

SB 651



NEIL AMBERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

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

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

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

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

Senate Bill No. 651 seeks to require mediation as a means to avoid foreclosures in Hawaii and proposes to create a special fund for mediation costs in the office of consumer protection. While the Department supports the intent of this measure, it does not believe that the OCP is the appropriate entity to administer a mediation program.

Mediation has recently 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 New Jersey, Ohio, Florida, Connecticut, Indiana, Maine, New York, and Vermont, as well as programs established independent of the judiciary in the non judicial foreclosure states of California, Oregon, Maryland, Michigan, and Nevada. Despite some procedural differences, all of these programs have several features in common. They are designed to bridge the communication gap between loan servicers 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 servicer with full authority to consider all loss mitigation options.

While the Department believes that mediation is a desirable method of avoiding unnecessary foreclosure it does not believe that the Office of Consumer Protection would be an appropriate administrator of any such program. As a law enforcement agency, the OCP's primary purpose is to enforce the consumer protection laws of the State of Hawaii. It is not a mediator. It civilly prosecutes respondents who violate the law. Consequently, placing a mediation program within its realm would be inappropriate.

Although the Department does not believe that OCP is the proper entity to administer a mediation program, it stands ready to explore with all interested parties other feasible alternatives for the administration of an effective mediation program.

Testimony on Senate Bill No. 651
Wednesday, February 2, 2011
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Thank you for providing me with the opportunity to testify on Senate Bill No. 651.
I will be happy to answer any questions that the committee members may have.



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Consumer Protection

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
(Wednesday, February 2, 1011, 8:30 a.m.)
State Capitol, Conference Room 229

by
Elizabeth Kent
Director
Center for Alternative Dispute Resolution

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

Purpose: Requires foreclosing mortgagees to engage in mediation with the mortgagors prior to initiating non-judicial foreclosure proceedings. Establishes a special fund for mediation costs in the Office of Consumer Protection.

Judiciary's Position:

The Judiciary recognizes the benefits of using mediation and other forms of Alternative Dispute Resolution (ADR) to resolve appropriate foreclosure actions and agrees that mediation and other alternatives to court assist homeowners and lenders to find solutions. However, the Judiciary has various concerns with Senate Bill No. 651 in its current form.

The Judiciary currently has a pilot mediation program in the Third Circuit (Hawaii Island) for judicial foreclosure cases. Statewide, judges already have the discretion to order mediation of appropriate foreclosure cases. Also, the Mediation Center of the Pacific, a provider under the Judiciary's Purchase of Services contract for mediation services, has trained mediators on Oahu to assist with judicial and non-judicial foreclosure cases.

Senate Bill No. 651 would require mortgagees in all cases to engage in mediation prior to filing a foreclosure action. This provision extends too far in its present form and there should be some sort of screening process to provide for mediation in appropriate cases as opposed to all cases. Without such a process, the result might unnecessarily delay cases and increase costs, which ultimately might be turned over to consumers. As currently written, the mediation process may be subject to possible abuse.



Senate Bill No. 651, Relating to Mortgage Foreclosures
Senate Committee on Consumer Protection
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There also appear to be some issues related to the timing of the mediation. For instance, Section 2 (c) states that the mediator may compel the parties to attend mediation for sixty days follow the breach of the mortgage agreement, but it is not clear that mediation could be conducted that quickly.

Thank you for the opportunity to testify on this measure.

TESTIMONY FOR:

SB576 & SB651

RELATING TO MORTGAGE FORECLOSURES

(Requires mediation for the purpose of attempting to avoid foreclosure)

AMENDED NOTICE OF HEARING:

DATE: Wednesday, February 2, 2011

TIME: 8:30 a.m.

PLACE: Conference Room 229

State Capitol

415 South Beretania Street

TO:

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair

Senator Brian T. Taniguchi, Vice Chair

And Colleagues

FROM:

ANNE W. JENNY

Representing (former) Homeowners of Hawaii

1465 Baldwin Ave

Makawao, HI 96768

808 579-9456

My name is Anne W. Jenny

Although it is too late for me we desperately need this legislature to pass **SB576 & SB651** to ensure that the abuse and fraud engaged in by the mortgage industry is halted and our citizens no longer need live in fear of losing their homes.

I was a bank examiner for the US Treasury, Office of the Comptroller of the Currency during the banking crisis of the 1980's. While at the OCC I specialized in examining banks' compliance with consumer protection regulations and the Community Reinvestment Act. I was also selected as a Consumer Compliance Instructor and completed the Federal Financial Institutions Examination Council Instructor training course. Later I was the compliance officer for a bank holding company and an instructor for the ABA compliance school in Chicago. I have also been a licensed realtor in the state of Arizona. Along with being an expert on lending regulations, I am also a mediator working primarily with churches and non-

profits. I am currently teaching economics and personal finance at the University of Hawaii, Maui College.

