the terrorist threats and base tactics employed by BOA for these past two years has had serious consequences on my health.

And all because, after years paying our mortgage, we were unfortunate enough to be short just a couple of months due to the sudden downturn of the economy, and BOA would not enter into any kind of negotiation or payment option.

I just pray that some sort of legislation be put in place to prevent any more people going through the nightmare tactics that these scurrilous companies such as BOA have been able to get away with

Sincerely

Alaina deHavilland

Summary

My husband was laid off from a building job in September of 2008, while looking for work, out of savings we made the monthly mortgage payments until January 2009 when we fell short and sent a partial payment of half the amount due, \$1766.12, with a letter of explanation.

In February 2009 he started a new job and in March we sent in a further partial payment of \$1000.00 letting them know of our change in circumstances and we would now be able to catch up.

In April we sent 2 more payments of \$1000.00 each.

In early April we received a notice of Intent to Accelerate requiring \$6,224.42. I called the contact number repeatedly for two weeks reaching a call center and the only information given was that the monies we had sent were being held in partial

I went on line to find that our account had been taken off the website so no more information was available to us. Another of their base tactics.

On April 16th I received a letter from Countrywide saying we could be eligible for the **Home Affordable Modification Program**, I called and was given a list of financial information required to review our status. **I put this together and called for a month, unable to get through to anyone who could assist in telling me what I should do with this paperwork. Repeatedly I was told that the loan was in foreclosure and that was all they could tell me.**

On May 19th I got through to Brenda at 1 877 744 7691 who gave me an ext. # 8846. She said the loan could be reinstated if I sent by Fed EX certified cashiers check for **\$11,313.97 the amount owing to date. This we sent but it was never applied to the account.**

Monies I had sent, she said were being held 'in partial' and may or may not be returned. She suggested I call the Home Owners Assistance Plan program.

On May 20th, the next day I got through to the HM Program and was told to not send any more funds to BO America and to fax all the required proof on income etc to the Hope Dept. at 1 866 261-6472. While the loan was in review the foreclosure would be on hold. I was told to give a call back in three weeks for the status.

I was told that if approved all delinquent penalties and late payment interest and penalties charged would be forgiven. The monthly payments would be lowered and if the new lower payments were kept up to date for three months, the loan would be in the program.

On May 21st I faxed over all requested info.

In order to see that the faxes had been received I called back to Brenda repeatedly but was never able to connect to that extension again. **I was consistently told that the loan was still in foreclosure, and we could be required to leave the property within 20 days.**

On Friday May 22nd received a Fed Ex package from making Home Affordable Program.

The documents left us with many questions, **as the loan was modified up from the \$3,458.50 we usually paid to \$4,083.27. As this did not include the monies we paid into escrow of \$400.00+- included in the regular monthly payments, it actually resulted in our payments going up!**

I called numerous times to get answers but still only got through to the call center in Texas who had no info for me other then the foreclosure had been filed, and we should start packing.

The following week of May 25th thru 29th I called everyday and was told the same thing, nothing, and that my faxed papers had not been received. I repeatedly asked for the name of the lawyers that had filed the foreclosure papers and where filed and was told they did not have to give me that info.

On Saturday afternoon May 30th, a holiday weekend, I received in the mail a Reinstatement Calculation letter. Good through June 4th, just 3 business days from receipt of the letter and a demand for \$22,853.23.

The amount to cover 5 monthly payments, \$17,291.50 to include June, as well as \$461.73 late charges for June (it was not yet June), and Attorneys/Trustee fees and foreclosure expenses of \$5,100.00.

A total of \$19,873.23 in the form of a cashiers check was to be at a P.O. Box in Van Nuys CA by Wednesday.

Giving just three days to get it there.

On advice from the attorney we sent the money, June 1st, the earliest day possible after the weekend. He included a letter requesting receipt and acknowledgement of the monies being applied to the mortgage account and the account reinstated as laid out in their demand. To date we've never received this.

From June 4th when I got an email of proof of receipt from the US Postal service I called daily and was given endless BS and run around. **Told repeatedly that they never received the money, even though I had signed proof.** Throughout June when I finally had them acknowledge receipt I was told the funds were not applied and the foreclosure continued to proceed.

