

HB 1411, HD 2

**Measure
Title:**

RELATING TO MORTGAGE FORECLOSURES.

**Report
Title:**

Mortgage Foreclosures

Description:

Repeals the old non-judicial foreclosure process. Clarifies the new non-judicial foreclosure process. Strengthens laws regarding mortgage servicers. Broadens the duties of the Center for Alternative Dispute Resolution. Effective July 1, 2050. (HB1411 HD2)

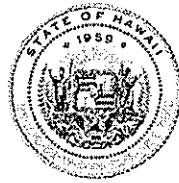
Companion:

Package:

None

**Current
Referral:**

CPN, WAM



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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

Tuesday, March 22, 2011
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 1411, H.D. 2, RELATING TO MORTGAGE
FORECLOSURES.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND BRIAN T. TANIGUCHI,
VICE CHAIR, AND MEMBERS OF THE COMMITTEE

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify in support of House Bill No. 1411, H.D.2, 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.

House Bill No. 1411 H.D. 2, seeks to significantly amend Hawaii's current home foreclosure laws by repealing the old non-judicial foreclosure process, as contained in part I of chapter 667 of the Hawaii Revised Statutes, adopting several recommendations of the Mortgage Foreclosure Task Force, implementing a comprehensive foreclosure

mediation program, imposing a mandatory foreclosure moratorium, requiring a physical presence in Hawaii for mortgage servicers, imposing duties on the part of mortgagees to maintain mortgage property, and adopting several amendments to Hawaii's "new non-judicial foreclosure law" as contained in part II of chapter 667 of the Hawaii Revised Statutes.

Repealing Hawaii's Old Non-Judicial Foreclosure Law

While the Department acknowledges that there appear to be several deficiencies with Hawaii's "old non-judicial foreclosure process" as reflected in part I of chapter 667, of the Hawaii Revised Statutes, the Department believes that the recommendations of the Task Force submitted to the legislature on December 28, 2010 and contained in House Bill 879, addresses many of them, and, if adopted, will greatly benefit Hawaii homeowners facing foreclosure. In this regard, it does not appear to be appropriate to completely repeal the "old law" at this time. Additionally, the Department believes that the committee should defer consideration of amendments to the "new law" since the Mortgage Foreclosure Task Force intends to perform a comprehensive review of its contents during the next year. Although the Mortgage Foreclosure Task Force discussed the possibility of amending part II of chapter 667, of the Hawaii Revised Statutes, during several of its meetings, it ultimately determined that in view of the complexity of the issues associated with its possible revision, it did not want to analyze it in a piecemeal fashion, and deemed it necessary to defer a thorough review until the 2011 calendar year. See, pages 13-14 of the Preliminary Report of the Mortgage

Foreclosure Task Force. In this regard, the chairperson of the Task Force intends to request that the task force thoroughly examine all issues associated with part II, including those described in House Bill No. 1411, H.D. 2, during its 2011 meetings.

If the Committee is not inclined to defer the proposed amendments to part II of chapter 667 (the "new non judicial foreclosure law") the Department believes that it would be in the interests of consumers to adopt several additional changes to H.D. 2. In this regard, the Department proposes the following amendments:

1. On page 7 after line 15, add, "A dispute resolution conducted pursuant to this part must use the calculations, assumptions and forms that are established by the Federal Deposit Insurance Corporation and published in the Federal Deposit Insurance Corporation Loan Modification Program Guide as set out on eh Federal Deposit Insurance Corporation's public accessible website". This amendment is based on a standard adopted by state of Maine and its purpose is to provide a transparent standard developed by the FDIC under which borrowers and lenders can determine if a loan modification is feasible.
2. The penalty provision contained on page 23, line 17, should apply to chapter 667 in its entirety, instead of merely a few sections. Violation of any of its provisions should have serious consequences. In this regard, the Department believes that it should be placed at the end of all of the affected sections.

3. On page 35, line 18, the word "party" should replace the word "lender".
Use of the word lender is too narrow, because other entities besides the lender, such as investors, may have an ownership interest.
4. As a matter of consistency, the notice provisions on page 41, line 4 to page 42, line 18, should be required to be disclosed in the same 14 point font size as the notice provision contained on page 18.
5. Section 667-38 as contained on page 67, line 21 to page 68, line 6, **should not** be repealed, since doing so, would remove the current statutory prohibition on pursuing deficiency judgments pursuant to part II of chapter 667, "the new non judicial foreclosure law".

Adoption of Task Force Recommendations

House Bill No. 1411, H.D. 2, has adopted the recommendations of the Mortgage Foreclosure Task Force established by Act 162, Session Laws of Hawaii 2010. The Department is in support of these recommendations, which were provided to the Hawaii legislature on December 28, 2010 through the Preliminary Report of the Mortgage Foreclosure Task Force. They contain significant improvements to the current non-judicial foreclosure law in Hawaii. They provide for superior notice to homeowners of an impending foreclosure, offer them the ability to convert a non-judicial foreclosure to a judicial foreclosure, and allow them to escape a deficiency judgment in a non-judicial foreclosure.

Foreclosure Mediation

The Department is in general support of the mediation provisions of House Bill No. 1411, H.D. 2, which, in large part, are similar to that contained in Senate Bill 651, S.D. 1.

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.

House Bill No. 1411, HD 2, establishes in Hawaii a mediation program as a means to avoid unnecessary foreclosures. The program, in a large part, is based on one currently in use in Nevada, one of the most successful models currently operating in the United States. It is also very similar to that proposed by Senate Bill No. 651. House Bill No. 1411, H.D. 2 salient features are the same as those in Nevada. They 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.

Currently, the DCCA and the Judiciary are in dialogue for the purpose of developing a mediation program patterned in large part after Nevada's program.

Moratorium, Maintenance of Mortgaged Property, and Regulation of Mortgage Loan Servicers

The Department believes that the provisions in House Bill No. 1411, H.D. 2, relating to implementation of a foreclosure moratorium, requirements relating to the maintenance of mortgaged property, and mortgage loan servicers, 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, which is in a superior position to articulate the Department's concerns to the committee.

Thank you for providing me with the opportunity to testify on House Bill No. 1411, H.D. 2. I will be happy to answer any questions that the committee members may have.



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TO THE
SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

THE TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION OF 2011

Tuesday, March 22, 2011
9:00 a.m.

TESTIMONY ON H.B. NO. 1411, H.D.2, RELATING TO MORTGAGE FORECLOSURES

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

My name is **Iris Ikeda Catalani**, Commissioner of Financial Institutions ("Commissioner"), testifying on behalf of the Division of Financial Institutions ("Division") of the Department of Commerce and Consumer Affairs ("Department") on House Bill No. 1411, H.D.2. The **Division wishes to offer comments** on Sections 1, 5, and 6 of the measure relating to proposed amendments to Chapter 454M, Hawaii Revised Statutes ("HRS").

Section 1 of this measure proposes to amend Chapter 454M, HRS by adding a new section thereto, which would expressly void any action taken in connection with a

mortgage foreclosure under Chapter 667, HRS by a person who engages in the business of mortgage servicing without a license as a mortgage servicer under Chapter 454M, HRS.

The Division administers the licensing program for mortgage servicers under Chapter 454M, HRS, and fully supports the intent of the proposed amendment to the mortgage servicers law. However, our concern with the language as presently drafted is that it may not adequately reflect the fact that Chapter 454M, HRS provides exemptions from licensing to certain persons enumerated in Section 454M-3, HRS.

Accordingly, we would suggest that the language in Section 1 be amended, at lines 4 to 8, to read as follows:

"§454M- Unlicensed foreclosure actions voided. Any action taken in connection with a mortgage foreclosure under chapter 667 by a nonexempt person who engages in the business of mortgage servicing without a license as provided and required in this chapter shall be void for purposes of chapter 667."

This measure also proposes to amend HRS Sections 454M-2 and 454M-5, to effectively require nonexempt mortgage servicers to maintain a physical presence in the State if they have actively serviced an as-yet unquantified number of mortgage loans in Hawaii. Our support or objection to these amendments may depend on the number of such mortgage loans that is selected by the Legislature as the threshold for requiring an in-State presence. We therefore offer the following comments on that issue.

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A requirement to establish a physical presence, in the form of a brick and mortar office staffed by at least one agent or employee, would significantly increase the cost of doing business for many of the mortgage servicers that are currently licensed by the Division under HRS Chapter 454M. The Division is not convinced that subjecting licensed Hawaii mortgage servicers to this significant additional cost of doing business in Hawaii is either necessary or warranted, for the following reasons:

HRS Chapter 454M was enacted by the Legislature in 2009 and licensing under the statute became effective on July 1, 2010. The law was enacted as a means to identify those entities that engage in servicing residential mortgage loans in Hawaii and to make them subject to the Division's regulatory supervision so that complaints, along with any alleged abuses against Hawaii borrowers, could be promptly addressed by the Division, with the appropriate enforcement and sanction provisions at the Commissioner's disposal when and if necessary.

Applicants for a mortgage servicer license under HRS Chapter 454M are already required to provide the Division with the name and contact information for an individual in the licensee's organization who the Division can contact regarding consumer complaints. Further, applicants that are organized and located outside the state of Hawaii are required to obtain a certificate of authority from the Department's Business Registration Division, qualifying the applicant to do business in Hawaii. One of the requirements to obtain a certificate of authority from the Business Registration Division is the appointment of a registered agent for service of process in Hawaii.

Consequently, in light of the fact that HRS Chapter 454M already contains a requirement for local service of process, and gives Hawaii consumers immediate access to the resources of the Division to assist them should a licensed mortgage servicer fail to address consumer inquiries or concerns in a timely and professional manner, it is questionable, from our standpoint, why the State should seek to impose a new and significant additional cost – namely the cost of establishing, staffing, and maintaining an in-State office – on licensees that are already being adequately supervised, in the Division's opinion, without the need to impose that significant extra cost burden on doing business in the State. As evidence of that, we point out that since the mortgage servicer licensing requirement under HRS Chapter 454M took effect on July 1, 2010, the Division has received only one complaint against a Hawaii licensed mortgage servicer. The few other complaints that the Division has received against mortgage servicers since July 1, 2010 involved servicers who are exempt from licensure under HRS Chapter 454M, and thus would not even be subject to the amendment of Section 454M-5 that is now proposed under this measure.

The Division also notes that, due to the recent enactment of Hawaii's Secure and Fair Enforcement for Mortgage Licensing Act, HRS Chapter 454F, many mortgage servicers, both in-State and out-of-State, who engage in loan modification activities, are now also required to be licensed as a Hawaii mortgage loan originator company under HRS Chapter 454F, and are, in fact, required by that statute to establish a physical office in Hawaii as a condition of licensure. Consequently, the Division believes that

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many of the perceived foreclosure abuses, among them the admitted abuses by some mortgage servicers who have failed to adequately and timely assist distressed borrowers in averting foreclosures, can and will now be captured and addressed by the Division as the supervisory authority regulating mortgage loan originator companies under HRS Chapter 454F, which, as noted, does require the in-State physical presence of mortgage loan originator companies.

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



THE JUDICIARY, STATE OF HAWAII

Testimony to the Senate Committee on Commerce and Consumer Protection

Senator Rosalyn Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

Tuesday, March 22, 2011, 9:00 a.m.
State Capitol, Conference Room 229

by

Rodney A. Maile

Administrative Director of the Courts

Bill No. and Title: House Bill No. 1411, H.D. 2, Relating to Mortgage Foreclosures

Purpose: Repeals the old non-judicial foreclosure process. Clarifies the new non-judicial foreclosure process. Strengthens laws regarding mortgage servicers. Broadens the duties of the Center for Alternative Dispute Resolution.

Judiciary's Position:

I. PROPOSED DISPUTE RESOLUTION PROCESS

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.

A. 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



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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 40 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 a moratorium on processing of foreclosures 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 is an overwhelming number of cases when the program starts, there may be delays and unanticipated impacts on court operations, to the detriment of the public.

One way to address this concern would be to add a section stating that the program is only available to foreclosure actions commenced after the date the program starts. Section 667-B(c) (previous participation bars mandatory participation) and Section 667-D(b) (election for either dispute resolution or conversion) also address this concern, although the Judiciary has significant concerns about the impact that the conversion option would have on the courts without a commensurate increase in funding.

Particularity that may be better addressed by court rules. Some provisions of the bill are 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.

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. 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.

B. Specific Concerns

Certain important terms not included in the definitions provisions (Section 667A, page 2). The Judiciary notes that this provision of the bill does not define the terms “owner occupant,” “primary residence,” and “residential property,” although they are defined elsewhere in the bill.