I consider myself to have an expert level understanding of the regulations and procedures that govern the making of mortgage loans. That understanding was not enough to protect me from the fraud and malfeasance that occurred when my loan was sold into the secondary market. That understanding did not protect me because I had no place to sue for redress. There is no one responsible for requiring the speculators and profiteers to follow the rules that I relied on to protect me from their greed. I am instead considered merely "collateral damage." (pun intended) My home, my marriage even my health came close to being destroyed because there was no way to enforce fair dealing on the part of those more interested in profiteering than in honoring a contract. Ironically these are the same people who received multi-million dollar bonuses paid out of my tax dollars because we were told that their contracts must be honored.

Why has my government, whose officials have sworn to defend and protect us, not acted in the face of this domestic terrorism? My safety and security is and continues to be at far greater risk from these financial thugs than from any foreign entity. **These people have destroyed far more lives, devastated many more communities and come closer to bringing the US economy to its knees than any Al Qaeda agent has managed, even in his wildest dreams.**

My husband and I are both military veterans and eligible for a VA guaranteed home loan. However we were told that they were not available and if we could get one it would be far more expensive than the 'really good deal' our realtor had arraigned for us. I found this hard to believe and started asking questions and doing some research. While waiting to close on our home, I happened to mention to the broker that I had once been a regulator and that I was looking into VA loans. Suddenly the realtor and the broker informed us that they could get my husband a much better deal if he was the only one who signed the papers. As we had recently moved across the country and I had only been employed for a short time this seemed marginally reasonable. Our realtor was the chair of the church council and my husband's boss. He knew exactly what our financial circumstances were. Although I had no reason to distrust him it felt odd to be barred from any input into further negotiations and I never did get to see the final contract. Eventually the loan was closed and sold to Countrywide.

After only a few months the payments began to rise precipitously and in a short time had doubled no prior notice was given as to the timing or amount of the seemingly arbitrary increases. The loan payments were principal and interest only and did not include taxes and insurance. Apparently the broker had not informed my husband that the contract did not include the usual escrow for taxes and insurance. We were suddenly faced with a tax bill of several thousand dollars on top of the drastically escalated loan payments. Our friendly realtor (still my husband's boss) offered to put the house on the market for us (at the full broker's fee, of course) and over the many months it was on the market we received not a single offer. Ironically, we continued to receive robo-calls offering special financing deals from countywide and other mortgage lenders. My husband tried diligently to find to refinance the mortgage on more conventional terms but he was continually transferred from one person to another who made promises but could never again be reached. He sent reams and reams of paperwork that was

always lost and/or deemed to be incomplete. And, since my name was not on the papers and I had no legal standing to deal with Countrywide and no one would speak to me when I tried to do the leg-work myself.

My husband became clinically depressed and told me recently he had actually planned to commit suicide. In order to ensure that we at least had a place to sleep I purchased a small RV. After we were forced out of our house it became our home. (I've kept it, just in case we get offered another "trust me it's a really good deal" again.) Ironically the RV cost about the same as my first home but without all of the fees, charges, points, and other items that add to the expense of purchasing a regular property. Nor has the loan been sold in the secondary market, I can pick up the phone and speak to my lender immediately if I have a question or issue. Also, like a regular house I have been able to rent the RV out to help cover the loan and the interest is deductible as though it was a mortgage loan.

The worst part of the entire experience was the feeling of utter helplessness. **If just once someone from countrywide had acted in good faith, there were resources we had available.** But we had no leverage to bring them to the table. We consulted with an attorney but even he offered us no hope of any kind of remedy. The best solution he could offer was to consider filing for bankruptcy.

As a mediator I've worked with the state of Maryland Day of Trial Mediation program, done restorative justice conferences, facilitated interfaith dialogue after 9-11 and even mediated church sexual misconduct cases. I am amazed at how often even the most difficult problems can be resolved once the parties are all sitting face to face. **Mandatory mediation is the most equitable and cost effective way** to deal with what has devastated so many lives. It balances the both the deep pockets of the financial industry and requires them to come to the table rather than hiding behind their answering machines greedily counting the blood money bonuses sucked from another devastated family.

Hawaii is a state where we celebrate the spirit of aloha, the breath of life. The fraud and abuse of the mortgage industry has left us gasping for air, drowning in shame that is not of our making. It is time to reclaim the ethical high ground; to live pono and honor the traditions of talking story and ho'oponopono that the foundations of our culture. Mandatory mediation is a bare minimum, a baby step towards restoring a little of the dignity that has been stripped away from my husband and I and from so many other families.

TESTIMONY OF Michelle Kauhane
On Behalf of Hawaiian Community Assets, Inc.

IN SUPPORT OF SB651

BEFORE THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

February 2, 2011

Aloha Chair Baker, Vice-Chair Taniguchi and Members of the Committee:

Thank you for the opportunity to provide testimony on behalf of Hawaiian Community Assets (HCA) in support of SB651. My goal is to share with you how SB651 would support the unbearable realities Hawaii families face when dealing with mortgage foreclosure. My name is Michelle Kauhane, Executive Director of Hawaiian Community Assets. HCA is a non-profit organization with a ten year history of serving Hawaii families with asset building programs that include homebuyer and financial education with an emphasis on increasing and retaining homeownership.

As you are well aware, the foreclosure crisis in Hawaii has reached daunting levels. To address the crisis, we need immediate solutions that can be implemented to assist Hawaii's families with an opportunity to save their homes and where possible, avoid foreclosure.

