



NEIL AMBERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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

KEALI'I S. LOPEZ
INTERIM DIRECTOR

EVERETT KANESHIGE
DEPUTY DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION
TO THE HOUSE COMMITTEE ON HOUSING
TWENTY-SIXTH LEGISLATURE
Regular Session of 2011
Wednesday, February 2, 2011
8:30 a.m.

**TESTIMONY ON HOUSE BILL NO. 1135, RELATING TO MORTGAGE
FORECLOSURES.**

TO THE HONORABLE RIDA T.R. CABANILLA, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to comment on House Bill No. 1135, Relating to Foreclosures. My name is Stephen Levins, and I am the Executive Director of the Office of Consumer Protection ("OCP"), representing the Department.

House Bill No. 1135 seeks to require foreclosing lenders to notify certain mortgagors about credit counseling no later than 30 days prior to a regular nonjudicial foreclosure and allow certain mortgagors to forestall regular nonjudicial foreclosure proceedings by requesting copies of the promissory note and mortgage document.

Credit counseling is a laudatory concept so long as the counselor is well trained, has no ulterior motive of self dealing and is sincere in assisting the mortgagor work through their financial difficulties. Counselors approved by the United States Department of Housing and Urban Development (HUD) appear to meet these criteria. They offer services to homeowners that involve repayment plans, refinancing options, and financial counseling. To the extent that House Bill No. 1135 can help mortgagor consumers receive this kind of assistance from the HUD counselors the Department is generally supportive of the intent of this Bill.

The Department has one specific area of concern with House Bill No. 1135, however, which is the bill's mandate that the a mortgagor must send their request for a promissory note by certified, registered, or express mail, postage prepaid and return receipt requested. Such a requirement appears to be unnecessarily burdensome on the mortgagor and rather than make it easier for them to obtain copies of the promissory note and mortgage, makes it more difficult. In this regard, unless there are compelling reasons for such an onerous service requirement, the mortgagor should be able to request their documents by regular postage.

Thank you for providing me with the opportunity to testify on House Bill No. 1135. I will be happy to answer any questions that the committee members may have.



TEL:
808-524-5161
FAX:
808-521-4120
ADDRESS:
1600 Bishop Street, Suite 301B
Honolulu, HI 96813-4203

Presentation to the House Committee on Housing

Wednesday, February 2, 2011, at 8:30 a.m., Conf Rm 325

Testimony for HB 1135 Relating to Mortgage Foreclosures

TO: The Honorable Rida Cabanilla, Chair
The Honorable Pono Chong, Vice Chair
Members of the House Committee on Housing

My name is Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in **opposition** to HB 1135, which requires foreclosing lenders to notify certain mortgagors about credit counseling no later than 30 days prior to a regular nonjudicial foreclosure. Also allows certain mortgagors to forestall regular nonjudicial foreclosure proceedings by requesting copies of the promissory note and mortgage document.

Credit Counseling Notice Provision

HBA opposes the credit counseling notice provision on the simple grounds that it is already required under federal law and as a general practice servicers put this notice in their collection letters. Under the Housing and Urban Development Act of 1968, for FHA insured mortgages, lenders must notify homeowners of the availability of homeownership counseling, not later than 45 days after the loan becomes delinquent, and provide them a list of HUD approved nonprofit counseling centers or provide the toll free HUD number to obtain the counseling information from HUD. The earlier notice required by HUD makes more sense since it more than likely to late by the time foreclosure is initiated to provide this notice.

Thus, this provision is not needed as it is duplicative of existing federal law, which requires an earlier notice of counseling service to help mortgagors before they reach a serious stage of delinquency.

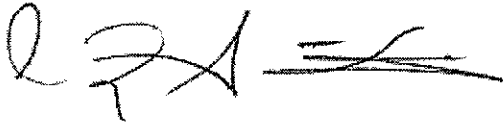
Copies of the Note and Mortgage Provision

The use of the term "forestall" in the bill description points out our opposition to this bill, as it would be easily be used as a delaying tactic by the mortgagor, even if good faith loan modification was previously attempted. The borrower/mortgagor is already provided with copies of the promissory note and mortgage at the time of the loan closing. Subsequently, it is standard procedure to provide copies, for a fee, of the mortgage loan documents, at any time requested by the mortgagor.

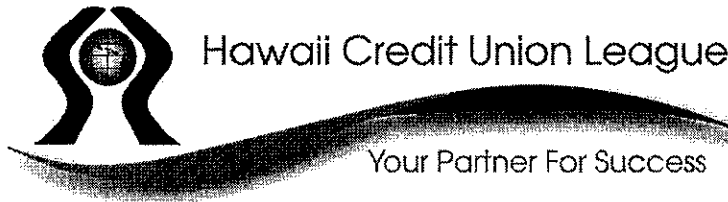
Further, this provision does not specify at what stage during the foreclosure process can the mortgagor request these documents or what constitutes proof that the mortgagee provided the requested documents, especially if the mortgagor does not sign the return certified mail receipt. Unnecessary delays only add to foreclosure cost, which may eventually have to be paid by the homeowner. Allowing stalling tactics could have a negative effect on availability of mortgage loans by making it harder for buyers to qualify for a mortgage through higher income to debt ratios and higher interest rates &/or higher down payment requirements.

The reality is that a vast majority of foreclosures result from reduced income due to unemployment or underemployment (for example, loss of second job). It is best to let banks have the flexibility to help borrowers because we have the motivation and financial expertise to help.