Center or its designee (Section 667-B(b), at page 2, line 15). 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.

HUD approved local housing counsel agency (Section 667-C(b)(2), at page 3, line 12). Because it is important for mortgagors to receive as much information as possible about their options in order to prepare for their dispute resolution session, the Judiciary suggests the contact information for multiple or all local housing agencies be provided in the notice. One potential bottleneck in this system will be if there are not sufficient HUD approved counselors to provide services to mortgagors.

Parties provide notice to each other as well as the Center (Section 667-C(b)(4), at page 4, line 2). 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). In subsection (a), the Judiciary suggests changing “whether or not” to “that,” which would mean that parties notify the Center only when they choose to participate in the dispute resolution program and not if they waive that option. This would mean that subsection (d) could be deleted.

Subsection (d) raises numerous challenges. The Center would not be in a position to know if notice is untimely given by a mortgagor or even if notice is waived in the event the mortgagor did not submit a form. Also, it is not clear why the burden of such notification should fall on the Center, a state entity, rather than the parties. Furthermore, the Center would not be in a position to determine which entity – the court, land court, or the bureau of conveyances – was the proper entity to notify of a waiver or untimely filing. The parties are in a much better position to perform all these tasks.

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, as should notification of nonparticipation in dispute resolution.

Sharing of information (Section 667-E(c), at page 6, line 14). 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(d), at page 7, line 11). 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 "community mediation center" site for the session.

Notification of failure to comply with program rules (Section 667-E (e) and (f), 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, and this creates numerous challenges. The Judiciary notes that this provision requires strict compliance on the pain the non-compliant party loses rights to relief. 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. Importantly, 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 be a need to impose other and lesser sanctions for noncompliance with other Program rules in order to accomplish the program goals.

Notification of compliance with program rules (Section 667-E(g), 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-(h), at page 9, line 5). 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 16 [and also mentioned in Section 667-W, at page 26, line 20 and page 27, line 2]). 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 notes that this obligation should fall upon the parties.

Filing of temporary modification agreement (Section 667-F(b), at page 10). 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.

Other charges included in fee (Section 667-I, at page 11). 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 this charge may 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.

Rules regarding special fund (Section 667-L, at page 12, line 19). It is unclear what type of rules the Legislature anticipates will be adopted regarding distribution of moneys from the special fund.

Start up time required. The Judiciary estimates that it would take a minimum of six months to implement this program.

II. PROPOSED CONVERSION PROCESS

The Judiciary is committed to assisting the public and appreciates the bill's intent to update the foreclosure statutes to better serve all parties. However, as stated in our previous testimony, we are concerned that without adequate funding from the Legislature, the purpose of



this bill will be frustrated. Thus, we must respectfully oppose this bill's proposed "conversion" process unless it is amended to include a sufficient funding mechanism.

A. Funding is Critical to the Success of this Measure

Previous testimony from the borrowers has included frustration at delays in loan modifications and at the failure to have their cases timely resolved. However, shifting these cases to the Judiciary, *without the Legislature's providing adequate funding for their adjudication*, will result in a similarly frustrating situation of a backlog of cases and further expenses and delays, prolonging an already stressful situation for borrowers and all those involved. Moreover, adding significant numbers of new cases may harm other parties who already have pending cases before the courts. The Judiciary understands that these are difficult economic times. In fact, there is talk in other spheres of government regarding cutting back of services. However, this bill envisions the opposite—an increase in services—without a counterpart provision for sufficient funding to support this measure, which is not realistic.

To illustrate the potential increase in the volume of cases and the resultant delay and detrimental effect on borrowers, other interested parties, and the overall public, should this measure pass without adequate funding, we note the following:

1. The Conversion Complaint Process Will Significantly Increase the Number of Additional Cases in the Circuit Court System, Requiring An Estimated Additional \$1,075,000 to \$4,300,000 Yearly.

Currently, most foreclosure cases--approximately 75% to 90%--proceed through the non-judicial process.¹ Last calendar year, there were approximately 1,331 *judicial* foreclosure filings² state-wide compared with *a total of 12,425* foreclosure cases. *See Star Advertiser article dated January 13, 2011.* If the 12,425 foreclosure cases included both judicial and non-judicial foreclosures, approximately 90% or 11,094 cases last year proceeded through the non-judicial process.

The conversion "complaint" form appears to make it easier for a borrower without an attorney to simply complete the form to stop the non-judicial foreclosure on his or her home,

¹ See attached 3/22/09 Honolulu Star Bulletin article (estimating that at least 75% of foreclosures proceeded non-judicially); see also Star Advertiser article dated January 13, 2011 (citing statistics from Realty Trac). Since the Judiciary does not track non-judicial foreclosures, we only have knowledge regarding the number of *judicial* foreclosures. Please note that the figures in this testimony are preliminary estimates based on recently-gathered information.

² These figures may include agreements of sale.



while the court decides the issues. Looking at it from an operational standpoint, it would appear that the bill's intent is to benefit as many members of the public who need the assistance as possible. The challenge in estimating how many borrowers might avail themselves of the conversion option is that there is no "before and after" empirical data since this conversion procedure is entirely new in Hawaii. Thus, we are left with our best reasoned estimates. It would be far better to do our best to prepare than to *underestimate* the number of possible additional cases, to the detriment of the public. In view of the above, we would like to provide estimates regarding a range of possible additional cases so that the Legislature can have a better understanding of what the costs may be for a broader range of situations.

If about 50% of the 11,094 non-judicial foreclosure cases in 2010 were converted to judicial foreclosure actions pursuant to this bill, adding approximately 6,000 new cases (500 new cases per month), would constitute a very significant increase in the Judiciary's caseload. The Judiciary would not be able to timely process 6,000 new cases per year at the circuit court level, without additional resources and staffing. Our estimate to fund the cost of the additional judges and support staff to handle 6,000 new circuit court cases per year is approximately \$4,300,000.³

Alternatively, if about 25% of the 11,094 non-judicial foreclosure cases were converted, adding 3,000 new cases would still constitute a significant increase in our caseload and negatively impact the length of time it took to resolve cases. Our estimate to fund the cost of these additional cases is approximately \$2,150,000 *yearly*.

Finally, if 1,500 new cases were added *per year* (about 13-14% of the 11,094 non-judicial foreclosures), this would still result in an appreciable increase in our caseload, costing us an estimated \$1,075,000 yearly. It is important to note that without adequate funding, these cases would continue to accumulate yearly and contribute to any backlog of existing cases.

2. Because of Budget Cuts, Furloughs, and Increase in Cases, There is Already Significant Delay in Our Cases, Including Foreclosure Cases

Since the budget cuts and furloughs, the median age of pending Circuit Court civil cases has increased by 41.8%. At the same time, there has been an increase in the number of cases filed with the courts. The number of pending judicial foreclosure cases increased by 80% and the median *age* of pending foreclosure cases increased by 44%. *Please see attached the*

³ The measure also provides that the action shall be dismissed if all interested parties fail to file a statement submitting themselves to the court process within a certain period of time after the filing of the conversion complaint. Additional resources would be needed to reduce delays in dismissal. Any delay in dismissal would further prolong the foreclosure process since the filing of the complaint stays the non-judicial foreclosure until the judicial proceeding has been dismissed. If this measure passes, the Judiciary requests that the action may be dismissed after the filing of a motion by any interested party, rather than requiring court clerks to monitor each case.



Judiciary's report, "Justice in Jeopardy" dated December 2010 ("Justice in Jeopardy Report"), p.12. In other words, although judicial foreclosures comprise only approximately 10% to 25% of the total existing foreclosure cases, the length of time it takes to resolve the existing caseload has increased by almost 50%.

Moreover, the addition of foreclosure cases, as allowed by the bill, without requisite funding to service these additional cases, will further delay existing civil and criminal cases, including those critical to public safety. For example, in the District Court of the First Circuit, due to budget cuts, traffic and DUI trials that took 1-2 months to be heard prior to furloughs, now take at least 4-5 months to schedule. In fiscal year 2010, the courts processed approximately 179,740 criminal cases, including murder, manslaughter, rape, narcotics, burglary, and DUI cases. This does not include Family Court proceedings which address domestic abuse protective orders, foster custody cases, and juvenile probation cases and other civil circuit court cases. *See attached "Justice in Jeopardy" Report, pp. 3 & 12.* Adding a significant number of foreclosure cases (which may involve time-consuming and complex issues) to this caseload, *without providing sufficient funding for these new cases*, does not realistically take into consideration the logistical costs of delivering judicial services to the public.

Please note that even if these funds were allocated this Legislative session, it would take time for the Judiciary to hire qualified staff for the new positions and be in a position to provide the judicial services envisioned by the bill. Even with immediate attention, the Judiciary estimates that between nine (9) and twelve (12) months would be required before the new judges and staff would be fully integrated into the judicial foreclosure process. In the interim and/or alternative, with no additional funding, the existing court staff will be required to process the new cases presented. This would significantly delay the timely provision of judicial services and ultimately, the public would bear the consequences of inadequate funding of the bill.

The bill also provides that the fee for filing a conversion complaint shall not exceed \$400. It is unclear whether this amount would include the filing fee and all other costs, surcharges, and other fees associated with filing a complaint.⁴

⁴ Even if the bill were revised so that the filing fee would go directly to the Judiciary, the amount of the fee appears insufficient to handle the requirements of the mandate (i.e., \$400 x 3000 cases would generate \$1,200,000, significantly less than the required \$2,150,000. In any case, the amount generated would still be reduced as it is likely parties would file *in forma pauperis* applications.



B. Requiring the Borrower to Become the Plaintiff and Lender to Become Defendant May Be Confusing to Borrowers Who Are Not Represented by Attorneys

The proposed conversion complaint requires the borrower to become the "Plaintiff" and the lender to become the "Defendant." The Judiciary believes that this portion of the bill can result in procedural confusion, especially for those who are not represented by attorneys. Because the lender is still in the position of seeking foreclosure, it makes sense to have the lender retain the title of "Plaintiff," similar to normal judicial foreclosures. This would avoid any unintended conflicts with various court rules and procedures that use the terms "Plaintiff" and "Defendant" to define various duties to the court and others. For example, traditionally the "Plaintiff" bears the burden of proof; this measure might lead to confusion about which party bears the burden of proof.

Thus, in the event this measure passes, to avoid confusion, the Judiciary respectfully suggests that (a) the "complaint" form be changed to a "Notice of Conversion" ("notice"); and (b) a provision be added to require that after receiving the notice, the lender, in order to proceed with the foreclosure, must file a complaint, in accordance with the rules of court, no later than 30 days after having received notice. The process can then follow the usual course for judicial foreclosures.

Finally, the proposed language requires the lender to serve notice of the non-judicial foreclosure "in the same manner as service of a civil complaint under chapter 634 and the Hawaii rules of civil procedure . . ." However, the rules of court are generally applied only after a party has initiated a court case. From an operational standpoint, we would like to avoid the parties' confusion and incorrectly assuming that the person initiating and serving notice of the non-judicial foreclosure must also make a proof/return of service filing or any other filings in court.

In conclusion, the Judiciary would like to be able to provide meaningful assistance. However, as currently drafted, the bill does not provide for sufficient funding and adding to the Judiciary's caseload without adequate funding may actually compound the problem. Until sufficient funding is provided, we must respectfully oppose this bill.

Thank you for the opportunity to testify on this measure.

Island Homes

Interests

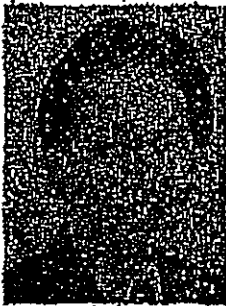
Rentals

Open Homes

* starbulletin.com/classifieds

Facing The Challenges Of Today's Real Estate Marketplace

Facing Foreclosure



Marvin S. C. Dang
Attorney and
Managing Member
Law Offices of
Marvin S. C. Dang, L.L.C.

Foreclosure is a financial disaster home owners hope they will never have to face. Not only does foreclosure mean the loss of their real property - probably their biggest personal investment - but their credit is severely damaged and chances of obtaining another mortgage loan substantially diminished.

Attorney Marvin Dang has handled foreclosures as an attorney for lenders for 30 years and as a commissioner for 28 years. He believes many foreclosures could be avoided if the home owner acknowledged potential problems before they reached crisis proportions and contacted their lender to try to work out a solution.