Over the past two years, HCA has implemented a *Call Us -We Can Help* campaign to reach out to families facing foreclosure. To date, our call center has received 667 calls for help. In addition, we have been able to successfully complete 159 modifications, avoiding foreclosure. I share our successes with a need to articulate that for every success, we have approximately four additional families we are unable to help for various reasons. In most cases, families are fumbling through the process that is confusing and embarrassing and simply run out of time.

One of the primary frustrations is that we have a federal program in place designed to help families save their homes from foreclosure that is used only if and when the lending institution and or servicer holding the mortgage, chooses to do so. Housing counselors are held hostage to the subjective opinions of individuals who are working in call centers, struggling to keep up with the high demand for their assistance. These employees are overwhelmed with tens of thousands of phone calls and are often too busy to provide assistance based on the need for their help.

SB651 offers an opportunity for mediation to take place before a foreclosure. This measure would assist in reducing the number of cases we see where families are working to get their mortgage modified and learn that their home has been sold. It would prevent the instances where families successfully comply with the agreement of a trial modification and are then denied a permanent modification. It would eliminate the frustration of families who have modifications approved only to learn that the revised monthly payments are in fact higher than the original loan

payments. Most importantly, it would provide greater protection to the families who are struggling through the process and stress of foreclosure and then realize they are also victims of a scam. Mediation would reduce, and in some cases eliminate, the tragic realities we are witnessing in our day to day work that supports families facing foreclosure.

Families in Hawaii need a reasonable option to combat the escalating rate of foreclosure. We need a vehicle that will assist in turning the current foreclosure crisis around. Housing counselors need the proper tools to support their foreclosure prevention efforts. The State of Hawaii needs to formulate a solution to remedy the daunting impact foreclosures have on the residents of our beautiful island state.

Hawaiian Community Assets appreciates the opportunity to provide testimony and humbly seeks your support for SB651.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Kauhane". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michelle Kauhane
Executive Director
Hawaiian Community Assets



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Presentation of the Committee on Commerce and Consumer Protection
Wednesday, February 2, 2011 at 8:30 a.m.
Testimony on SB 651 Relating to Mortgage

In Opposition

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

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

It is our understanding that SB 651 requires foreclosing mortgagees to engage in mediation with the mortgagors prior to initiating non-judicial foreclosure proceedings and establishes a special fund for mediation costs in the office of consumer protection.

Lenders do not want to foreclose on homeowners. Therefore, lenders will work with willing borrowers to keep them in their homes. Most lenders participate in the Federal Home Affordable Modification Program or have their own modification programs to help troubled homeowners stay in their homes. However, it is our experience that most residential owner occupants are unable to make their mortgage loan payments due a reduction in income caused by unemployment or underemployment. So in most cases foreclosure medication does not really solve the underlying problem of loss of income.

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

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

It will be interesting to see the report on the results of the Hawaii Island mediation pilot program that started over a year ago. We have not seen the report and just heard anecdotal from participants that the program results were less than stellar.

Additionally, due to the State's budgetary constraints is it the appropriate use of limited funds for a program that does not solve the underlying cause of foreclosure, further taxing the resources of an already burdened judiciary and opening up the possibility of mediation being used as a delaying tactic by borrowers that do not have the means to make mortgage payments are a few of some other issues to also consider.

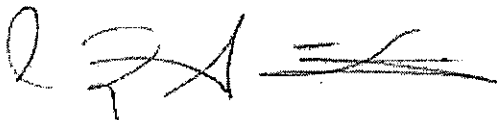
It is suggested that the Committee consider other alternatives to mediation as follows:

1. Pass the Recommended Legislation of the Mortgage Loan Foreclosure Task Force: The legislature should adopt the recommendations of the task force outlined in SB 652 or similar measures, with a very minor modification to the proposed legislation (page 18 line 9) Section 667-5 subsection (e) by eliminating the word "residential".

2. Implement Mortgage Loan Modification Fairs: The appropriate State agency should work with the major servicers/lenders that have the bulk of the foreclosures to set up mortgage loan modification fairs to enable homeowners to meet face to face with servicer/lender representatives with the authority to negotiate modifications.

3. Direct Assistance of Limited of Resources to Assist Troubled Borrowers: Where the resources to support a mediation program might instead be better used is a question. Based on experience of foreclosure attorneys dealing with borrowers and their attorneys, there appears to be a need for educational and housing transition counseling programs and independent modification assistance providers. This use of precious resources that directly helps troubled borrowers would be a more effective use of funds instead of wasting funds on a mediation program, which has not proven to be very effective.

Thank you for the opportunity to provide our testimony and respectfully asked that this bill be held.



Gary Y. Fujitani
Executive Director



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

January 31, 2011

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

Re: Senate Bill 651 Relating to Mortgage Foreclosures

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

I am Rick Tsujimura representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of real estate lenders in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, and other financial institutions. The members of the MBAH originate the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending.