On June 29th I sent, on the advice of the lawyer a mortgage payment of the regular \$3,458.30. **I had still no receipt from them** and the account was not up on the Internet.

On July 13th I received a letter saying the account was still seriously delinquent with a further threat to take action, requesting a further \$17,291.50.

I called repeatedly and was told that the foreclosure was going through as the loan was in the modification program. This would not stop the foreclosure, they said if I was lucky the modification would go through before we lost the property, but it'd be unlikely as they were months behind.

I kept insisting to the numerous different people I was continually put through to, that we were not in the program, had never signed and sent in the papers as there were too many questions unanswered. The BOA people insisted we were in it

They finally gave me the name of their attorney. He is in Alaska. I called the number a few times and only get a voice mail and no return calls. Routh, Crabtree and Olsen, 1-800-786-1992. There had still not been any foreclosure filed on record in Hawaii.

On July 14th the account was put back up online, showing that all monies sent were still being held 'in partial' and **we were being charged monthly late fees of \$461.73.**

In every conversation I was told **"the codes'** would have to be removed to reinstate the account and I would get a notice within 10 days. **I was told this in June, July and August. On a daily basis and I was given names and extensions to call back 'within 3 days', but was never put through.** Told, "Oh they don't do that." Then why give the extension numbers?

On July 20th we engaged the services of local attorney Stephen Whittaker who sent BOA a letter protesting the continued threats of foreclosure, despite payments made of many thousands of dollars. He demanded an immediate accounting and documenting of fair and reasonable billing. This we never received.

On August 18th, after still being told the monies were held as we were in the Modification Program, **I was then told that the check I sent for the July payment was put towards additional attorneys fees accrued since June? They would not tell me what for.**

Also on August 19th I received a call from our landlords Kamehameha Schools, saying that the taxes and ground lease rent had not been received, they'd been due on August 1st. I explained I'd been making payments into escrow with BOA. Margaret Kanealii of KS said they were having this problem with a number of lessees, who also could not get through to BOA, yet were holding their funds.

To date we have not received a concise summary of the disbursement of funds, an accurate accounting of monies received from us by them, or a summarized bill of reasonable attorneys fees.

On August 26th we received an Escrow account Review demanding a shortage due of \$5,253.83 due October 1st.

In **September 2009** we hired another attorney, Gary Dubin, as Mr. Whittaker said he was not able to do anything further as he could never get a response to his numerous calls and letters from BOA.

All this time BOA continued to tack on bogus attorneys fees, and late charges and interest to our bill, as they never applied the money sent money to our account.

Mr Dubin proceeded to send letters, emails and make calls to BOA. No response.

By this time we had spent over \$21,000.00 on attorneys fees. Numerous expenses for title research, flights to Honolulu to meet with the attorney, and had sent BOA over \$27,000.00. To date BOA have never reimbursed us .

My name is Kim Harman and I am the Policy Director for Faith Action for Community Equity. FACE represents more than four dozen dues-paying institutional members on Oahu Hawaii and Maui including churches, temples, synagogues, tenant organizations, social service agencies and a statewide labor union. On behalf of our membership, we have been advocating for a mandatory mediation bill for many months and we support SB651 and HB 1411. Both bills allow Hawaii's families the respect and dignity they deserve by giving them the right to request a face to face meeting with their mainland lender or mortgage servicer where both parties must try in good faith to avoid foreclosure.

Both SB651 and HB1411 are based on the very successful Nevada Foreclosure Mediation Model. According to ABC News, 47% of families who chose to participate in the Nevada Foreclosure Mediation Program in the first year were able to come to an agreement with their bank or mortgage servicer that avoided foreclosure and kept the family in their home.

There has been some confusion about the success rate of the Nevada program that I would like to clear up today. Several critics of the Nevada Foreclosure Mediation Model are saying that the program was only able to help stop "5% of foreclosures" in Nevada. In order to make that number work, you would have to take the total number of foreclosures in Nevada, including commercial and non-owner occupied dwellings such as rentals timeshares and divide by the total number of families who completed the mediation process with a formal agreement with their lender.

This claim of 5% is dishonest because the Nevada Model was never meant to deal with the tens of thousands of commercial and non-owner occupied foreclosures in the first year of the program. Nevada's program, like Hawaii's program, is designed to help families stay in their homes, not investors.