He noted that there are many reasons why a borrower might be unable to continue making mortgage payments: loss of job, reduction in working hours and salary, huge medical bills, break-up of a marriage, an increase in the monthly mortgage payment, etc.

"Although there is no guarantee that a lender will make accommodations, chances are better that the lender will not start a foreclosure if the borrower contacts him with an explanation instead of simply halting payments," Dang said.

"Generally, lenders prefer to work out a 'win-win' solution rather than resort to foreclosure. The foreclosure process is costly and time consuming. It is a 'lose-lose' scenario. The only one who potentially benefits from a foreclosure is a buyer who manages to



pick up a foreclosed property at a bargain price at a foreclosure auction."

Dang explained that after one or two payments are missed, a lender will contact the borrower and mail out reminders to pay. If no mutual arrangement is made, a lender may refer the account to an attorney after three or four missed payments. But it could be sooner if the property is abandoned.

"Usually the first notification from the lender's attorney to the property owner is a letter confirming the default. This is sent out before the attorney begins the foreclosure proceeding. Once the borrower gets the attorney's letter, it still may be possible to work with the lender, so the property owner

should not ignore the letter," Dang said.

"If the borrower consults with a third party for assistance, it's also important to check the credentials of that person, as there are local and Mainland scam artists who have taken advantage of inexperienced Hawaii home owners with devastating results. It's best to talk with a Hawaii-based credit counseling service or a Hawaii real estate professional, rather than getting advice from the Internet. People can also meet with a bankruptcy attorney to decide what their best course may be."

Dang noted that in Hawaii there are two types of foreclosure actions, judicial and non judicial. The judicial process is run through the court system. The lender files a complaint with the court regarding the delinquent loan and requests that the court allow the lender to foreclose on the mortgage on the real property. After the borrower is served with the complaint by a process server, the borrower needs to file a written answer with the court. If the borrower fails to respond, they will be in default as to the complaint.

The lender will ask the court to schedule a hearing to appoint a foreclosure commissioner to auction the property. At the hearing, the party being foreclosed on has an opportunity to tell the judge why a commissioner should not be appointed; for example, the property is in the process of being voluntarily sold and should close in a few months or the borrower is getting money to bring the loan current. If the judge is convinced that such a sale will close, or believes the loan can be reinstated he or she may be willing to delay the foreclosure proceeding for a short period.

If the property owner is able to pay off the loan or bring it current, the foreclosure can be dismissed.

"In a judicial foreclosure, the commissioner

Facing Foreclosure

Continued from page 1

who is usually either an attorney or a real estate professional, is accountable to and acts on behalf of the court...not on behalf of the lender," Dang said. "It will be the responsibility of the commissioner to get access to the property to inspect it. Generally, during the foreclosure, the commissioner will not evict the home owner or the tenant of the property. But any tenant will now need to pay rent to the commissioner and not to the landlord.

"The commissioner will hold two open houses at the property, usually on Saturdays and Sundays, and place ads in newspapers, such as the Honolulu Star-Bulletin. The ads must run once each week for three consecutive weeks announcing the date and time of the open houses and the date, time, and place of the auction. The last ad needs to appear at least two weeks before the auction is to be held. In Honolulu, the foreclosure auctions are held Monday through Friday beginning at 12 noon at the Eva Lani at First Circuit Court at 777 Punchbowl Street, where notices of upcoming auctions are posted. There could be more

than one property being auctioned at the same time by more than one commissioner."

According to Dang, anyone planning to bid at the auction will be required to show the commissioner before the auction proof of having a deposit in the form of a cashier's check or money order or cash, since the highest bidder needs to give the commissioner ten percent of the bid price at the end of the auction. The rules of the auction are announced by the commissioner and there is usually no upset price.

"Often the lender jumps in and bids at the auction," Dang said. "These lenders could be local and Mainland banks, credit unions, and other parties who may have bought the loan being foreclosed. Before they bid, lenders would have researched the condition and value of the property being foreclosed. Other bidders should do the same. The lender is not always the highest bidder. Investors and potential home buyers sometimes outbid the lenders.

"The highest bidder needs to understand that the judicial foreclosure sale is sub-

ject to court approval. After the auction, the commissioner will file a report with the court. The lender's attorney will schedule a court hearing to approve the sale, at which time the judge will ask if anyone wants to reopen the bidding for five percent higher than the auction price. Whoever is the highest bidder either from the first public auction or at the reopening at the hearing is generally approved by the court. The winning bidder has about 35 days to come up with the rest of the money to close the sale. Upon closing, the foreclosure commissioner will sign a deed to convey the property in 'as is' condition to the buyer. When the deed is recorded at Bureau of Conveyances, the title to the property is transferred."

Dang said that the second type of foreclosure in Hawaii, the non-judicial foreclosure, was rarely held until the late 1990s but now accounts for about 75 percent or more of foreclosure proceedings here.

"There are several basic differences between a non-judicial foreclosure and a judicial procedure," Dang pointed out. "A judicial foreclosure can take six to nine

months, whereas a non-judicial foreclosure takes two to three months since there are no court filings, no open houses, and no hearings. However, one similarity is that a newspaper ad announcing an auction will be required to run in a local newspaper once each week for three consecutive weeks, the last ad to appear at least two weeks prior to the auction. The notice of the non-judicial foreclosure sale needs to be mailed to the borrower and should be served by a process server. The notice must be posted on the property. No open houses are required to be held at the property, and there is no opportunity to inspect it in advance of the auction.

"For non-judicial foreclosures the auction and bidding procedures are similar to those of a judicial foreclosure. However, a non-judicial foreclosure auction is conducted by the lender's attorney or representative rather than a court appointed commissioner. At the conclusion of the non-judicial auction, the buyer pays the ten percent deposit. The rest of the sales price must be paid within thirty days

after the auction. Once the sales price is paid, the buyer will get a deed and becomes the owner of the property after the deed is recorded at the Bureau of Conveyances.

"For both judicial and non-judicial foreclosures, the new owner, that is, the successful bidder, is responsible for obtaining possession of the property. The new owner can keep the occupants there or can ask them to move out. In cases where occupants refuse to move, the new owner may need to go to

court to ask the judge to issue an order to evict them."

"The entire foreclosure process could possibly be avoided if the borrower simply phoned the lender before missing that first payment," Dang said. "And people who find themselves facing possible foreclosure should keep in mind that, even if the foreclosure is started, it can be delayed and the auction can be postponed if the borrower is able to work out an arrangement with the lender."

Star Advertiser

Foreclosure filings hit new high

Figures show 38 percent more Hawaii properties were affected last year compared with 2009

By Andrew Gomes
 POSTED: 01:30 a.m. HST, Jan 13, 2011

Lenders pursued or completed foreclosure against a record number of Hawaii properties last year.

There were 12,425 properties statewide affected by foreclosure last year, which was 38 percent more than the 9,002 properties in 2009 and more than triple the 3,525 properties in 2008, according to the latest report from RealtyTrac, a real estate data company.

NO PLACE LIKE HOME
Hawaii's monthly foreclosures over the past year, including the year-over-year percentage gain

2010		
MONTH	TOTAL	CHANGE
December	1,000	-34.8%
November	877	+0.6%
October	1,271	+37.4%
September	1,617	+66.9%
August	1,629	+97.5%
July	980	-6.1%
June	1,000	+41.6%
May	1,055	+29.3%
April	1,474	+115.5%
March	1,097	+51.5%
February	972	+81.0%
January	1,302	+286.4%
Total	14,224	+42.9%

BY THE NUMBERS
Five Hawaii communities with the most properties in foreclosure last year

ZIP CODE	AREA	FORECLOSURES
96740	Kailua-Kona	1,244
96753	Kihei	905
96706	Ewa Beach	867
96761	Lahaina	646
96707	Kapolei	609

Source: RealtyTrac

Most of the properties were homes, though RealtyTrac doesn't exclude commercial real estate from its foreclosure data. If all the properties affected by foreclosure were homes, the total last year would represent 2.42 percent of all homes in the state, up from 1.8 percent the year before.

The growing number reflects the state's continuing struggle with economic recovery, and has strained families.

But so far foreclosures haven't reached epidemic proportions seen in states such as Nevada, Arizona and Florida.

"We've been relatively fortunate," said Jon Mann, a Honolulu real estate agent. "We haven't really been impacted as significantly as some mainland markets."

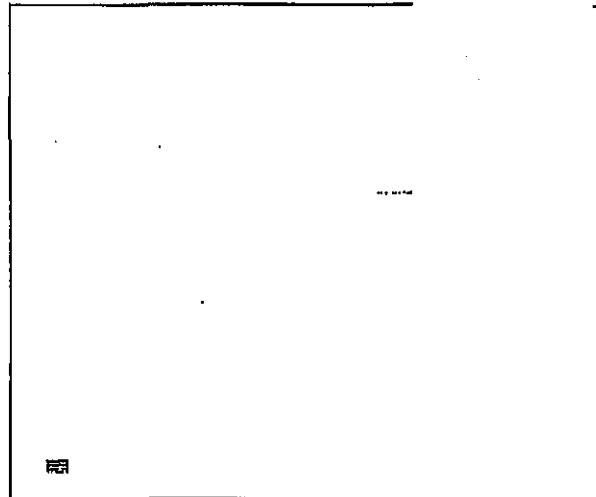
Hawaii's foreclosure level was close to the national average — 2.23 percent of housing affected by foreclosure last year — though Hawaii's rate was 11th highest.

The worst problem is in Nevada, where 9.42 percent of homes were affected by foreclosure last year. The lowest rate was 0.13 percent in Vermont.

In Hawaii, more than half the properties affected by foreclosure were on the neighbor islands, where many out-of-state investors bought vacation homes during the real estate boom in the mid-2000s.

On the Big Island, there were foreclosure filings against 3,370 properties last year, representing 4.23 percent of homes.

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Star Advertiser

Maui had 2,675 properties with foreclosure filings, or 4.05 percent of homes.

be counted on the same property in different months.

Kauai had 819 properties with foreclosure filings, or 2.75 percent of homes.

Oahu had the most properties affected by foreclosure but the lowest rate – 5,561 properties representing 1.65 percent of the housing market.

Real estate industry watchers caution that foreclosures could put downward pressure on housing prices if an overbearing number of foreclosed homes wind up on the market.

On Oahu, there were close to 3,200 single-family homes and condominiums on the market at the end of last year.

Mann said about 15 percent to 20 percent of the inventory was owned by lenders or homeowners trying to avoid foreclosure through short sales.

Whether the percentage will rise is hard to tell because not all homes that enter foreclosure are sold. Some owners work out their mortgage difficulties. In other cases, foreclosure can drag on for more than a year.

Mann notes that some additional inventory won't necessarily hurt the market because present inventory is relatively tight.

Hawaii's foreclosure problem is expected to worsen this year, according to local foreclosure attorneys.

There was a lull in the past two months, but the industry attributes that to lenders holding up cases to address improper processing issues raised a few months ago.

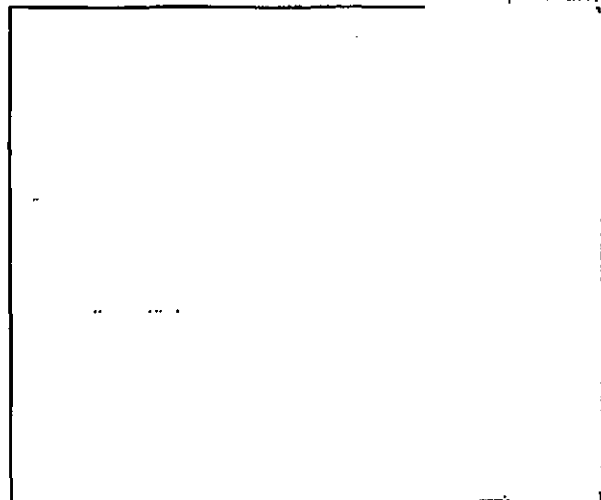
The number of foreclosure filings in December was 1,000. That was down 35 percent from 1,302 in the same month last year but was up from 877 in November.

Lenders filed a flurry of new foreclosure cases last month – 163 default notices, which according to RealtyTrac was the highest number in more than a year.

The bulk of filings last month were auction notices and lender repossessions.