The MBAH opposes Senate Bill 651 Relating to Mortgage Foreclosures. The Mortgage Bankers Association of Hawaii strongly feels that these bills relating to the matter of foreclosures should be vetted as part of the mortgage foreclosure task force since both consumer and lender groups are represented and can work on the details of each bill to come to a consensus. We feel that the bills, as presented, have merit but include processes which may potentially cause harm to consumers and lenders.

Thank you for the opportunity to present this testimony.

HAWAII FINANCIAL SERVICES ASSOCIATION

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

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

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February 2, 2011

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

Re: **Senate Bill 651 (Mortgage Foreclosures)**
Hearing Date/Time: Wednesday, February 2, 2011, 8:30 A.M.

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

The HFSA **opposes** this Bill.

The purpose of this Bill is to: (1) require foreclosing mortgagees to engage in mediation with the mortgagors prior to initiating non-judicial foreclosure proceedings; and (2) establish a special fund for mediation costs in the office of consumer protection.

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

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

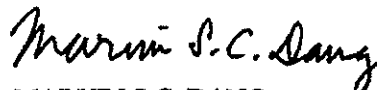
The provisions in this Bill (Senate Bill 651) are not part of the Task Force's recommendations.

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

Additionally, as an attorney I have been handling foreclosures which have been subject to the Judiciary's Foreclosure Mediation Pilot Project for the Third Circuit (Big Island) which began 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. There are untenable delays in the foreclosure process when mediation is inappropriate or unsuccessful.

We incorporate by reference the testimony separately submitted by the Hawaii Bankers Association opposing this Bill.

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

(MSCD/hfsa)

Faith Action for



Community Equity

Oahu and Maui Chapters

Gamaliel Foundation Affiliate

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The Rev. Alan Mark
Statewide President

The Rev. Sam Domingo
Oahu President

The Rt. Rev. Monsignor
Terrence Watanabe
Maui President

Mr. Rosario Baniaga
Statewide Treasurer

Ms. Judy Ott
Statewide Secretary

Mr. Drew Astolfi
Executive Director

Mr. Patrick Zukemura
Oahu Lead Organizer

Ms Terri Erwin, PhD
Maui Lead Organizer

CPN

8:30am February 2, 2011

Attn: Senator Roz Baker

I am writing in support of SB 576 & SB 651 related to foreclosure, but I am also asking for a few additions to these two bills. I am Rev. Sam Domingo, President of FACE Oahu.

Everyone knows someone in default these days -- even if they don't always know they do. Our people tend to struggle in silence, and everyone in Hawaii is struggling some today. This foreclosure epidemic is part of a larger picture of slow erosion of Hawai'i's local culture.

In many ways investor driven capital is hurting our way of life. One example is the way our hotels -- once owned by local businessmen are now owned by investor groups like Goldman Sachs -- an institution which cares nothing for us here, and which thinks and plans quarter to quarter...maybe that explains why they ignore the crowd of homeless living in front of their hotel, imagining perhaps that it will have no effect on their business, or on the greater community their business depends upon.

Likewise the epidemic of foreclosures is driven by people from far away who neither know us, love us, or think about us. Local banks -- staffed by our friends and neighbors are *not* foreclosing on local families in the casual way that off shore banks do.

These two bills require as law what local banks do as part of their regular business -- they sit down and talk to their customers to find solutions to problems. I wish that people would just sit down voluntarily to talk things out. We should not need a law to make things pono. Sadly there doesn't seem to be another way.

Other states and some counties have moved bills mandating mediation into law with very good results -- but they all did three things our early draft bills don't. First they required lenders to prove they own the paper before they process a foreclosure. Second the mediation --the face to face connection -- is mandatory. Mandatory means it is a condition of foreclosure -- whether judicial or non-judicial. Third, their needs to be penalties applied when these conditions are not met. Simply put, a successful mediation process needs teeth.

One of the industry lobbyists explained at a hearing last week that mediation programs on the mainland have not worked so good. Take a closer look, and you will see that the programs without teeth are the ones that have not worked so good. The programs with teeth, like Nevada, have been hugely successful.

I know that mandatory mediation will add a burden to DCCA or the judiciary, so you might consider a short moratorium on foreclosures while the new program is set up.

Thank you for your attention to this important issue.

FACE MAUI

Faith Action for Community Equity

Consumer Protection Committee Testimony related to SB 651 on Mediation and SB 576 on Mediation Wednesday, February 2, 2011 8:30 am - ?

I am Rev. Monsignor Terrance Watanabe, current Pastor of St Theresa Roman Catholic Church in Kihei and the President of FACE Maui – I am testifying in support of both SB 651 and SB 576 – but I would like them to be stronger in two important ways. Foreclosures damage and sometimes destroy families. I have seen this all too often over the last few years. According to the newspaper Maui County has one of the worst foreclosure rates in the United States. That feels true to me...sadly it matches my experience.

While there are a large number of important ideas addressing this problem in several of these bills I want to focus on these two bills which introduce the concept of mandatory mediation. This is the best route to saving homes for local families, and preserving the character of our islands.