The claim of 5% is also dishonest because it ignores the Nevada Model's success in helping families and the lenders reach agreements prior to the actual mediation. Once the date was set for the mediation, thousands of families were able to reach an agreement with their lender without going through the mediation process.

FACE Hawaii believes strongly that a mandatory mediation program based on the Nevada Model is the best long-term chance our families have to save their homes from foreclosure. We urge you to make sure that the program applies to all families facing foreclosure on their owner-occupied home and that you will hold the lenders to a high standard in proving their legal standing to pursue a foreclosure.

Thank you for all you have done this session to consider and act on behalf of Hawaii's families.

Testimony for SB651 on 3/16/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, March 15, 2011 1:59 PM

To: CPCtestimony

Cc: Brianakiona@yahoo.com

Testimony for CPC/JUD 3/16/2011 2:00:00 PM SB651

Conference room: 325

Testifier position: comments only

Testifier will be present: No

Submitted by: Brian Akiona

Organization: Individual

Address:

Phone:

E-mail: Brianakiona@yahoo.com

Submitted on: 3/15/2011

Comments:

I support SB651 because I feel mandatory mediation is important to families going thru this horrendous problem of illegal seizure of their home without finding out the facts of clear title and promissory note. The outright fraud against illegal bank transactions.



Progressive Democrats of Hawai'i

<http://pd-hawaii.com>

2457 Lamaku Pl, Honolulu, HI 96816

email: info@pd-hawaii.com

tel: 808.371-9334

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Robert. Herkes, Chair

Rep. Ryan Yamane, Vice Chair

COMMITTEE ON JUDICIARY

Rep. Gilbert Keith-Agaran, Chair

Rep. Karl Rhoads, Vice Chair

DATE: Wednesday, March 16, 2011

TIME: 2:00 PM

PLACE: Conference Room 325

TESTIMONY IN STRONG SUPPORT OF SB651 SD2 RELATING TO MORTGAGE FORECLOSURES

Aloha Chairs Herkes and Keith-Agaran, Vice Chairs Yamane and Rhoads, and Members of the Committees on Consumer Protection and Commerce and Judiciary:

We are testifying on behalf of Progressive Democrats of Hawai'i (PDH) in strong support of Senate Bill 651 Senate Draft 2.

The collapse of the financial system was, in many ways, a collapse of the real estate market. We are still suffering from the effects of that collapse. Our current state budget crisis is a consequence of the recession caused by that collapse.

At times, it feels like Federal policies have been more concerned with protecting the major banks and "making them whole," than in helping homeowners salvage their investments, keep them in their homes or helping them to get an equitable resolution if they need to walk away from those homes.

So it falls upon state legislatures to do what they can to provide some relief for homeowners. A lot of Hawaii homeowners are under great financial and emotional distress because the value of their homes has collapsed so drastically. We think this bill is a good step toward providing some aid to those homeowners and commend you for your effort.

PDH supports this bill because it would offer an opportunity for mediation to take place before a foreclosure and would assist in reducing the number of families working to get their mortgages modified, only to learn that their home has been sold. It would also prevent instances where families successfully comply with the agreement of a trial modification and are then denied permanent modification of their mortgage.

Mandatory mediation, especially when combined with a temporary moratorium, is the most proven way to that states and counties have used to address high rates of foreclosures. According to ABC News, Nevada cut its foreclosure rate by 47% after implementing mandatory mediation. In Nevada, local banks are not foreclosing on families, in part, because face-to-face contact tends to lead to loan modifications.

Banks need to be compelled to participate in mediation and the Legislature should use its law-making authority to indeed compel banks to do so.

We would also like to take this opportunity to suggest that your committees amend the bill to include a provision which requires loan services to prove they own the mortgage to foreclose. If they cannot produce the loan or bank note, the process should be halted until it can be produced and shown to the homeowner.

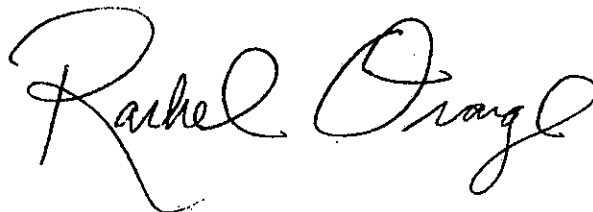
We again urge you to move this bill forward and mahalo for the opportunity to testify.