RealtyTrac numbers for the full year are different in that they count properties going through foreclosure. The monthly counts are foreclosure filings, which can

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JUSTICE IN JEOPARDY

THE IMPACT OF BUDGET CUTS AND
FURLOUNDS ON THE JUDICIARY, STATE OF HAWAI'I
DECEMBER 2010

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A MESSAGE FROM CHIEF JUSTICE MARK RECKTENWALD

These have been difficult economic times for all of Hawai'i, and the Judiciary has been no exception. In the last two years, the Hawai'i State Judiciary's general fund appropriation has been reduced by \$19.7 million (or 13.1% of its overall budget), while demand for Judiciary services has increased due to the impact of the difficult economy on our citizens. Furloughs alone have eliminated over 600,000 available staff hours of work.

These reductions have had substantial negative effects throughout the judicial system, by reducing, delaying and in some cases eliminating important services. Notably, Hawaii's families and most vulnerable citizens have been significantly impacted. The time it takes to process an uncontested divorce has doubled, and the wait time for children to participate in the Judiciary's Kids First program in Kapolei, which seeks to alleviate the impacts of divorce by having children participate in a group counseling session, has more than doubled.

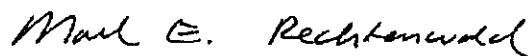
Budgetary reductions have also had negative effects in criminal cases. For example, 24 adult probation positions were eliminated in the First Circuit, including positions in high risk areas such as the sex offender unit and the domestic violence unit. Individual probation officers now supervise as many as 180 defendants, well above the nationally recommended ratio.

Justice has been delayed in civil cases as well. From FY2008 through FY2010, the median age of pending Circuit Court civil cases has increased by more than 40 percent. By delaying the time it takes to resolve civil disputes, the cost and uncertainty of litigation increases and our community's efforts at economic recovery are hindered.

Finally, the Judiciary's programs and services can save the public money in the long run. The cost of supervising a criminal defendant in the HOPE probation program, or providing intensive supervision and treatment through programs such as drug court, is far less than the \$137/day that it costs to incarcerate a defendant.

This report highlights some of the impacts that furloughs and budget cuts have had on the Judiciary's ability to fulfill its mission "to administer justice in an impartial, efficient, and accessible manner in accordance with the law."

Adequately funding the state court system is an investment in justice, and an investment in our democracy, that should not be compromised even during tough economic times.



Mark E. Recktenwald
Chief Justice

HAWAI‘I STATE COURTS AT WORK

The Hawai‘i State Judiciary resolves a wide-range of disputes facing our local community.

CIVIL JUSTICE

Hawai‘i residents and businesses rely on the courts to fairly resolve their civil conflicts. In FY2010, the Judiciary was involved with:

- ◆ 60,575 District Court civil cases including:
 - 44,292 Regular Claims Division cases (\$3,500 - \$25,000 damages range)
 - 6,141 Small Claims Division cases (up to \$3,500 damages limit)

- ◆ 37,251 Circuit Court civil proceedings including:
 - 14,090 condemnation, contract and personal injury cases
 - 8,736 probate proceedings
 - 6,938 conservatorship and guardianship proceedings
 - 1,422 trust proceedings
 - 6,065 land court, tax appeal and mechanic’s lien cases

“It is time to ensure that, in a country founded on the rule of law and the principle of access to justice, our judicial branch does not wither under the burden of financial stress..It is time for our lawmakers to recognize the value of our judicial branch as more than a line item in a budget. A strong judicial branch is essential to maintaining responsible government and protecting citizens’ rights.”

– Stephen N. Zack, President of the American Bar Association

CRIMINAL JUSTICE

The Judiciary strives to expeditiously and fairly adjudicate or resolve all criminal matters. In FY2010, the Judiciary was involved with:

- ◆ 68,041 criminal traffic cases including:
 - 13,593 DWI/DUI cases
 - 1,264 reckless driving cases
- ◆ 94,479 District Court criminal cases including:
 - 9,413 larceny/theft cases
 - 6,154 assault cases
 - 2,169 vandalism cases
 - 1,349 prostitution cases
 - 4,096 narcotics cases
 - 1,232 sex offense cases
- ◆ 17,220 Circuit Court criminal cases including:
 - 178 murder & manslaughter cases
 - 97 forcible rape cases
 - 1,602 aggravated assault cases
 - 1,235 burglary cases
 - 2,686 larceny/theft cases
 - 3,633 narcotics cases

"[A]s a practicing litigator, I can share with you the impact that the budget cuts on the Judiciary have caused. Among my case load, I have a case that is about four years old that has been ready to go to trial since late last year. It has been delayed because of the backlog of criminal trials and was recently reset to [redacted], 2011 - a year away. Many of my colleagues are reporting similar occurrences. The Judiciary allows economic, political and social life to function properly and it must be spared any further budget cuts."

- An attorney in private practice

FAMILY COURT

The Family Court hears all legal matters involving children, such as delinquency, waiver of jurisdiction, status offenses, abuse and neglect, termination of parental rights, adoption, guardianships, and detention. The Family Court also hears domestic relations cases, including divorce, domestic violence, temporary restraining order, nonsupport, paternity, and uniform child custody jurisdiction cases. In FY2010, the Family Court workload involved:

- ◆ 57,696 Family Court proceedings including:
 - 10,761 divorces
 - 5,150 domestic abuse protective orders
 - 1,604 child abuse and neglect cases
 - 926 adoptions
 - 3,674 paternity cases
- ◆ 1,557 foster custody cases
- ◆ 2,326 juvenile probation cases

“As a current participant, the Family Drug Court program has helped me do things I never thought I could do. I have learned the skills I need to remain clean and sober for the rest of my life...Without the support and instruction given to me by the Family Drug Court, I would not have the hope I have in my life today, and I am currently on the path to being reunified with my children... I will continue to battle this disease of addiction with the skills the Family Drug Court has armed me with and my children will never return to the foster care system.”

- Family Drug Court participant

TREATMENT COURTS

Many criminal defendants have substance abuse and/or mental health issues. When appropriate, the Judiciary provides these defendants with probation and treatment in lieu of incarceration. Treatment can help defendants live a clean and sober life, allowing them to reunite with their families and become productive citizens. In FY2010, the Judiciary's treatment courts served 1,085 clients statewide. The strength of the treatment courts lies in their ability to lower recidivism rates and costs to the State of Hawai'i. Less recidivism means less court and incarceration costs. Hawaii's Adult Drug Courts have an average recidivism rate of about 8 percent as opposed to a recidivism rate of 50 percent for those persons on general probation. The cost of treatment in these courts averages about \$5,000 per client per year as opposed to a cost of about \$50,000 per year for incarceration.

PROBATION

Most convicted criminal defendants are sentenced to probation in lieu of or in addition to incarceration. The Judiciary supervises probationers to reduce recidivism and encourage the rehabilitation and reintegration of these individuals into the community. In FY2009, the Judiciary's 129 probation officers supervised:

- ◆ 20,586 probationers
- ◆ 23,534 cases

"It makes social and economic sense to provide treatment rather than incarceration when appropriate. Treatment courts besides being cost effective are a major tool in breaking the cycles of substance abuse, domestic violence and many other social issues facing our state."

- Dee Dee Letts, Treatment Court Coordinator

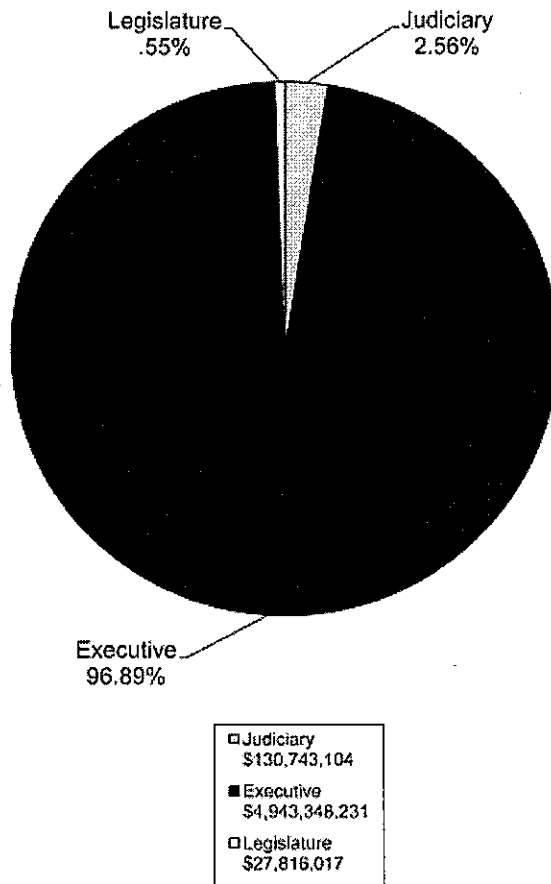
"Due to the limited number of slots available, we have a waiting list to get into Mental Health Court. There are not enough resources in the community for treatment and housing which puts defendants and community at risk."

- Louise Crum , First Circuit, Adult Client Services, Mental Health Court

JUDICIARY GENERAL FUND APPROPRIATION

The Judiciary's Hawai'i general fund appropriation is its most important funding source, accounting for over 90 percent of its funding. The Judiciary receives less than three percent of Hawaii's general fund appropriations.

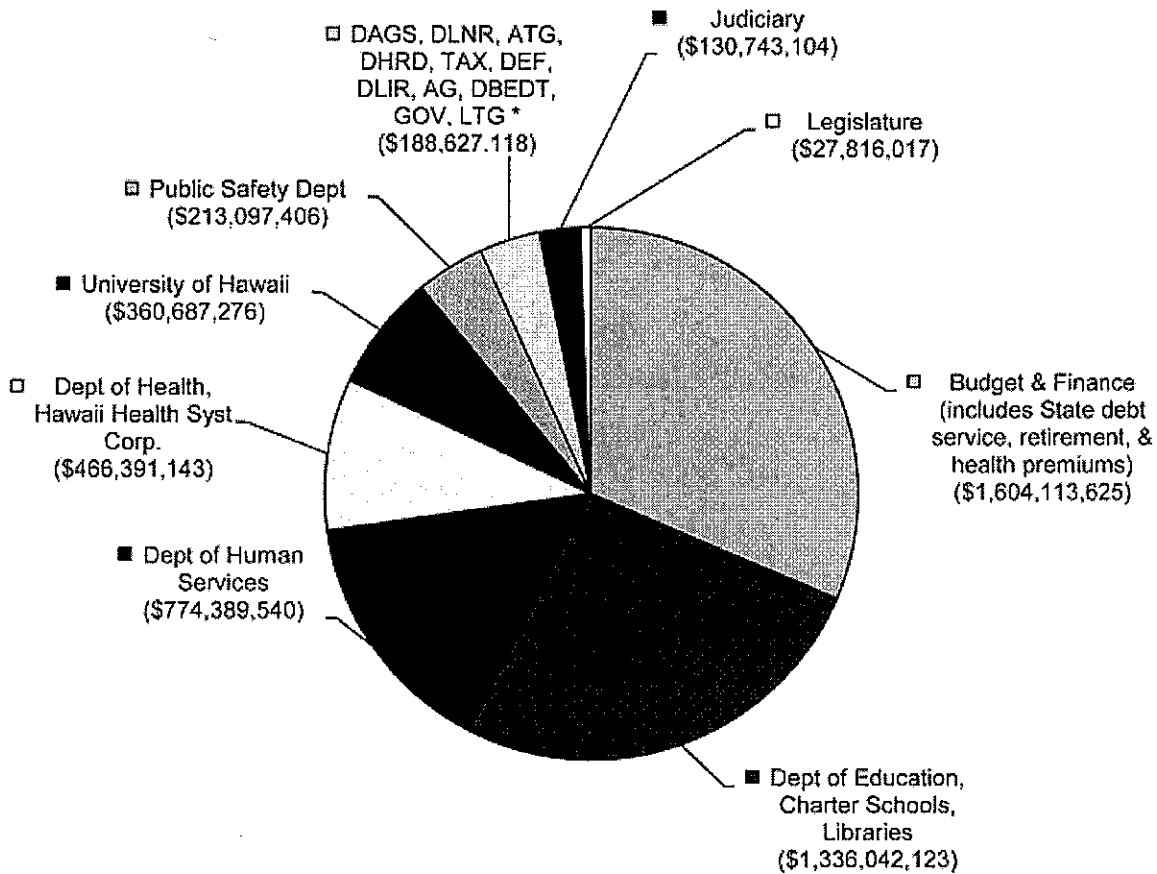
Hawai'i General Fund Appropriations
(FY2011)



“The Legal Documents Branch of the Circuit Court on O’ahu receives, files and processes, on average per year, approximately 300,000 original documents, depositions, and exhibits (approximately 116,000 Family Court, 80,000 criminal and Family Court criminal, and 104,000 civil documents, depositions, and exhibits).”