Mandatory mediation (especially when combined with a temporary moratorium which gives it time to get set up) is the most proven way that states and counties have used to correct this issue. According to ABC News two weeks ago, Nevada cut its rate of foreclosures by 47% after implementing mandatory mediation two years previously. Local banks are not foreclosing on families in part because face to face contact tends to lead to loan modifications. Both these bills provide that kind of contact. But according to Nevada leaders, face to face contact is not enough to fix the problem – the mediation must have teeth – there must be a stick to give the mortgage servicer a reason to enter into the mediation. While I support both mediation bills in the Senate, SB 651 is weaker than SB 576 because it does not require loan servicers to prove that they own the mortgage to foreclose and this has been a problem all over the country.

In closing I want to say that banks need to be compelled to participate in the mediation. The legislature should not hesitate to use its powers to make the parties at least seek out a way to keep families in their homes. I know that the banks never support regulation that governs their activity, and I know that they will not support this now. This time the legislature should put the families first. Neither bill currently requires the mortgage servicer to send a person to the mediation who is expressly authorized to modify the loan in order to keep people in their home. This was a key feature in the Nevada law, and it should be a part of whichever of these two bills makes it through the committee.

Mahalo for allowing me to testify.

Good Morning. My name is Kim Harman and I am the Policy Director for FACE Hawaii. I also authored the 2010 study *"Facing Hawaii's Foreclosure Crisis: A Community Study and Call to Action"*. On behalf of FACE Hawaii, both the Oahu and Maui chapters, I am writing to endorse mandatory mediation that follows the Nevada model that was passed by the Nevada State Legislature in 2009.

It is great that our state legislature is introducing and hearing bills for mandatory mediation. This is one of the best steps a state can take in preventing foreclosures.

I have talked to dozens of families facing foreclosure in the last few months and many of their stories sound the same: they originated their loan with a local lender here in Hawaii, but the local bank sold their loan to a mainland lender or mortgage servicer soon after the origination. These families thought they were doing the right thing by getting their mortgage with a local lender, but in the end, it did not help them. When the family defaults on the loan, missing a few payments or making partial payments for a few months, they receive their default notice. At that point, the families do everything they can to satisfy the bank. They call every number they are given, they fax and Fedex the same financial documents dozens of time, to different people in different states, all at their own cost, all with the hopes that the papers will get to the right person and that person will help them.

Hope has not been enough in any of their cases. The one family I talked to who actually got their lender to give them a contract for a loan modification, had it revoked a few days later with no explanation. We cannot rely on hope to save our homes, and we cannot rely on the hope that mainland banks like Bank of America or Chase or Wells Fargo are going to do the right thing for these families unless we make them do the right thing. We need to pass a mandatory mediation law like Nevada already has, that would give our families real rights to hold these banks accountable in this process.

I also want to speak to some of the testimony that was given at the CPN hearing last week Friday, January 28 by the state Mortgage Foreclosure Task Force. No public testimony was allowed, but I heard three things at that hearing that I need to comment on. First, one of the Task Force members commented that we should not "punish" local banks for the internal problems of the off-shore banks foreclosing on our families. That does not make sense. Mainland banks are already punishing our families, now we need law that will hold them accountable. Second, one of the Task Force members commented during their testimony that mediation has mixed results across the country. This is only partly true. Weak mediation laws, laws that do not require banks show proof that they own the loan and laws that allow banks to sail through the process without real engagement, those laws have had bad results. That is why we don't want a weak law here in Hawaii. States like Nevada and Maryland have had wonderful results and have garnered praise from homeowners and bankers alike.

The final thing that I heard from one of the Task Force members who spoke out against mediation for families was his pride in the fact that borrower representatives and lender representatives who served on the state Task Force were able to discuss and listen to each other and come out with proposals that they could all agree to. That is exactly what our homeowners deserve: The chance for lenders and borrowers to sit face to face under a structure with rules and

CPN Hearing
February 2, 2011
8:30am
Room 229

Aloha. I am Stan Franco, one of the founders of FACE Maui, and a past President of the organization. I am also the current chair of Housing for the Local Person (HELP), an affordable housing coalition in Maui County. I am in support of SB 576 and SB 651 – but I am also requesting that you make amendments to these bills.

The foreclosure situation on Maui is deeply depressing to me – I see it impoverishing local working and middle class families almost overnight. Our parents and grandparents worked very hard and sacrificed to give us a chance at home ownership, and it breaks my heart to drive through Dream City in Kahului and see all the foreclosure signs. Without local homeownership, there will be no more locals in another generation or so. This is a cause for much grief - not just for individual affected families – but also for all of us –their friends, neighbors, co-workers and fellow parishioners.

It is not easy to do the right thing here. The banks are very powerful – they give away a lot of campaign money, and they buy a lot of influence. It will take both Wisdom and Courage for the legislature to address this.

Both bills SB 576 and 651 call for mandatory mediation but only SB 576 requires lenders to prove they own the loan before they start the foreclosure. Neither yet require that the lender's representative be authorized to negotiate during the mediation. These provision should be included in any final version of this bill. But we need to go further than that – there must be penalties if the mortgage servicer fails to participate in the mediation in good faith. After all, the family is facing very steep consequences – so the mortgage servicer needs to be serious too. Reading about the robo foreclosures in the paper make me think that we cannot rely on the good will of the lender.

Please work to make these two bills stronger, and move a strong version to the House.