Josh Frost

A handwritten signature in black ink, appearing to read "Josh Frost". The signature is stylized with a large initial "J" and a long horizontal stroke.

Co-Chair

Rachel Orange

A handwritten signature in black ink, appearing to read "Rachel Orange". The signature is written in a cursive style with large, flowing letters.

Co-Chair

Testimony for SB651 on 3/16/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, March 15, 2011 9:39 PM

To: CPCtestimony

Cc: hisk2k@gmail.com

Attachments: new loan mod ltr for help ~1.rtf (3 KB)

Testimony for CPC/JUD 3/16/2011 2:00:00 PM SB651

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Kris Bjorback

Organization: Individual

Address:

Phone:

E-mail: hisk2k@gmail.com

Submitted on: 3/15/2011

Comments:

Dear Sirs,

On December 19th of 08 I was layed off from a good paying (\$53.00/hr) long term job and have since done everything I can to keep working and the money coming in. I collected unemployment for 5 or 6 weeks in early 2009 and 4 weeks in June/July of 2010 as well as taking an initial \$18 per/hour pay cut (about \$3100 per/month). In February of 2009 I applied for a loan modification and after one year of lost documents, inconsistant employment and unemployment, dozens and dozens of phone calls and e-mails, finally in February 2010 we received and signed final documents. This original loan modification did help, but only lowered our monthly payment \$547.74/mo to \$3,129.98 with our original payment being \$3677.72. Immediately after receiving our new loan mod and making our first payment in April,2010, I was layed off, so I called Citi Mortgage to ask what our options were. They put us on a forbearance plan, paying 1/2 the mortgage payment - \$1,564.99/mo - recommending we apply for a traditional loan modification. We applied and waited while making all the agreed upon payments. November 1 our loan was transfered to Nationstar Mortgage, with no information transfer from Citimortgage other than the loan. Start over. I called Nationstar on Nov 1st to make a loan payment, but was told to wait as they did'nt have our info and any back payments would be added into the new loan. It was expected in 3 to 4 weeks; It never came. Received a default notice on 12/15/2010 and told to not worry because as long as I was in the loan process forclosure could not proceed. NS obviously never researched the loan they obtained from Citi. Middle of December I was sent a new loan mod packet which I sent back by 1/14/11 and was told again to wait 3 to 4 weeks. Nothing. On March 1st, after about 6 weeks, I called only to be told that I didn't qualify for another modification by 2 rude people, one phone call after the other. NationStar has decided not to help us. Monday we received (March 14,2011) a forclosure notice.

I am presently working for \$30.00/hr @ 40 hrs/week or about 60% of what I was making in 2008 when we bought our home. As you know, the residential construction market here on Maui has been severly affected, with fewer jobs and lower pay for those available. I have been a carpenter for 33 years and have never seen a market like this. Child support has been lowered to \$ 629.00/month. Thank you for helping us stay in our home and your consideration during this challenging time. If there is anything else I can do to help please contact me at:

Kristen R Bjorback
808-344-3363

e-mail hisk2k@gmail.com

phone

CPCtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 15, 2011 8:55 PM
To: CPCtestimony
Cc: tropicalbelt@yahoo.com
Subject: Testimony for SB651 on 3/16/2011 2:00:00 PM

Testimony for CPC/JUD 3/16/2011 2:00:00 PM SB651

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Margaret Levy-Dohanos
Organization: Individual
Address:
Phone:
E-mail: tropicalbelt@yahoo.com
Submitted on: 3/15/2011

Comments:



Hawaii Credit Union League

Your Partner For Success



1654 South King Street
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Testimony to the House Committee on Consumer Protection and Commerce and
House Committee on Judiciary
Wednesday, March 16, 2011 at 2:00 p.m.

Testimony in opposition to SB 651 SD2, Relating to Mortgage Foreclosures

To: The Honorable Robert Herkes, Chair
The Honorable Ryan Yamane, Vice-Chair
Members of the Committee on Consumer Protection and Commerce

The Honorable Gil Keith-Agaran, Chair
The Honorable Karl Rhoads, Vice-Chair
Members of the Committee on Judiciary

We are Stefanie Sakamoto and Frank Hogan, Esq., and we are testifying on behalf of the Hawaii Credit Union League, the local trade association for 85 Hawaii credit unions, representing approximately 810,000 credit union members across the state.