- Lori Okita, First Circuit, Legal Documents Branch 1

FY2011 Hawai'i General Fund Appropriations (\$5,101,907,352)

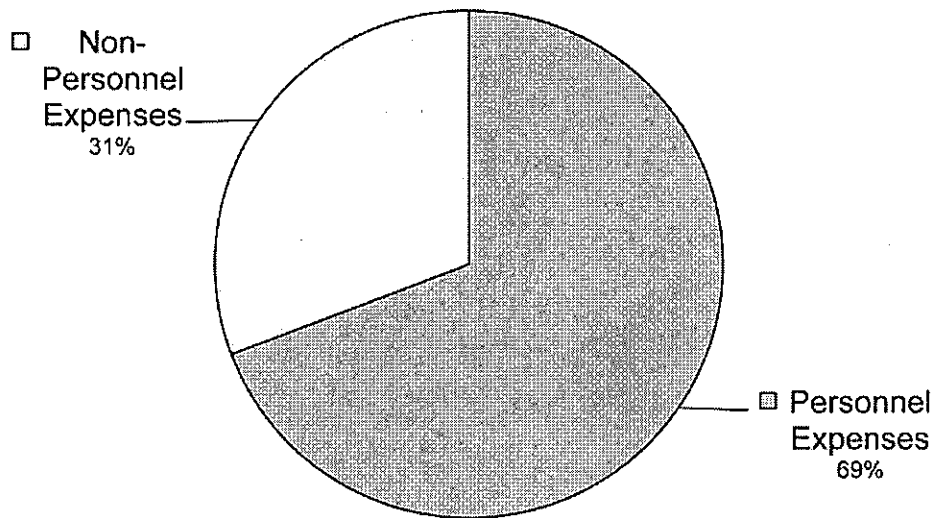


- * Dept of Accounting & General Svcs
 Dept of Land & Natural Resources
 Dept of Attorney General
 Dept of Human Resources Development
 Dept of Taxation
 Dept of Defense
 Dept of Labor & Industrial Relations
 Dept of Agriculture
 Dept of Business & Economic Development
 Office of the Governor & Lt. Governor

HAWAI‘I STATE JUDICIARY EXPENSES

The Judiciary uses its general fund appropriation to pay its 1,900 employees, operate its 21 facilities, and provide court services to thousands of Hawai‘i residents each year.

Judicial Branch Expenses (FY2011)

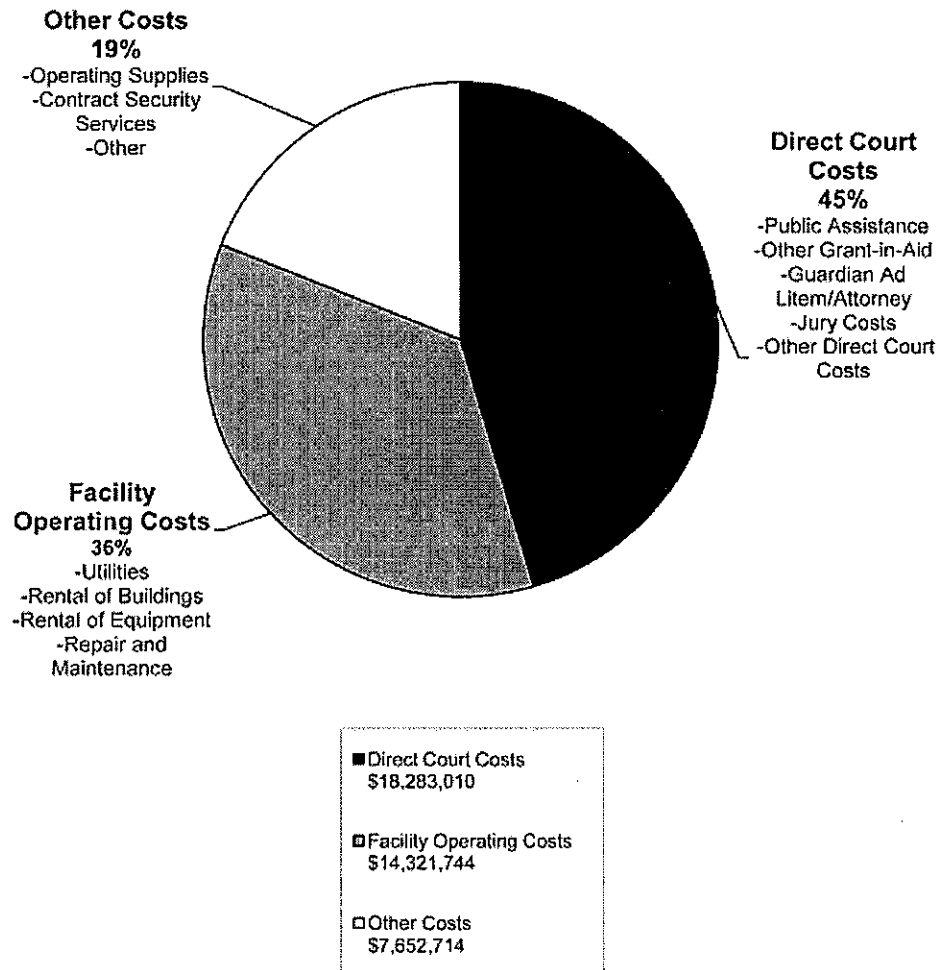


Personnel Expenses	\$90,485,636
Non-Personnel Expenses	\$40,257,468

“Our greatest concern is that the furloughs negatively impact our system’s response/coordination of cases involving children who are alleged victims of abuse or who are witnesses to crime. For example, delays in scheduling forensic interviews of these young victims and witnesses may result in concern for their safety. Justice may not be served for the crimes.”

- Jasmine Mau-Mukai, Children’s Justice Centers of Hawai‘i

Judicial Branch Non-Personnel Expenses (FY2011)



“The ‘Achieving Access to Justice for Hawaii’s People: The 2007 Assessment of Civil Legal Needs and Barriers to Low- and Moderate-Income People in Hawaii Report’ found that due to a lack of resources legal service providers are able to assist only one of three of those who seek their help. Since 2007 it has only gotten worse, resulting in more persons appearing in court without representation. Greater resources are required from the Judiciary to assist these persons to navigate the court system.”

- Judge Daniel Foley, Chair, Access to Justice Commission

JUDICIARY BUDGET REDUCTIONS

FY2009

- ◆ Judiciary's general fund appropriation was \$150.5 million
- ◆ The Legislature applied a 7 percent reduction (about \$1 million) in discretionary costs to the Judiciary's core budget base
- ◆ The Legislature provided Capital Improvement Program (CIP) funding of about \$13.8 million
- ◆ The Legislature took \$1 million from the Computer System Special Fund to help balance the state general fund budget deficit

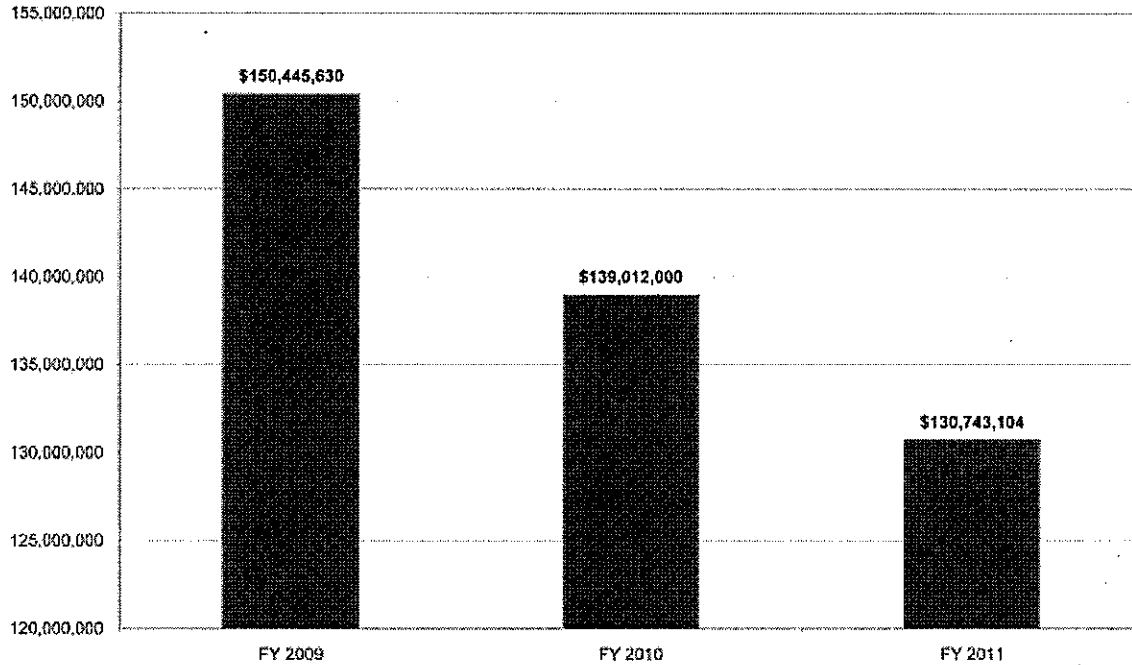
FY2010

- ◆ Judiciary's general fund appropriation was reduced to \$139 million, \$11.5 million lower than in FY2009
- ◆ The Judiciary initiated furloughs for its employees
- ◆ The Legislature reduced the salaries of state judges by 5 percent
- ◆ The Legislature eliminated 79 vacant positions
- ◆ The Legislature authorized \$2 million and 22 positions to staff the Kapolei Judiciary Complex
- ◆ The Legislature provided a one-time \$2.5 million ceiling increase for the Computer System Special Fund
- ◆ The Legislature provided CIP funding of about \$9.8 million

FY2011

- ◆ Judiciary's general fund appropriation was reduced to \$130.7 million, an \$8.3 million reduction from FY2010
- ◆ No CIP funding was provided as the Legislature indicated it would wait for the results of the Judiciary's Facilities Master Plan Study
- ◆ The Legislature allocated an additional \$2.5 million to the Judiciary for domestic violence (\$1 million) and legal/treatment service providers (\$1.5 million)
- ◆ The Legislature authorized the transfer of \$2 million in funds from the Computer System Special Fund and \$1.5 million from the Drivers Education Fund to the general fund

**Judiciary General Fund Appropriations
(including collective bargaining & specific appropriations)**



“We are unable to keep up with the demands and backlogs that occur in almost every area due to lack of manpower resources. The law enforcement divisions work 24/7 and are making arrests and issuing citations around the clock. With the economic downturn, there are more lawsuits being filed thereby increasing the courts’ caseloads. There are two less work days a month due to the furloughs, however, the workload has increased.”

- Iris Murayama, First Circuit Court, Deputy Chief Court Administrator

SPECIFIC BUDGET IMPACTS ON THE COURTS

JUSTICE DELAYED

- ◆ From FY2008 through FY2010, there was a 28.4 percent increase in pending Circuit Court civil actions and a 19.6 percent increase in the number of cases filed. Since the budget cuts and furloughs, the median age of pending Circuit Court civil cases increased by 41.8 percent.
- ◆ From FY2008 through FY2010, the number of pending court foreclosure cases increased by 80 percent. The median age of pending foreclosure cases increased by 44 percent.
- ◆ From FY2008 through FY2010, there was a 98.2 percent increase in pending District Court civil actions and a 36.4 percent increase in the number of cases filed.
- ◆ At the District Court of the First Circuit, furloughs and position reductions have resulted in substantial delays in scheduling hearings and trials. Traffic and DUI trials typically took 1-2 months to be heard prior to furloughs and now take 4-5 months to schedule. Trials in regular claims cases were scheduled within two weeks prior to the furloughs but now take 4-6 weeks to schedule.
- ◆ In the Family Court of the First Circuit, the time it takes to process an uncontested divorce has increased from 3-4 weeks, to 6-8 weeks since furloughs and budget cuts were implemented. The wait to schedule a mandatory session with the Judiciary's Kids First program in Kapolei has increased from 4 weeks up to 10 weeks. Filing for divorce can be the start of a traumatic process for a child that may involve physical relocation, a new school, financial insecurity and the inability to see one parent. Delays in processing divorce cases increase the stress that children experience.

"The judiciary is currently on a two day per month furlough system where, in addition to state holidays, the courts close for two workdays per month. Two days equate to 16 hours per month of court time. On Oahu, there are approximately 12 circuit court criminal divisions. As a result, the furloughs result in about 192 hours of lost court time per month for the circuit court criminal calendar on Oahu. Conservatively speaking, that time could accommodate approximately 8 average-length criminal jury trials, 192 evidentiary motions, 384 plea hearings or 576 non-evidentiary motions. This is an illustration of the very direct and serious consequences that budget shortfalls are having on the criminal justice system."