Mahalo for reading my testimony

This testimony is for:

SB651

The Consumer Protection Committee

Wednesday, February 2, 2011

8:30am hearing

Hello. My name is Kalena Miyashiro and I am active with FACE (Faith Action for Community Equity).

I am a new homeowner in Hawaii Kai where I was born and raised and I am in full support of the Hawaii State Senate passing the strongest mandatory foreclosure mediation law it possible can. I have friends and neighbors who are trying their best to save their homes but the mainland banks have turned the loan modification process into a no-win situation for most of us.

I went a FACE meeting Saturday, January 22 and learned of the Nevada law that has successfully kept 47% of families who were originally denied a loan modification by the bank **IN THEIR HOME AND OUT OF FORECLOSURE.**

Our families are getting the run around from mainland banks. These banks are not acting in good faith. They make it sound like they will help you, they make you fax and refax documents for months, only to deny you help with no explanation.

This is a crisis and we need real solutions. Please pass a law as strong as the Nevada law that protects Nevada families. Our families need protection from the mainland banks, too.

Thank you for your time.



P.O. Box 976
Honolulu, Hawaii 96808

January 31, 2011

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

Re: SB 651/OPPOSE

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

I chair the CAI Legislative Action Committee. CAI opposes SB 651 for multiple reasons.

First, the bill could be construed to apply to condominiums because condominiums foreclose "in like manner" as a mortgagee. Condominiums should not suffer for the sins of the mortgage industry.

As is noted in separate testimony related to SB 1191, money is the lifeblood of condominium associations. It is, has been and should remain the law in Hawaii that condominium owners must pay first and dispute later.

Existing law provides for mediation and/or arbitration subsequent to payment in full. That has been the law from the time before the legislature re-codified the entire condominium law, and it remains the law now. CAI respectfully requests that the legislature preserve this aspect of existing law with respect to condominium mediation.

Hawaii Revised Statutes Section 514B-161(b)(2) exempts "Actions to collect assessments" from mandatory mediation. H.R.S. Section 514B-162(b)(5) exempts "Actions to collect assessments which are liens or subject to foreclosure; provided that a unit owner who pays the full amount of an assessment and fulfills the requirements of section 514B-146 shall have the right to demand arbitration of the owner's dispute, including a dispute about the amount and validity of the assessment[.]"

Honorable Rosalyn H. Baker
Honorable Brian Taniguchi
January 31, 2011
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The failures and/or abuses of mortgagees in relation to their for-profit industry present entirely distinct and separate issues from issues present in condominiums. Condominiums are a collective.

Consumers divide common expenses among the owners, who benefit from the common services. There is no profit motive. There is only the overriding need to pay the bills.

The legislature wisely passed legislation mandating that condominiums fund reserve accounts to assure their long-term viability. H.R.S. Section 514B-148 reflects an important legislative achievement. SB 651 would, if applied to condominiums, have an adverse effect on the financial viability of condominiums.

Thus, CAI respectfully requests that SB 651 at least be amended to clearly exclude condominiums from the effects of that bill.

Separately and apart from the harm to conscientious consumers who fund condominium operations, by meeting their lawful obligations, SB 651 involves the executive branch in the exercise of a judicial function. That would multiply the opportunities for jurisdictional complication and challenges.

Foreclosure is an equitable action, and the courts have equity jurisdiction. A foreclosure process involving two branches of government would be undesirable.

There are also practical concerns about the language of the bill. For example, the phrase "No mortgagee may institute a foreclosure under power of sale under section 667-5 unless the mortgagee has engaged in and exhausted mediation efforts with the mortgagor[.]" 667-C(a) (emphasis added), is likely to serve as grounds for litigation in many cases because exhaustion is a matter of opinion. There are other similar ambiguities. Moreover, mediators do not compel. See, Section 667-D(c).

Also, this bill is not limited to owner-occupants, or to owners with equity to preserve. It takes no account of the availability of the mortgagor (who may not live in Hawaii) and it is generally deficient in a number of technical ways. The bill is open to the interpretation that the breach of contract is a matter of no significance but that the exercise of contractual remedies is to be severely hampered and discouraged.

Honorable Rosalyn H. Baker
Honorable Brian Taniguchi
January 31, 2011
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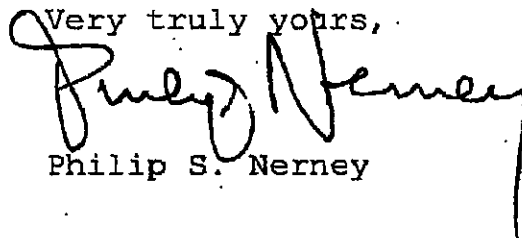
It is unclear that such a policy is warranted. If such a policy is warranted, then it should still be true that a surgical approach should be adopted after careful consideration of implications.

As written, an out-of-state investor with no equity who is deliberately defaulting on a mortgage obligation, receiving rent and not cooperating with the prescribed "mediation" process, could nonetheless claim entitlement to benefit from the proposed law. Legal arguments could then be made to further delay the process.