We are in opposition to SB 651 SD2, Relating to Mortgage Foreclosures. Mainly, this bill would require dispute resolution before any foreclosure action, and would impose a moratorium on all foreclosures until the mediation program is launched. Mandatory dispute resolution and a moratorium on foreclosures will have an extremely negative effect on our ability to lend, and may in turn harm credit unions' ability to offer low-cost services to our members. In turn, this legislation may have an adverse effect on an already struggling economy. We are also concerned that similar dispute resolution programs, such as the one underway in the Third Circuit Court, have not been effective.

Credit unions have a long history of "serving the underserved", and do everything in their power to keep borrowers in their homes. Foreclosure is often the very last avenue that credit unions will take, after every option – such as loan modification - has been exhausted. Currently, 63 Hawaii credit unions offer mortgage loans. As of 2010, credit unions had approximately 23,000 real estate loans on the books. Out of those loans, credit unions currently only have 22 foreclosures in process.

It is agreed upon between proponents of the bill and lenders that the foreclosure problem in Hawaii was not caused by local lenders. Therefore, we respectfully ask you to consider the effect this legislation will have on local financial institutions in the State of Hawaii.

Thank you very much for the opportunity to testify.



TEL:
808-524-5161
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ADDRESS:
1000 Bishop Street, Suite 301B
Honolulu, HI 96813-4203

Presentation of the Committees on Consumer Protection & Commerce and Judiciary
Wednesday, March 16, 2011 at 2:00 p.m.
Testimony on SB 651 SD2 Relating to Mortgage Foreclosures

In Opposition

TO: The Honorable Chairs Robert N. Herkes and Gilbert S.C. Keith-Agaran
The Honorable Vice Chairs Ryan I. Yamane and Karl Rhoads
Members of the Committees

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in opposition to SB 651 SD2. HBA is the trade organization that represents all FDIC insured depository institutions with offices in Hawaii.

HBA respectfully opposes SB 651 and other similar bills like HB 1411 HD2, because of its potential harm to the economy without a corresponding benefit of helping those consumers who are able to pay on a mortgage loan if the loan was modified. Because of the potential deleterious effect on the economy by harming the mortgage market, this bill would harm consumers, all participants in the housing market, and our state economic recovery.

Lenders do not want to foreclose on homeowners. It is costly. For example, the government reported the average foreclosure loss on a FHA loan was \$76,000, which actually is much lower than the figure for one of our members. Therefore, lenders will work with willing borrowers to keep them in their homes. All lenders with Fannie Mae loans participate in the Federal Home Affordable Modification Program (HAMP) 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 a diminution of the value of their house and a reduction in income caused by unemployment or underemployment. So in most cases foreclosure mediation does not really solve the underlying problem of loss of income and declining housing value.**

Unintended consequences could include: *larger down payments; fewer borrowers able to qualify for loans; higher interest rates; depressed property values delaying economic recovery (which harms sellers and neighborhoods); flood of foreclosures down the road.* Mediation may make it harder for future home buyers to qualify for mortgage loans.

In analyzing these foreclosure related bills, it is important to distinguish between the impact on mortgage loans already made and those to be made in the future. Impact on loans to be made in the future is the most troubling and causes the largest potential for harm to Hawaii.

There are several other foreclosure related bills like HB 1411 HD2 that contain many other troubling provisions that would have the unintended consequences of delaying Hawaii's economic recovery and make it more difficult for future homeowners to qualify for mortgage loans. To highlight the background on the mortgage market:

Mortgage Market

There are two mortgage markets. There is the government market which is government sponsored enterprises (GSEs) such as Fannie Mae. GSEs are regulated by the Federal Housing Finance Agency, formerly known as the Office of Federal Enterprise Housing Oversight. Presently, on a national level, GSEs own or insure about 90% of mortgages. The GSE market is characterized by national pricing controlled by the GSE, with subtle lender and regional distinctions, and GSE mandated standardized underwriting which for the most part are strict and inflexible.