- John M. Tonaki, Office of the Public Defender

MORE SELF-REPRESENTED LITIGANTS

- ◆ More Hawai'i residents are entering the court system without the benefit of an attorney. Even with reduced hours and resources, the Judiciary's Ho'okele service centers on O'ahu assisted 103,009 self-represented litigants in 2009, a 5.6 percent increase from the year before.
- ◆ The Fifth Circuit Service Center in Lihue opened in March 2008 to assist self-represented litigants with court forms and questions about court procedures. It was closed in December 2008 due to staffing shortages.

COURT SERVICES REDUCED

- ◆ In 2005, the Honolulu Traffic Violations Bureau was open five nights a week to serve the public after working hours. It is only open one night a week now. In the near future, it will probably close at night altogether, requiring more non-criminal defendants to take off from work to resolve their cases.
- ◆ Due to a staffing shortage by the Department of Public Safety's Sheriff Division, there were not enough sheriffs to provide security for Judiciary facilities on the Big Island. The Judiciary was forced to close the North Kohala, Hamakua, and Ka'u rural courts in October 2010, requiring court customers to make a 20-60 minute drive to a courthouse.

“Increasing numbers of self-represented litigants in civil cases receive less in terms of court services because they are often disadvantaged due to lack of education, language barriers, and/or sometimes suffer from mental health issues.”

- Judge Barbara Richardson, Deputy Chief Judge, District Court

PROBATION STAFFING ELIMINATED

- ◆ In the Client Services Division of the First Circuit, 24 positions were lost last year due to budget cuts, including positions in both the Sex Offender Unit and the Domestic Violence Unit. These units work with some of the most dangerous offenders who are at a higher risk than others to recidivate. According to the American Probation and Parole Association, the caseload standard is 30:1 to 120:1 depending on the risk level of the probationer. In Hawai'i, the ratio of cases to probation officers is as high as 180:1.
- ◆ Furloughs also are affecting public safety. Our probation officers have 24 fewer days a year to supervise offenders. As a result, revocations of probation are being delayed, and probation officers are unable to provide the level of supervision necessary for certain clients because there are fewer hours in the week to monitor the same, or increasing, numbers of probation clients.

EFFECT ON FAMILIES AND VICTIMS

- ◆ To efficiently use public funds, the Judiciary contracts with external entities to provide services that are not performed internally. These contracts were cut by more than \$2.8 million in FY2010 to balance the Judiciary budget. The contracts involve the purchase of assessment and/or treatment services for substance abuse, child sex abuse, and mental health, as well as domestic violence emergency shelter services, juvenile client and family services, anger management, victim impact classes, and more.
- ◆ The reduction in purchase of service (POS) contracts has resulted in fewer social services for crime victims. For example, reduced Judiciary funding of Catholic Charities Hawai'i in FY2010 resulted in the loss of two positions which led to 165 fewer child sexual abuse clients being served compared to the previous year.
- ◆ Cutting treatment court budgets has resulted in taxpayers having to pay more, not less. As a result of the budget cuts, 5 of the 11 treatment courts have waitlists for admittance due to a reduction in the programs' capacity. Many people on a waitlist are incarcerated at a cost of \$137 per day to taxpayers as compared to about \$14 a day when they are in a treatment court.

- ◆ In FY2010, the Judiciary's Maui/Moloka'i Drug Court program lost four full-time equivalent (FTE) positions after it had its annual allocation cut over \$420,000. There is now at least a 13-month wait for men to receive drug treatment services on Maui. The wait for treatment was already between 8 and 12 months in May 2008 when the Legislature authorized four FTE positions to reduce the delay.
- ◆ Due to budget cuts, Drug Courts have had to reduce electronic and voice monitoring of clients by 30 percent. Since monitoring is used to ensure clients' compliance with curfew restrictions, the decrease in monitoring reduces community safety and increases the likelihood of clients relapsing. Furthermore, the Oahu Adult Drug Court lacks sufficient funding to accept new clients who need residential treatment after March 2011 until the start of the next fiscal year.
- ◆ The budget cuts forced a reduction to the Judiciary's POS contract for mediation and other dispute resolution services. The Mediation Centers of Hawai'i are now expected to provide services for approximately 3,100 cases, as opposed to 4,000 prior to the reduction in the contract amount for the POS. Mediation is provided in many types of cases including domestic and family, landlord/tenant, temporary restraining orders, and neighbor disputes.

"I felt all was lost and no one could help let alone begin to understand the difficulties I was facing. It is because of Girls Court that I now know that I am not alone...Help had finally arrived...I do not wish to imagine what our lives would be like had Girls Court not intervened. I implore that additional funding be granted so that this program may continue its vital work in helping young ladies and their families."

- Girls Court participant



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The Honorable Rosalyn H. Baker, Chair
The Honorable Brian T. Taniguchi, Vice Chair
Senate Committee on Commerce and Consumer Protection

Hearing : Tuesday, March 22, 2011, 9:00 a.m.
State Capitol, Conference Room 229

IN SUPPORT OF THE INTENT OF HB 1411 HD 2

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 the intent HB 1411 HD2 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.

HB 1411 HD2 proposes to repeal and replace the existing non-judicial foreclosure process, requires a physical presence in the state for mortgage servicers, requires mandatory mediation, implements a mandatory foreclosure moratorium and increases duties of mortgagees to maintain foreclosed properties.

As you know the Hawaii Mortgage Foreclosure Task Force has submitted its recommendations to the Legislature, which are contained in HB 879. While LASH believes there are significant weaknesses in the current foreclosure law, it may be premature to completely repeal the law without additional consideration. Such consideration will be undertaken in the upcoming year by the Task Force.

With regards to the recommendations of the Task Force adopted by HB 1411 HD2, LASH fully supports these changes, which provide clarification of the current law, further

protections for homeowners, including the ability to convert a fast moving non-judicial foreclosure to a more moderate judicial foreclosure.

HB 1411 HD2 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. However this bill also relates the right to convert to a judicial foreclosure to the ability to mediate. LASH believes these two changes should be separate provisions.

With regard to a moratorium, LASH does not take a position, but offers comments. While a moratorium may assist those homeowners who are currently in foreclosure with more time to attain a favorable result, there has been no cost/benefit analysis to determine what other effects this moratorium may have.

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

Conclusion:

We appreciate these committees' recognition of the need to protect consumers in the State of Hawaii. HB 1411 HD2 attempts to strengthen protections for consumers by requiring mortgage lenders to engage in mediation before instituting foreclosure proceedings. We support the intent of HB 1411 HD2 its attempts to protect homeowners in the State of Hawaii. Thank you for the opportunity to testify.

Presentation of the Committee on Commerce and Consumer Protection
Tuesday 22, 2011 at 9:00 a.m.
Testimony on HB 1411 HD2 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 HB 1411 HD2. HBA is the trade organization that represents all FDIC insured depository institutions with offices in Hawaii.

HBA respectfully opposes HB 1411 HD2 because of its 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.

In analyzing the 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 894 and SB 651 that contain many other troubling provisions that would have the unintended consequences: 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. This would just further delay Hawaii's economic recovery.

Mortgage Market Highlights and Changes

There are two mortgage markets. One is the government market which is about 90% of the market today. Those are mortgages bought/insured by Fannie Mae, Freddie Mac and the FHA. These entities are government sponsored enterprises (GSEs), which are regulated by the Federal Housing Finance Agency (FHFA). Fannie Mae and Freddie Mac are under government conservatorship.

The other is the private market. This market can be further subdivided into two subsections: a) the securitized market involving private investors; and b) the local market where local banks and credit unions make loans which they do not sell to the GSEs, but retain on their books. Depending on market conditions, the local private market can be 10% to 25% of mortgages made in Hawaii. This market is characterized by more **flexible** pricing and underwriting. It is clear that lending by local banks/credit unions for their own portfolio make a critical difference on mortgage loan availability, which helps to foster a healthy real estate market.

The government market pricing and underwriting requirements are uniform nationally. The uniformity works against flexibility in underwriting. It makes underwriting a science and not an art. For example, the Fannie Mae minimum FICO credit score is 620, if your score is 619, then you are not eligible for a Fannie Mae loan, but, a local lender can make the loan for its own portfolio. Fannie Mae has loan limits, while local lenders making portfolio loans have loan limits based on Hawaii housing prices. Federal legislation has been introduced to eventually limit GSEs to a \$417,000 loan limit, which would not even finance a medial home on Oahu unless the borrower can make a large down payment. Thus the loan limit flexibility of local lenders will become more important in the future.

It is clear that the government market will diminish. The Obama administration proposed three options for getting the government out of the mortgage business. One impact admitted by Treasury Secretary Geithner will be that it will be much harder to get a fixed 30-year mortgage loan. Thus, a substantial source of mortgage funds will be provided the private market and not the government.

The local source of loans will take on greater significance as the mortgage market undergoes a radical transformation over the next several 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. **As GSEs loans are harder to get, the local lending source becomes more important, especially for condo loans** The only question is the speed of the transformation and the ultimate structure of the mortgage market.

Loan availability is so important that a strong consumer advocate, Center for Responsible Lending, argued against a proposal by GSEs to raise down payment requirements from 3% to 10%, since it would diminish loan availability for middle to lower income people. The Centered stated there are less concern about loans made recently because mortgage lending has become more traditional and prudent, thus minimizing foreclosure concerns.

It is important to preserve the mortgage funding sources, and that really means the both the out of state private and local sources, because lack of loans means lower home prices and eventually more foreclosures. .

Servicer and Loan Modification Change is on the Way

State governments through their attorney generals in conjunction with federal agencies have been negotiating on a global settlement with the five large banks (Bank of America, Wells Fargo Bank, J.P. Morgan Chase Bank, Citi Bank and Ally Bank) that service 59% of mortgages nationwide. The Iowa Attorney General, the lead spokesperson for the group, acknowledged while there is no consensus a settlement is more likely than not. Press reports that a counter-offer from the banks is likely soon. There has been wide spread criticism of the proposed settlement as going too far and reportedly, Treasury Secretary Geithner, is not happy with some of the proposal. A securities trade association that buys securitized mortgages has been critical of the proposal. Their view is important since they will be a major source of mortgage funding in the future.

The federal banking regulators will likely impose pre-foreclosure loan modification requirements on the banks they supervise. 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 Office of the Comptroller of the Currency (OCC), which regulates both national banks and federal thrifts, and the Federal Reserve, which regulates member banks, have also issued similar pronouncements. Thus, the federal banking regulators will eventually propose servicer reform including loan modification discussion before foreclosure.

Today for Fannie Mae loan servicers are required to determine if a borrower qualifies for a HAMP (Home Affordable Modification Program) loan modification pre-foreclosure.

Pre-foreclosure loan modification attempts have the best chance of succeeding. Attempting loan modification after a foreclosure is initiated usually does not work well based on national statistics. The longer a loan has been delinquent, the harder it is to do a loan workout. In mediation, the loan is likely seven to eight months delinquent before mediation begins.

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 one time only short moratorium with a specified end date is less likely to impact the economy because it does not impact on future loans. However, it may lead to uncertainty for out of state sources of mortgage funding in questioning if Hawaii will impose more moratoriums in the future. This could impact this source of funding.

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.

Opt-In Dispute Resolution aka Mediation

The mediation provisions, unless subject to a quick sunset, is much more problematic for our economy because it does affect future loans. Mediation should be on an opt-in basis like Nevada and mediation should only apply to owner-occupant non-judicial foreclosures and not judicial foreclosures. Further, if federal laws are enacted to require pre-foreclosure modification attempts, then lender should not be required to go through mediation.

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 foreclosure mediation program results shown below were extracted from the Annual Report of the Nevada Judiciary for fiscal year July 1, 2009 through June 30, 2010.

A quote from the report on the number of notice of default follows.