For these reasons, we oppose this bill and respectfully request that the bill be held.

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

Gary Y. Fujitani
Executive Director



1654 South King Street
Honolulu, Hawaii 96826-2097
Telephone: (808) 941.0556
Fax: (808) 945.0019
Web site: www.hcul.org
Email: info@hcul.org



Testimony to the House Committee on Housing
Wednesday, February 2, 2011 at 8:30 a.m.

Testimony in opposition to HB 1135, Relating to Mortgage Foreclosures

To: The Honorable Rida Cabanilla, Chair
The Honorable Pono Chong, Vice-Chair
Members of the Committee on Housing

My name is Stefanie Sakamoto and I am 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 HB 1135, Relating to Mortgage Foreclosures. This bill would require foreclosing lenders to notify certain mortgagors about credit counseling, and would allow certain mortgagors to forestall regular nonjudicial foreclosure proceedings by requesting copies of the promissory note and mortgage documents.

The credit counseling notice provision is already required by federal law. Under the HUD Act of 1968, lenders must notify homeowners of the availability of homeownership counseling by HUD-approved counseling centers, no later than 45 days after the loan becomes delinquent. Therefore, this portion of the bill is unnecessary, since it is duplicitous of existing federal law.

The provision of this bill that deals with forestalling of foreclosure provisions by requesting copies of the promissory note and mortgage documents would only needlessly lengthen the foreclosure process, which would be burdensome to all parties.

Thank you for the opportunity to testify.



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

January 31, 2011

The Honorable Rida T.R. Cabanilla, Chair
and Members of the House Committee on
Housing
State Capitol, Room 325
Honolulu, Hawaii 96813

Re: House Bill 1135 Relating to Mortgage Foreclosures

Chair Cabanilla and Members of the House Committee on Housing:

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 House Bill 1135 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.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 01, 2011 1:56 PM
To: HSGtestimony
Cc: jdodson@ebgca.net
Subject: Testimony for HB1135 on 2/2/2011 8:30:00 AM

Testimony for HSG 2/2/2011 8:30:00 AM HB1135

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Jim Dodson
Organization: Ewa by Gentry Community Association
Address: 91-1795 Keaunui Drive Ewa Beach, HI 96706
Phone: 808 685-0111
E-mail: jdodson@ebgca.net
Submitted on: 2/1/2011

Comments:

This bill totally adds to the national crisis and does nothing to mitigate the affect that foreclosures have on the economy. It provides another legal loophole to lenders to forestall proceedings indefinitely when documents have been duly recorded and available. If an out of country owner, certain acts and laws prohibit timely foreclosures already.



1050 Queen St., Ste. 201
Honolulu, HI 96814
Ph: (808) 587-7886
Fax: (808) 587-7899

February 1, 2011

House Committee on Housing
Wednesday, February 2, 2011 at 1:30pm
Conference Room 016

SUPPORT WITH AMENDMENTS

HB1135 – Relating to Mortgage Foreclosures

Dear Chair Cabanilla and Committee Members:

I am submitting testimony on behalf of Hawaiian Community Assets (HCA) in support of HB 1135 – Relating to Mortgage Foreclosures with suggested amendments.

HCA is a nonprofit organization and certified Department of Housing and Urban Development housing counseling agency that has provided homebuyer and financial education to families across the state since our founding in 2000. In 2008, at the beginning of our current foreclosure crisis, HCA developed a foreclosure mitigation counseling program and free statewide call center as more families saw their incomes drop making them at-risk of foreclosure. Since that time, the Center for Responsible Lending has reported that Hawaii foreclosure filings have increased 687% and resulted in a net loss of \$15 billion in home equity value for our communities. Furthermore, RealtyTrac recently reported that Honolulu had the highest year-over-year increase in foreclosure filings (39.55%) between 2009 and 2010 of any city in the nation. Based on the severity of foreclosures in Hawaii, HCA recommends the committee to insert additional language similar to SB576 – Relating to Foreclosure, introduced by Senator Chun-Oakland, that would require mandatory mediation for the purpose of attempting to avoid foreclosure before foreclosure by action or by power of sale may take place.

At the same time, HCA fully supports language in HB1135 that allows certain mortgagors to forestall regular nonjudicial foreclosure proceedings by requesting copies of the promissory note and mortgage document. Precedence for such action was established in the Massachusetts Supreme Court US Bank v. Ibanez decision on January 6, 2011, in which Justice Ralph D. Gants upheld the decisions of lower-court cases (US bank National Association v. Ibanez and Wells Fargo Bank NA v. LaRace) that ruled 2 foreclosures invalid because the lenders did not have possession of the original promissory note to prove they owned the mortgages. The US Bank v.

Ibanez decision comes as Faith Action for Community Equity reported that all but 2.5% of foreclosure filings in our state in November 2010 were initiated by mainland lenders. This includes Bank of America, which filed a full 1/3 of all foreclosure filings in November 2010, despite their alleged involvement in “robo-signing” scandals and corruption that triggered a 50-state investigation last year in order to determine whether hundreds of thousands of foreclosures were properly documented.

All of the data presented supports the passing of HB1135 - Relating to Mortgage Foreclosures with amendments.

Mahalo for your time, leadership, and consideration in supporting HB 1135 – Relating to Mortgage Foreclosures.

Sincerely

Jeff Gilbreath
Program Coordinator
Hawaiian Community Assets