If the legislature determines that transient economic conditions call for substantial change in longstanding law, the beneficiaries of such change should be worthy and the change should be narrowly tailored to meet the perceived exigency. It is unclear that every person who defaults on a mortgage is entitled to special consideration.

It is one thing to consider a change in law so that owner-occupants with equity accrued over years of diligently meeting a mortgage obligation receive consideration when larger economic forces beyond their control interrupt their earning potential temporarily. This bill goes in a different direction.

Very truly yours,



Philip S. Nerney

Senator Baker,

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

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

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

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

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

Respectfully Submitted,

George Jacobson
Currently off Island 509-546-1754

January 30, 2011

TESTIMONY FOR SB576 SB651
RELATING TO MORTGAGE FORECLOSURES
(Requires mediation for the purpose of attempting to avoid foreclosure)

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 2, 2011
TIME: 8:30 a.m.
PLACE: Conference Room 229
State Capitol
415 South Beretania Street

TO:
COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
And Colleagues

FROM:
JADE L. BROWN
Representing Homeowners of Hawaii
239 Upper Kimo Drive, Kula, HI 96790
(808) 344-1740

My name is Jade L. Brown. I am a responsible Maui homeowner at risk of losing my home and I need this legislature to pass (SB576 & SB651) so that my family will have the chance to save our home. I am honored to be able to have my voice heard regarding foreclosures in the State of Hawaii. Thank you for the opportunity to represent homeowners across our state who are facing and/or trying to prevent foreclosure.

Shortly after moving to Maui in 2003, I purchased my home along with my husband Patrick, a long-time Maui resident. Prior to moving in, I had a dream. The land "came" to me and said that I was the right one to live on and care for the Land. I had never had such a powerful dream. I had much to learn at the time about the Aina and the special relationship between humankind and the Land. I am still learning. I love my home, the grass, dirt, bugs, and animals. Patrick and I have worked hard every day to pay the mortgage, maintain our home, and be good stewards of the precious Land. I know that scores of others in our state are honored to participate with their home and Land in the same way.

What I am trying to say is that "home" has a very special meaning to us here in Hawaii. This is why so many of us have become shocked and sickened to learn what *our* home ownership has become to the players of the banking industry and Wall Street. We have learned that the contracts we entered into when purchasing our homes were not really mortgages, but security

instruments involving parties unknown and undisclosed to us. Our mortgages have been endorsed and assigned to parties unknown and undisclosed to us, often many times over. Such endorsements and assignments were conducted without proper recordkeeping, possibly making identification of our true creditor impossible and therefore, valid lien release upon payoff, also impossible. The banking industry allegedly avoided proper recordkeeping intentionally to bypass having to pay local recording fees. This lost revenue, which could tally millions of dollars, has robbed our local economy and contributed to the financial crisis that our state is in. Credit enhancements and insurance policies were attached to our mortgages without our knowledge, financially enriching parties unknown and undisclosed to us in the millions of dollars if we went into default. Often times, we were targeted for such default at loan origination. We have learned that because our titles are now clouded due to securitization, documents may have been falsified to fabricate a perfected chain of title allowing parties with questionable standing to foreclose on our homes. And finally, we have learned that our creditor or creditors have likely been made whole already through various insurance policies, credit default swaps, and when all those funds were exhausted, bailout money from our tax dollars. Given the questionable nature of these practices, a national investigation appears in order.

As the financial crisis hit, my income was significantly reduced and we began to struggle making our mortgage payment. President Obama appeared ready to help us with his Making Homes Affordable Program. We applied for a modification. We were told by our servicer that we had to be delinquent in order to qualify. We had never been late on a payment before, but we trusted the directions of our servicer because after all, this was a government program and surely they were conducting themselves with integrity and in good faith. After over 167 phone calls, 85 faxes because they kept losing our paperwork, a trial modification that was supposed to last 3 months – but dragged on for almost a year, and a final modification agreement that we signed and sent back on time, we still have no permanent modification. We are not deadbeats and have acted in good faith to modify our mortgage. Now, we may be facing foreclosure. We have complained to the OCC, sought the help of our Senators, and now the assistance of an attorney. All we want is to keep our home that we have worked so hard to love and maintain over the years.

Because Hawaii is a non-judicial state, many homeowners do not have protections to ensure that foreclosure occurs in a fair and just manner. In his first State of the Judiciary address, delivered last week, January 26th to a joint session of the State Senate and House, Hawaii Supreme Court Chief Justice Mark Recktenwald spoke of many challenges facing the Hawaii State Judiciary. He said "Many of Hawaii's low and moderate income families are unable to obtain the legal services that they need in the best of times, and the unmet need has become greater in these difficult economic conditions." He went on to say that there are increasing

numbers of families in Hawaii facing foreclosure and other economic crises, "yet, at the same time, state funding for legal service organizations has been sharply reduced." Being a non-judicial state, it is clear that the financial burden of litigation is upon the struggling Hawaii family.