“During the program’s first year, from July 2009 to June 2010, a total of *79,232 Notices of Default were filed in Nevada, indicating homeowners were delinquent in their home loan payments and risked foreclosure.*”

Nevada Mediation Program Results
For Fiscal Year July 1, 2009 through June 30, 2010

Description	Number	% of NOD	% of MCC
Notice of Defaults (NOD) Filed	79,232	100.0%	n/a
Homeowners electing to Participate In Mediation	8,738	11.0%	n/a
Number of cases mediators assigned	6,164	7.8%	n/a
Mediation cases completed (MCC)	4,212	5.3%	100.0%
Cases completed resulting in no foreclosure	3,767	4.8%	89.4%
Agreements reached between borrower & Lender	2,590	3.3%	61.5%
Agreement to voluntary vacate home	668	0.8%	15.9%
<i>Reached agreement & stayed in home</i>	<i>1,922</i>	<i>2.4%</i>	<i>45.6%</i>

Only 2.4% borrowers stayed in their homes based on the notice of defaults filed. However, by using the mediation cases completed then 45.6% stayed in their homes.

Unfortunately, the cost of the mediation program was not shown, but, it claimed to be self-sufficient. It is our understanding a \$50 fee for each foreclosure notice of default filed in addition to the \$400 mediation fee are used to fund the program. So the large number of foreclosure NOD fees seems to be an important source of funding to pay for fixed and other administrative cost to fund a program that either helped 2.4% or 45.6%?

The 79,232 notice of defaults times \$50 equates to \$3.9 million dollars. Even if you reduced the number of NOD to half, it will still be in the \$2 million range, which is still a substantial amount to fund the start up of this program.

One large lender reported that an overwhelming number of its Nevada mediated loan agreements were back in foreclosure within a year. So it helped a very small percentage, at what seems to be a start up high 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 modification attempt, not a pre-foreclosure loan modification 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 and the longer a loan has been delinquent, the harder it is to do a successful loan modification.

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.

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

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 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, 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.

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 lead 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.

- **Apply mediation only to loans made from 2003-2007.** Mediation should apply to loans made from 2003 to 2007. Most of the foreclosures are from that period, which was the peak of the sub-prime and non-traditional loans. California used this time frame

In Hawaii, the peak years of mortgage lending were from 2003 to 2006 and then it started to drop off as shown below.

Year	Number of Mortgages	Amount
2001	51,356	\$11,507,107,833
2002	68,662	\$15,264,375,201
2003	109,597	\$27,689,785,752
2004	91,700	\$26,885,426,182
2005	95,233	\$32,784,085,210
2006	82,778	\$33,853,041,238
2007	68,261	\$34,917,997,981
2008	44,745	\$17,561,656,807
2009	46,988	\$20,904,414,932
2010	38,481	\$17,435,588,850

The mortgage data reflects both residential and commercial real estate transactions. It is a safe assumption that the number of mortgages is primarily residential loans, while the dollar amount may be distorted by larger commercial mortgages.

The out of state lender/servicer commonly mentioned in complaints from borrowers made approximately 60,000 loans during this period and for the last two years less than 3,000 loans per year.

By applying mediation only to loans in the past, it does not affect loans to be made and thus will not impact the mortgage market. In fact, HAMP loan modifications are limited to mortgages originated on or before January 1, 2009. Since the bursting of the housing bubble, lenders have tightened up its loan qualifications, to prevent a recurrence of the present foreclosure mess.

- **Delete the section 667-V Actions and Communications with the Mortgagor in Connection with a Foreclosure:** This provision 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.
- **Delete section 67-Q 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.

There is no doubt that inclusion of this provision will lead to less condo loans, and those that are made will have a larger down payment requirement, a higher interest rate and loan approval will be much stricter. It could hurt first time home buyers and middle income borrowers.

- **Amend section 514A-90 to \$3,600:** The special assessment time period should be changed back to six months and the amount back to \$3,600. 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 the "duty to maintain" and increasing the special assessment to \$7,200 provisions are passed, it will mean that future condominium borrowers will pay higher rates and make bigger down payments. These tougher loan requirements may depress condominium prices and lead to more foreclosures.

The condominium market presents about 40% of Hawaii housing units. So these provisions 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.

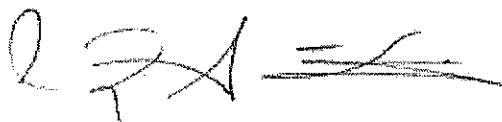
- **Limit Mediation to owner-occupant non-judicial foreclosures:** If lawmakers are so inclined to pass an opt-in mediation program, it should be limited to non-judicial owner-occupant foreclosures. The judicial foreclosure process is an already lengthy process with Judiciary oversight to insure fairness for borrowers.
- **Amend authorized representative authority:** Servicers do not have the authority to approve a loan modification, if the loan is owned by another party like Fannie Mae/Freddie Mac, etc., or have access to a person with authority to approve a loan modification. So this provision should be amended to allow for the flexibility of the servicer representative being allowed sufficient time to get a decision after the conclusion of the mediation session.
- **Owner-occupant mediation eligibility:** In addition to retaining the provision if borrower elects mediation then the right to convert to a judicial foreclosure terminates, if the borrower already went through HAMP or any other federally mandated pre-foreclosure loan modification process, the borrower should not be eligible for mediation or conversion.
- **Limit Mediator aka Neutral Authority:** The mediator should not have the authority or leverage to force a loan modification on either the lender or the borrower. If the mediation is not successful, then the lender should be allowed to proceed with foreclosure without the need for the neutral to sign/file a document signifying the end of mediation.
- **Eliminate Mediation Mortgage Documentation Requirements:** The mediator is not acting in a judicial capacity, therefore, the mortgage, note, etc., should not be required. The purpose of the dispute resolution session is about a loan modification and not about proper loan documentation. If there is a question of the servicer's authority to foreclose, the borrower should elect to convert to a judicial foreclosure to challenge the documentation.
- **Suggested State Action:** Recently, the big out of state lender, with reportedly the most problems, meet with law makers regarding efforts to help their troubled borrowers. They promised to hold in April face to face meetings with their borrowers to discuss loan modifications. This lender also offered special access phone numbers or email address for law makers to use if they have constituents complaining about a lack of response.

It is suggested that the Office of Consumer Protection &/or the Attorney General's Office contact other lenders that have complaints to also get phone numbers/email address for units that can special handle these request to share with both lawmakers and housing counseling agencies.

This could be an alternative to passing legislation that would be costly and time consuming for the Judiciary to set up. This special handling arrangement may have more of an immediate benefit in assisting Hawaii borrowers stay in their homes.

This not a permanent problem and thus we do not think we should create a permanent "solution" to this temporary problem. We need to increase the number of jobs, not the number of foreclosed homes. We are sympathetic to the difficulty some borrowers are facing. An improving economy would benefit everyone. Homes prices increase and people's income will start to be restored. We do not want to be left with a policy that results in unintended consequences. While the legislation is well-intended it ultimately benefits relatively few, could have a negative impact on Hawaii economy recovery and may affect future borrowers by making it more difficult to qualify for a mortgage loan.

Thank you for the opportunity to provide our testimony.

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

Gary Y. Fujitani
Executive Director



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Testimony to the Senate Committee on Commerce and Consumer Protection
Tuesday, March 22, 2011 at 9:00 a.m.

Testimony in opposition to HB 1411 HD2, Relating to Mortgage Foreclosures

To: The Honorable Rosalyn Baker, Chair
The Honorable Brian Taniguchi, Vice-Chair
Members of the Committee on Commerce and Consumer Protection

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 HB 1411 HD2**, Relating to Mortgage Foreclosures. Mainly, this bill would require a form of mandatory mediation (dispute resolution), before foreclosure action can take place. This bill would be extremely harmful to local lenders in Hawaii. In this difficult economic climate, credit is still extremely tight, as the economy has been slow to recover. This legislation has the ability to harm the mortgage market in Hawaii, which will in turn harm the housing market.

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, it makes sense that we be excluded from this legislation. We are in agreement with the proposed amendments from the Hawaii Bankers Association.

We ask you to consider the impact this bill will have on our ability to deliver low-cost services to our member base. This bill will raise the cost of loans, and will result in a smaller amount of people who can afford to purchase a home.

Thank you for the opportunity to testify.

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 22, 2011

Senator Rosalyn H. Baker, Chair
and members of the House Committee on Finance
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 1411, HD 2 (Mortgage Foreclosures)**
Hearing Date/Time: Tuesday, March 22, 2011, 9:00 A.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 **strongly opposes this Bill.**

The purpose of this Bill is to: (1) repeal the old non-judicial foreclosure process; (2) clarify the new non-judicial foreclosure process; (3) strengthen laws regarding mortgage servicers; and (4) broaden the duties of the Center for Alternative Dispute Resolution.

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. 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 (House Bill 1411) 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, such as what is in this Bill, can be reviewed by the Task Force over the remainder of this year as the Task Force considers other recommendations for the 2012 Legislature.

Additionally, there are numerous problematic provisions in this Bill:

* Creating an unnecessary dispute resolution process for judicial and non-judicial foreclosures involving owner-occupants (this new process will be time consuming and expensive and it will conceivably result in only a minimal success rate based on the experience with a Foreclosure Mediation Pilot Project on the Big Island and the experience with a mediation program in Nevada which is the model for this Bill's dispute resolution process);

* Requiring foreclosing lenders to advance monies under a new questionable duty to

maintain certain mortgaged properties (even when the lenders don't have title or possession of the properties);

* Doubling the special assessments that condominium associations can receive as a limited priority in foreclosures (which increased assessment will increase the cost of lenders in foreclosure actions);

* Attempting to revise on a piecemeal basis the new, alternate non-judicial foreclosure process (which revisions don't even address all the provisions which make the process unusable from the lenders' perspective); and

* Establishing prohibited conduct (even though there is no justification that this is needed).

There are other problematic provisions which other testimonies will undoubtedly address.

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.

HB 1411, HD 2 (Mortgage Foreclosures)
Testimony of Hawaii Financial Services Association
March 22, 2011
Page 3

In total, the approach taken by this Bill as drafted is short-sighted with foreseen negative and unintended negative consequences. This Bill is not in the best interest of Hawaii's consumers and lenders. It will harm the mortgage market. The additional statutory requirements in this Bill could make it harder for future borrowers get loans because they could have to pay higher interest rates and they could be required to make a larger down payment so that there is a lower loan-to-value ratio. Lenders who, as a last resort, need to foreclose on delinquent loans will be penalized by this Bill which will unnecessarily lengthen and delay the foreclosure process and will unjustifiably increase the cost to foreclose ... all with no real benefit to consumers.

Accordingly, we ask that you do not pass this Bill.

Thank you for considering our testimony.


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

(MSCD/hfsa)



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March 18, 2011

Senator Rosalyn H. Baker, Chair, and Senator Brian T. Taniguchi, Vice Chair
Senate Committee on Commerce and Consumer Protection

Opposition to HB 1411, HD 2, Relating to Mortgage Foreclosures.

Tuesday, March 22, 2011 at 9:00 a.m. in CR 229

My name is **Dave Arakawa**, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

HB 1411, HD 2. This bill proposes to implement a comprehensive strategy to reform the foreclosure laws in Hawaii by repealing the old non-judicial mortgage foreclosure process, and replacing it with a new non-judicial mortgage foreclosure process which, among other things, provides for mediation or dispute resolution for owner-occupant foreclosures. The measure also strengthens laws regarding mortgage servicers and broadens the duties of the Center for Alternative Dispute Resolution.

LURF's Position. LURF recognizes the underlying purpose of this well-intended bill (to improve and facilitate communication between local homeowners in foreclosure and mainland lenders regarding loan modification), however, LURF understands that the problem sought to be addressed by HB 1411, HD 2 does not exist with local banks and credit unions, and more significantly, that the passage of this bill will negatively affect the real estate market, job growth, and the overall economy in Hawaii.

The practical negative impacts of this bill reportedly will include:

- Increased down payment amounts.
- Greater difficulty in obtaining loans (the more difficult it will be to collect on a loan, the more difficult it will be to obtain a loan, as lenders must ensure repayment).
- Potentially higher interest rates.
- Potentially higher closing costs.

The proposed provisions of HD1411, HD 2 may actually delay the foreclosure process and drive up the cost of collecting on troubled loans. As indicated above, burdensome new processes and

laws are also expected to make it more difficult for first time home buyers and middle-income residents to obtain mortgages due to the higher interest rates, larger down payments and stricter loan qualification requirements.

The resulting fear of a smaller loan market will, in turn, increase developers' reluctance to build in an already unstable economy, thus chilling job growth in the construction industry, and weakening overall economic development. Given these potential outcomes, implementation of restrictive and burdensome foreclosure processes and laws may prove to be poor policy in this case, and will only work to prolong the recovery of the real estate market in Hawaii.

For the above reasons, it appears that HB 1411, HD 2, with its many unintended negative consequences, may be proposing a shortsighted, yet frighteningly long-term solution to a temporary problem (affecting relatively few homeowners), which may be better resolved by consensus reached through the coordinated efforts of lenders, lawmakers and proponents of this bill, or otherwise, by itself, upon recovery of the State's economy.