There is the private market or the portfolio market and these are loans made by a lender for its own portfolio (meaning it does not sell the loan to a GSE). In Hawaii, these are your local banks and credit unions. These loans are regional or within an even smaller territory depending on the size of the lender. This market is characterized by more flexible pricing and underwriting. As GSE or Fannie Mae loans are harder to get, the importance of this market is more important, especially for condo loans.

This private market will take on greater significance because the mortgage market will undergo a radical transformation over the next years because the role of the GSEs in mortgage financing will be heavily reduced and it will be up to the private market to bear the brunt of making mortgage loans. The only question is the speed of the transformation and the ultimate structure of the mortgage market.

It is important to preserve the mortgage market, and that really means the private market, because lack of loans means lower home prices and eventually more foreclosures. Even the Center for Responsible Lending is worried about a GSE proposal to raise down payment requirements arguing that it would lead to less loans and impact the lower and middle income homeowners.

The Future of Loan Modification

The extent of the proposed Hawaii foreclosure laws may not be necessary in the near future due to pending legal settlements or regulations by federal banking regulators. The fifty state attorneys general, the Justice Department, the Department of Housing and Urban Development and the Consumer Financial Protection Bureau are attempting to enter into a global settlement with the five largest mortgage lenders who service loans for themselves and others (Bank of America, Wells Fargo Bank, J.P. Morgan Chase Bank, Citi Bank and Ally Bank, ironically partially owned by the government) that would impose a major change in the servicing process all designed to address the reported problems being faced by troubled borrowers. On a national level, the five lenders service approximately 59% of the mortgage loans in this country. For FDIC supervised banks, FDIC chairwoman is on record that loan modification must be attempted in most circumstances prior to foreclosure. Thus, we can expect the FDIC to issue such a regulatory guidance. The OCC, which regulates national banks and federal thrifts, and the Federal Reserve, which regulates member banks, have also issued similar pronouncements. Thus, the federal banking regulators, FDIC and Office of the Comptroller of the Currency, will eventually propose servicer reform, again designed to address borrower complaints against servicers.

Thus, perhaps even before mediation is ready to roll out, most lenders will be under an obligation to attempt pre-foreclosure loan modification attempts. Even today, Fannie Mae requires pre-foreclosure attempts if the borrower requests and borrowers are notified of the right to request HAMP loan modification.

Moratorium

SB 651 and HB 894 call for a moratorium, which is potentially harmful, would be a serious threat to our State's economic recovery unless the moratorium has a short time frame and a set end date. A short moratorium with a specified end date is less likely to impact the economy because it does not impact on future loans.

Many thoughtful commentators contend that delaying foreclosures will further exacerbate weakness in the housing market and therefore delay a more general economic recovery. For instance, Third Way, a centrist Democratic think tank, recently issued a report opposing efforts to create a foreclosure moratorium on the grounds that delaying foreclosures will push housing prices lower and harm economic prospects. Third Way argues persuasively that a general policy slowing all foreclosures would "only prolong" our economic crisis.

See "The Case Against a Foreclosure Moratorium," <http://thirdway.org/publications/342>

Treasury secretary, Tim Geithner, acknowledged that a moratorium would hurt home prices, which leads to more foreclosures and a lengthening economic recovery.

To our knowledge, only the state of California has enacted what might be called a moratorium but that bill's effect was tempered by limiting its effect to mortgage loans made between 2003 and 2007, a sunset date and provisions for exemptions.

Mediation

The mediation provisions, unless subject to a quick sunset, is much more problematic for our economy because it does affect future loans.

Mediation programs have not worked well across the nation. For example, consumer advocates have touted Nevada's mediation program as one of the more successful programs with claims of 46% success rate. However, this number while seemingly high does not tell the rest of the story. The Nevada Judiciary report for the period from 7/1/09 through 6/30/10 showed 79,232 notices of default (NOD), of which 8,738 requested mediations (11% of total NOD). Of the 8,738, 4,212 were completed (5.3% of the total NOD). Of the 4,212, 3,749 did not end in foreclosure (4.7% of the total NOD) and only in 1,938 cases (2.4%) did the homeowner stay in their home. This last number of 1,938 divided by 4,212 that did not end in foreclosure seems to the 46% being tossed around as highly successful. **However, if you take the total notice of defaults filed, then the 1,938 only represents 2.4%.** And one large lender reported that an overwhelming number of its mediated loan agreements were back in foreclosure within a year. So it helped a very small percentage, but, at what cost?