There are increasing reports around the country of wrongful foreclosure. As we focus our efforts on economic recovery in the State of Hawaii, it is especially important to protect our citizens from fraudulent practices that will lead to their economic failure. Our people, who love this Land so much, will cause Hawaii to thrive once again. Let us please ensure that the people of Hawaii are given a fair chance to fight for the Land. **One solution is meaningful, mandatory mediation. States that have passed similar legislation have seen dramatic reductions in foreclosures.** Another solution is a foreclosure moratorium until a national investigation on securitization is conducted. This will ensure that no families of Hawaii will lose their homes unjustly.

In closing, I want to express that this personal for me. Our home is a sacred meeting place for friends, family, and community – not game piece on a monopoly board. Why I've chosen to make Hawaii my Home is that I am joined with fellow stewards of the Land. **Our love of this Land is greater than the greed of Wall Street.** Thank you for hearing my voice.

Testimony in support of mandatory mediation

CPN

February 2, 2011

For 8:30 am Cont. Hearing

My name is Eddie Amaral. I have been a proud homeowner in Kalihi Valley for 14 years, but Bank of America is now threatening to foreclose on my home. When my wife and I found out about the default, we did everything we could think of, we learned about loan modifications, the government HAMP program, we made dozens of phone call to Bank of America. We did everything Bank of America told us to do, and they made it sound like they were going to help us but then they denied us but we do not understand why. We hired a lawyer.

We want to pay our mortgage. We want the American Dream. But the loan modification process is a nightmare because homeowners like me in Hawaii do not have the rights we need in this process. It is hard to stand up against Bank of America, they are the 2nd largest corporation in the country. This Legislature could help me by passing the strongest mandatory mediation program possible.

SB 576 and SB 651 are good but they need to be stronger. Please make sure that the final bill requires that the lender's representative in the mediation is authorized to negotiate on behalf of the lender AND that both parties are required to negotiate in good faith or the foreclosure process is halted.

The moratorium on foreclosures would give us all the breathing space we need to make sure that the mediation process is as good and fair as it can be.

Thank you for taking on these important issues. There are thousands of families out there just like me who need a strong state law. Many of these families are on Maui and Big Island and cannot pay to fly here to testify, but their stories are a lot like mine.

Testimony for CPN 2/2/2011 8:30:00 AM SB651

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Al Denys

Organization: Individual

Address:

Phone: 306-9180

E-mail: adenys@hawaii.rr.com

Submitted on: 1/31/2011

Comments:

I am against SB 651as it will preclude community associations from trying collect delinquent fees from homeowners and will increase the maintenance fees from those homeowners who are in good standing because of the added expense in collecting those delinquent fees. Also the shortcoming in collected maintenance fees revenues, which are used to pay for the maintenance of the property will result in higher maintenance fees to pay for the day to day operations of the association. Please do not approve SB651 Mahalo.

Al Denys

Testimony for CPN 2/2/2011 8:30:00 AM SB651

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Eric M. Matsumoto

Organization: Mililani Town Association

Address: 95-303 Kaloapau St. Mililani, HI

Phone: 282-4324

E-mail: emmatsumoto@hotmail.com

Submitted on: 1/31/2011

Comments:

The bill does not differentiate between mortgage foreclosures and associaiton foreclosures. Mortgage industry problems shuld not ber lumped in with associations. This bill furhter ignores whether owner-occupants or non-residents are involved. Request associations be excluded from this measure or this bill be withheld in committee.

Testimony for CPN 2/2/2011 8:30:00 AM SB651

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: Jim Dodson

Organization: Ewa by Gentry Community Association

Address: 91-1795 Keaunui Drive Ewa Beach

Phone: 808 685-0111

E-mail: jdodson@ebgca.net

Submitted on: 2/1/2011

Comments:

Act should be amended to include notice of the mediation efforts be given to managers and common interest developments.

Testimony for CPN 2/2/2011 8:30:00 AM SB651

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Tim Baier

Organization: Pearl Regency Home Owners Association

Address: Aiea, HI

Phone:

E-mail: timlid.baier@att.net

Submitted on: 1/29/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB651

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: John E Patton

Organization: Individual

Address: WAILUNA CONDO COMMUNITY Aiea

Phone:

E-mail: jpatton@uci.edu

Submitted on: 1/30/2011

Comments: .

Testimony for CPN 2/2/2011 8:30:00 AM SB651

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Gordon Langston

Organization: Individual

Address:

Phone:

E-mail: flashgordon10t@aol.com

Submitted on: 1/28/2011

Comments:

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

Testimony for CPN 2/2/2011 8:30:00 AM SB651

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Glen Hilton

Organization: Individual

Address:

Phone:

E-mail: glenhilton2@netscape.net

Submitted on: 1/31/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB651

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Earl Park

Organization: Individual

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

Phone:

E-mail: parkj052@hawaii.rr.com

Submitted on: 1/29/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB651

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Timothy Baier

Organization: Individual

Address:

Phone:

E-mail: timlid.baier@att.net

Submitted on: 1/29/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB651

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: GARY M. YAKABU

Organization: Individual

Address:

Phone:

E-mail: gmyak@hawaiiantel.net

Submitted on: 1/31/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB651

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: JOE ALMEIDA

Organization: Individual

Address: 94-314 MAIAOHE PLACE

Phone: 623-7991

E-mail: J55547@AOL.COM

Submitted on: 1/31/2011

Comments: