

Honolulu, Hawaii

Feb 2, 2012

RE: H.B. No. 2018
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committees on Consumer Protection & Commerce and
Judiciary, to which was referred H.B. No. 2018 entitled:

"A BILL FOR AN ACT RELATING TO FORECLOSURES,"

beg leave to report as follows:

The purpose of this measure is to address consumer
protections in mortgage foreclosures by:

- (1) Repealing the provision automatically making all violations of the mortgage foreclosure law under Chapter 667, Hawaii Revised Statutes, an unfair or deceptive act or practice, in favor of determinations made on a case-by-case basis;
- (2) Specifying a mortgagor's right to claim that a violation of the mortgage foreclosure law constitutes an unfair or deceptive act or practice;
- (3) Providing that a mortgagee's failure to demonstrate the rights of a holder in due course is prima facie evidence of an unfair or deceptive act or practice;
- (4) Establishing a time limit for filing actions to void title transfers of foreclosed property, while preserving the right to file an action seeking monetary damages for an illegal transfer of title; and



- (5) Following the expiration of the mortgage foreclosure dispute resolution program on September 30, 2014, specifying certain foreclosure violations as unfair or deceptive acts or practices, and limiting the types of violations that may void a title transfer of foreclosed property.

A concerned individual testified in support of this measure. The Hawaii Bankers Association, Hawaii Credit Union League, Hawaii Financial Services Association, Legal Aid Society of Hawaii, and a concerned individual opposed this measure. The Department of Commerce and Consumer Affairs provided comments.

Your Committees find that this measure primarily relates to two provisions established by Act 48, Session Laws of Hawaii 2011, a mortgage foreclosure reform measure enacted to improve the way mortgage foreclosures are conducted in Hawaii. These provisions are section 667-60, Hawaii Revised Statutes, which deems any foreclosing mortgagee who violates the mortgage foreclosure law under Chapter 667, Hawaii Revised Statutes, to have committed an unfair or deceptive act or practice under section 480-2, Hawaii Revised Statutes; and Part V of Chapter 667, Hawaii Revised Statutes, which establishes a mortgage foreclosure dispute resolution program for mortgagors occupying, as a primary residence, real property subject to nonjudicial foreclosure.

Following the enactment of Act 48, lenders bypassed the dispute resolution program by instead pursuing foreclosures in court. As a result, the rate of judicial foreclosures has risen dramatically while the dispute resolution program remains dormant.

The principal reason lenders have cited for their refusal to use the dispute resolution program is the risk of incurring significant penalties under section 667-60, Hawaii Revised Statutes, for any violation of the mortgage foreclosure law. Unfair or deceptive acts or practices under section 480-2, Hawaii Revised Statutes, are subject to the imposition of fines for every day that a violation is found pursuant to section 480-3.1; voiding of the contract or agreement pursuant to section 480-12; and treble damages and reasonable attorneys' fees and costs for the claimant in a civil suit brought under section 480-13. Lenders are concerned that minor violations, such as missed deadlines or using the wrong font sizes on printed materials, will be used to completely invalidate a borrower's mortgage debt obligations.



During the interim following the 2011 legislative session, the Mortgage Foreclosure Task Force established by Act 162, Session Laws of Hawaii 2010, reached a consensus on amendments to section 667-60, Hawaii Revised Statutes, to specify certain types of mortgage foreclosure violations as unfair or deceptive acts or practices. These amendments were incorporated into this measure as provisions taking effect on October 1, 2014, following the expiration of the dispute resolution program.

However, with regard to the current treatment of mortgage foreclosure violations as unfair or deceptive acts or practices while the dispute resolution program remains in effect, your Committees find that a complete suspension of this provision to address lender concerns appears warranted if it would clear the way for dispute resolution to be used. In doing so, the hope is that by removing what lenders claim to be the chief obstacle to using the dispute resolution program, as well as the modified nonjudicial foreclosure process under Act 48, more homeowners facing foreclosure can be helped. Moreover, this may relieve any strain on the courts resulting from the recent increase in judicial foreclosure filings following the enactment of Act 48.

Accordingly, your Committees have amended this measure by:

- (1) Repealing entirely the provision in the mortgage foreclosure law relating to unfair or deceptive acts or practices that would have remained in effect until the expiration of the mortgage foreclosure dispute resolution program on September 30, 2014;
- (2) Delaying until October 1, 2014, the provision in this bill establishing a time limit for filing actions to void title transfers of foreclosed property, to coincide with the effective date of provisions that:
 - (A) Specify certain foreclosure violations as unfair or deceptive acts or practices; and
 - (B) Limit the types of violations that may void a title transfer of foreclosed property; and
- (3) Eliminating provisions that:
 - (A) Specify a mortgagor's right to claim that a violation of the mortgage foreclosure law constitutes an unfair or deceptive act or practice;



- (B) Provide that a mortgagee's failure to demonstrate the rights of a holder in due course is prima facie evidence of an unfair or deceptive act or practice; and
- (C) Specify the right to file an action seeking monetary damages for an illegal title transfer of foreclosed property; and
- (4) Making technical, nonsubstantive amendments for the purpose of clarity, consistency, and style.

As affirmed by the records of votes of the members of your Committees on Consumer Protection & Commerce and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 2018, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 2018, H.D. 1, and be referred to the Committee on Finance.

Respectfully submitted on
behalf of the members of the
Committees on Consumer
Protection & Commerce and
Judiciary,


GILBERT KEITH-AGARAN, Chair


ROBERT N. HERKES, Chair