To be fair, all modification programs have not worked well. One big reason is that successful loan modifications depend on a reliable income stream which often is not available. HAMP has been heavily criticized by the Special Inspector General for TARP. But yet, HAMP and other proprietary modification programs that are done pre-foreclosure have worked better than those made post-foreclosure filing. The most obvious reason is that the success of a loan modification depends heavily on an early workout, pre-foreclosure. That is the biggest reason pre-foreclosure modifications that are at the core of HAMP, the proposed 50 state attorney generals' settlement with lenders who service 59% of the nation's mortgages, likely federal banking regulators requirement of pre-foreclosure modification attempts, and the California law requiring pre-foreclosure loan modification attempts, all have a better chance at success than mediation.

Mediation is a post-foreclosure loan mod attempt, not a pre-foreclosure loan mod attempt. That alone is a big difference. By the time, the mediation occurs, it is likely that the borrower will be severely delinquent because foreclosure is a last step for lenders, the delinquent borrower has been through a loan modification process, and the longer a loan has been delinquent, the harder it is to do a successful loan mod.

Another reason for mediation's lack of success: As long as the mediator or the court acts as an arbitrator, using its powers such as the power to declare lack of "good faith" to leverage an unwanted loan mod, it is likely to fail because the loan mod will not be

well thought out. A loan mod is a loan underwriting process, and absent a mediator who is an experienced loan underwriter, the substitution of the mediator or court's judgment for a knowledgeable lender's judgment is not likely to be successful.

In no case, should mediation be used as another way for a borrower that that did not already qualify for a loan modification, be given the opportunity to delay collection of the loan. For that reason, a person who has been through the loan modification process and either has been denied a loan modification or failed to perform under a loan modification agreement should not be eligible for mediation. The reason that most troubled borrowers do not qualify for a loan modification is the lack of income to pay a reasonable modified monthly mortgage payment. Mediation does not solve the problem of lack of income.

Duty of Foreclosing Mortgagee to Maintain Mortgage Property

This is a very troubling provision to require a non-owner of a property to assume the liability and cost to maintain a property before the mortgagee assumes ownership. The lender is not the owner and it is highly questionable if this provision would be enforceable.

Not only does it raise significant constitutional issues if imposed on federally chartered lenders, it raises legal issues for all lenders since it requires a lender to commit a criminal act by breaking into a housing unit it does not own.

If the mortgagee has to assume the liability and cost to maintain a property, like paying condominium association monthly fees, it will have a very negative effect on condominium lending by making it much harder for borrowers to qualify. Already it is more costly and harder to qualify for a condominium loan. If this "duty to maintain" provision is passed, it will mean that future borrowers will pay higher rates and a bigger down payment. These tougher loan requirements may depress condominium prices and lead to more foreclosures.

The condominium market presents about 40% of Hawaii housing units. So this provision will impact a large segment of the buyers like first time and middle class borrowers by making it harder for them to qualify for a loan. There is no doubt that inclusion of such a provision will lead to less condo loans, and those that are made will have a larger down payment requirement and loan approval will be much stricter.

Repeal of the Old Non-Judicial Foreclosure (Foreclosure by Action or by Power of Sale) Statue

Another provision in HB 1411 repeals the old non-judicial foreclosure process and clarifies the new non-judicial foreclosure process (alternative power of sale process).

The Mortgage Foreclosure Task Force, created by Act 162 of the 2010 Session Laws of Hawaii, issued its recommendations to provide more rights for home owners in the old

nonjudicial foreclosure process. These recommendations are contained in other bills, such as HB 879 and SB 652. The recommendations by the Task Force are substantive and represent the consensus of the 17 members who represented diverse and opposing views.

The recommendations of the Task Force for the 2011, as contained in HB 879 and SB 652 should be adopted by the legislature. Any other issues, like changes to the new nonjudicial process, should be reviewed by the Task Force for its report to the 2012 Legislature.

The unintended consequence of repealing the old non-judicial foreclosure process without additional time for careful review and vetting could leave Hawaii without a non-judicial statute and force all foreclosures through the judicial process, which would overwhelm an already overburdened Judiciary.

Actions and Communications with the Mortgagor in Connection with a Foreclosure

This provision in HB 1411 will have the negative effect of hindering verbal communication by a lender due to the liability imposed. It is in the best interest of the borrower and lender to have an open dialogue to help keep the borrower in their home. This will force lenders to communicate only in writing, which would be to the detriment of the borrower, and the borrower will also be forced to respond in writing. This undoubtedly will be counterproductive in facilitating a loan modification.

Improvements to the Bills

Carve out the local lenders that have not been the problem to avoid adversely impacting the local private market. Otherwise, loan availability may be lessened which only leads to lower prices which eventually will lead to more foreclosures. A carve out based on asset size is clearly constitutional, and in fact, in banking, such exemptions are common, as seen for example in the President's financial regulatory reform bill.

Sunset the entire bill within two years. The real problem are not the loans being made now especially because of the President's financial regulatory reform bill. Even the Center for Responsible Lending argued against a GSE proposal to raise the down payment requirement because it would lead to less loan availability, and it argued that newer loans posed less risk because less risky loans are being made.

A major out-of-state servicer/lender that has been the source of many of the Hawaii complaints thinks it will take about two years to clean up its servicing problems.

California twice passed a foreclosure law, which although styled a moratorium law, was more a law requiring pre-foreclosure loan modification attempts. Both bills had a sunset period.

CPCtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 15, 2011 3:06 PM
To: CPCtestimony
Cc: thelma.kealoha.1@gmail.com
Subject: Testimony for SB651 on 3/16/2011 2:00:00 PM

Testimony for CPC/JUD 3/16/2011 2:00:00 PM SB651

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Thelma Akita-Kealoha
Organization: Individual
Address:
Phone:
E-mail: thelma.kealoha.1@gmail.com
Submitted on: 3/15/2011

Comments:
Consumer Protection Committee
Testimony related to SB 651
Wednesday, March 16, 2011

As the chair of FACE Maui's Affordable Housing, Land Use and Foreclosure task force I would like to express gratitude to Senator Roz Baker and Senator Suzanne Chun Oakland for being committed to helping families across the state that are facing foreclosure.

I am testifying in support of SB 651 and I am asking you to please support this bill. We need your help to advocate strong mandatory mediation legislation that will hold mortgage servicers accountable to families facing foreclosure. I also ask you to please make sure that this mandatory mediation is available to any families facing foreclosure who has not yet lost their home and require the banks and mortgage servicers provide absolute proof that they have legal standing to pursue the foreclosure before the mediation can begin.

I get calls from many people who can't afford their mortgages, who are so worried that their homes are going into foreclosure or have already lost their homes and have no where to go. They have no idea what they can do or what their options are.

I have read in the Star Advertiser that statewide our foreclosure rate is one of every 44 homes, this is absolutely staggering and adds to our already stretched system and homelessness issues on Maui. Families need to feel they have rights; they need to understand the process and what they can do to correct the situation to make it right (the whole concept of pono and doing what is right). They have the right to meet face to face with an authorized person not spend countless phone calls often speaking to a new representative every time they call, who requires them to resubmit required paperwork time and time again. They have the right not to live in constant fear, that every time they hear a car driving into their driveway it's not a sheriff representing a lender taking away their home and throwing them out in the street. Thus making them feel frustrated, powerless, a loss of control leading them to believe they have no rights and cannot win this losing battle

In Hawaii our land is cherished and treasured; the idea of losing it means a loss for generations. Please give our families the ability to be pro-active and work towards solutions so they won't lose their homes to foreclosures and will have homes that will be handed down to their children and their children's children.

Sincerely,

Theima Akita-Kealoha
Maui Community Director

Testimony for SB651 on 3/16/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Wednesday, March 16, 2011 7:39 AM

To: CPCtestimony

Cc: aloha@fastmail.fm

Testimony for CPC/JUD 3/16/2011 2:00:00 PM SB651

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Douglas Gray

Organization: Individual

Address:

Phone:

E-mail: aloha@fastmail.fm

Submitted on: 3/16/2011

Comments:

Passage of this bill is essential to keep families in their homes and prevent children from being evicted and traumatized as a result of bank errors and greed. Dispute resolution is fundamental to the American way of life. This bill only seeks to protect the most basic rights of Hawaiian families.