LURF therefore respectfully recommends that **HB 1411, HD 2 be held in this Committee.**

Thank you for the opportunity to provide testimony regarding this matter.

March 22, 2011

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

RE: H.B. 1411, H.D. 2, Relating to the Mortgage Foreclosures

HEARING: Tuesday, March 22, 2011, at 9:00 a.m.

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

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 **submits comments** regarding H.B. 1411, H.D. 2, which: (1) repeals the old non-judicial foreclosure process; (2) clarifies the new non-judicial foreclosure process; (3) strengthens laws regarding mortgage servicers; and (4) broadens the duties of the Center for Alternative Dispute Resolution.

HAR believes that a comprehensive evaluation of the non-judicial foreclosure process and balanced approach to amending the foreclosure law is needed- however, HAR believes that, as drafted, H.B. 1411, H.D. 2, imposes some requirements that go too far in creating a balanced foreclosure system. This can have severe consequences for the real estate industry in Hawaii. Accordingly, HAR provides the following comments on the bill:

Dispute Resolution: Section 2 of H.B. 1411, H.D. 2, creates a section that requires participation in dispute resolution if the borrower so elects. A similar program currently exists under Nevada's Foreclosure law. HAR **supports the intent** of allowing for dispute resolution in the context of both judicial and non-judicial foreclosures, but notes that a screening process may be needed, to ensure that borrowers are minimally qualified to proceed with dispute resolution. Otherwise, a borrower that opts-in to pursue dispute resolution may use it as a tactic to delay the foreclosure process. As such, HAR supports an expedited process so that both mortgagee and mortgagor are able to come to a good-faith agreement.

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 dispute resolution 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 further believes that as part of any proposed dispute resolution program, the mortgagor should be required to continue paying any property taxes and association fees until the dispute mediation program is concluded. It does not make sense for any other parties to bear the burden of the taxes and fees, and this will prevent homeowners from taking advantage of a dispute resolution program to avoid the payment of such taxes and fees.

Conversion from Non-Judicial to Judicial Foreclosure: Section 3 of H.B. 1411, H.D. 2, creates a new section, §667-M, which provides the right for an owner-occupant to convert a non-judicial foreclosure to a judicial foreclosure proceeding. HAR **supports the intent** of this provision, but suggests a technical amendment -- while §667-M(3) provides “forty-five” days from the date of the filing of the complaint to require co-obligors and guarantors to file a statement submitting to the court’s jurisdiction, it is in conflict with the notice language under §667-O(a), page 19, line 10, which calls for “ninety days.” HAR therefore recommends that page 19, line 10 be changed to “forty-five” days.

Duty of Foreclosing Mortgagees to Maintain Property: Section 3 of H.B. 1411, H.D. 2, creates a new section, §667-Q, which provides that a foreclosing mortgagee must maintain the property. HAR has concerns regarding this section which requires the mortgagee to:

- (1) Ensure that the mortgaged property complies with all applicable building and housing laws materially affecting health and safety;
- (2) Keep the mortgaged property in a clean and safe condition;
- (3) Make all repairs and arrangements necessary to put and keep the mortgaged property in a habitable condition;
- (4) Maintain all electrical, plumbing, and other facilities and appliances in good working order and condition;
- (5) Make payments for all utility fees for the mortgaged property; and
- (6) Make regular payments for any association fees and real property taxes owing on the mortgaged property.

HAR **would support the intent** of the measure insofar as certain upkeep requirements are retained (i.e maintenance of the exterior of a property, minimizing impacts on other adjacent units, and payment of association fees and property taxes). However, HAR would note that, as currently drafted, Section 3 is problematic. At the time of foreclosure, some properties may not be safe or habitable. For example, some properties may have existing owner builder permits or other open permits. As drafted, requiring that a property be “habitable” and comply with “all building and housing laws, will require mortgagees to actively rehabilitate or restore properties to a habitable or safe condition, including the possibility that mortgagees might be required to fully build a partially built property.

Physical Presence of Mortgage Servicers: Section 5 of H.B. 1411, H.D. 2, requires that mortgage servicers licensed under §454M must establish a physical presence within the State. Under existing state law, non-exempt mortgage servicers are already licensed by the

State of Hawaii, Division of Financial Institutions (DFI). In addition, Section 4 of H.B. 1411, H.D. 2 requires that an affiliate statement must be recorded with the Bureau of Conveyances to ensure that the mortgage servicer and foreclosing mortgagee are identified. As such, if the affiliate statement is not produced, future foreclosure notices may be invalidated. HAR believes that these existing and added protections may make Section 5 unnecessary. This could also lead to the unintended effect that certain mortgage servicers would no longer provide services in Hawaii.

Definition of Owner-Occupant: Section 16 of H.B. 1411, H.D. 2, creates a new definition of “owner-occupant.” HAR believes that the present definition of “owner-occupant” in the bill may be too narrow, and should be modified to conform with the definition of “resident” under the State's tax code, HRS §235-1. Therefore, HAR respectfully requests that the definition be amended on page 37, lines 13-15 as follows:

- (2) The residential property is and has been the person's primary residence for a ~~continuous~~ period of not less than ~~one hundred eighty days~~ two-hundred days of the immediately preceding calendar year prior to immediately preceding the date on which the notice is served.

Notice of Default/Intent to Foreclose: HAR supports the intent of clarifying notice provisions in a non-judicial foreclosure. Section 17 of H.B. 1411, H.D. 2, amends notice requirements under §667-22, and adds the notice of the right to participate in dispute resolution, but does not mention the statement on conversion allowing an owner-occupant to convert a non-judicial foreclosure to a judicial foreclosure. It is HAR's understanding that Section 17 was intended to include both the notice of dispute resolution and the statement on conversion. Therefore, we would suggest that §667-22 be amended to also include the statement of conversion, so that it is consistent with the new section, §667-O.

Public Auctions: HAR supports the intent of Section 20 of H.B. 1411, H.D. 2, which identifies at least one state facility for auctions in each county. We believe this will create understanding and consistency for all parties involved in the foreclosure process.

Postponements on Sale: Section 22 provides for limiting the number of postponements on sale to four consecutive postponements. HAR supports the intent of limiting the number of postponements by requiring that the foreclosing mortgagee restart with public notices upon the forth postponement.

Repealing Part I and Amending Part II: Finally, HAR also supports the intent of H.B. 1411, H.D. 2 insofar as it repeals Part I pertaining to non-judicial foreclosures, and amends Part II relating to non-judicial foreclosures and making this section function by removing the requirement of the mortgagor to sign the deed. HAR further supports and appreciates added protections for ensuring that proper notice is given, for notifying a mortgagor that the mortgagee intends to foreclose.



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Recognizing the possibility that homeowners may continue to face greater hardship, and that this bill would serve address a part of the foreclosure problem facing our State, HAR respectfully requests your favorable consideration of this measure to continue the discussion, and ensure that all concerns can be addressed as fully as possible.

Mahalo for the opportunity to testify.





P.O. Box 976
Honolulu, Hawaii 96808

March 21, 2011

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

Re: **HB1411 HD2 COMMENTS**

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

I chair the CAI Legislative Action Committee. CAI asks that the Committee consider amendments to HB1411 HD2.

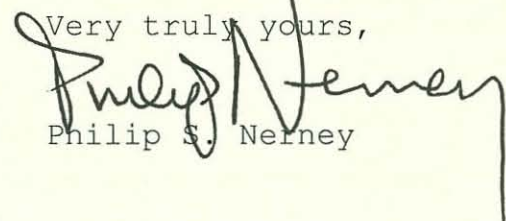
Broadly speaking, CAI asks that the Committee consider amendments to establish separate foreclosure authority for condominiums and planned community associations. The language of SB1454 provides a serviceable model for how to accomplish that goal.

HB1411 HD2 proposes a regime which remains focused on mortgage loans, but affects condominiums and planned community associations. More work is necessary if community associations are to share and/or are to be affected by the mortgage foreclosure statute, or separate authority is indicated.

CAI is persuaded that the time is at hand for separate legislative authority, because associations are non-profit entities that merely collect funds to pay the bills to operate projects and are entirely distinguishable from the for-profit mortgage lending industry.

Failing the enactment of separate foreclosure authority, then CAI respectfully requests that HB1411 HD2 be carefully reviewed for provisions that may inadvertently create questions about the procedures to be followed by associations when using a statute designed to address mortgage foreclosure issues.

Very truly yours,



Philip S. Nerney

March 21, 2011

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

Re: **HB No. 1411 HD2 COMMENTS**

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


As attorneys, we represent numerous condominium and planned community associations, along with local lenders. While this submission is not made in a representative capacity, a portion of our clientele may be materially affected by the above-captioned bill. We hope that serious consideration will be given to the following comments as they are based on an in-depth and practical understanding of HRS §667, and its direct effects on homeowners' associations.

HB1411 HD2 contains many valuable recommendations aimed at addressing the multitude of failures in the mortgage loan industry. However, the language therein is broad and as written would have drastic consequences on homeowners' associations. We recommend that HB1411 HD2 be deferred to allow the foreclosure task force to more specifically tailor its provisions and avoid the far-reaching collateral effects the bill would have as written.

Homeowners' associations are non-profit organizations. Unlike mortgage lenders which may merely suffer reduced profits as a result of HB1411 HD2, associations would be deprived of assessments used to pay actual operating costs. Beyond basic upkeep of the relevant housing projects, these costs include, but are not limited to, the cost of maintaining the safety and security of the project.

By interfering with an association's ability to promptly pursue assessments from delinquent owners, this bill (as written) may threaten the health, security, and property valuation for the association's remaining owners. With further review by the task force, the purpose of this bill can be served without such inadvertent effects.

Very truly yours,


Christian P. Porter, Esq.
Ka'ono K. Kiakona, Esq.
Bryson R. Chow, Esq.

Testimony for CPN 3/22/2011 9:00:00 AM HB1411

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: Lauren Koch

Organization: FACE

Address:

Phone:

E-mail: resumeslkoch@gmail.com

Submitted on: 3/20/2011

Comments:

Brief overview Of Aurora loan Servicing Company and Lauren Koch

For 27 months I have been in contact with Aurora Loan Servicing trying to establish a forbearance, or a modification.

Every time I end up talking to a different person, and every time I am delayed. 25 months ago I could have qualified, but they always had some excuse.

Some of their excuses are as follows:

April 2009, I asked every month for six months, and each time I was told my loan did not qualify. I continued to pursue just because I had the button on the phone that would direct me to that department. I fell behind one month, and all of a sudden, I could qualify.

I was told I could have a verbal qualification, which I failed (I did not know it a that time, but it was their forbearance that I did not qualify for). Had nothing to do with any of the Federal Programs.

Tried for the special one for the unemployed. Talked with them and they said I needed an award letter from EDD. I got the award letter, and send it to them, at the time, had about two months left on future benefits. When I followed up they said the analyst would be calling me. After a week I called them back, and since the award letter was the only form of an application, I got very assertive over the phone and asked what the criteria was. It was then I was told I had to have nine Month's of future EDD benefits available, and they said it was the law. I have researched all of the guidelines, and have not found anywhere in the law that has the nine month stipulation.

Talked to several of their agents, and through the conversations, I found out what the guidelines were to qualify for a forbearance, and that again it would be verbal. Qualified for the forbearance, and they offered me a \$450 discount on my payment, and that the negative amount would be added to the balance of the loan. I mentioned that the amount was not in line with the 31% that HAMP has specified, and it was at that time they informed me that this was their forbearance, and not any of the Federal programs. Once again I was mislead.

I told them that I needed some help from them, (not just a stall tactic). They then asked me which program I would like. I asked them which program would be best suited for me, as they had all of my monthly cash flow information, and they could not give me an answer.

I am a 99 weeker, and now benefits have exhausted, so I am falling farther behind in my mortgage payments drastically.

U S Bank seems to be labeled as a Trustee, they had bought the note from Lehman Bros.

It seems their goal is to avoid any type of assistance program for me so that I will end up in foreclosure and they can take my property.

As of this month, I am now in foreclosure with an auction date set for May 5th. I have submitted a HAMP application which is not complete, but it will supposedly keep them from proceeding with the auction.

I have also gone to Mazie Hirano, and they are going to send my case to the executive level of Aurora, so that I will be conversing with a person that can make decisions. I have also contacted an agent from the HAMP Escalation department. At this time I "cc" Mazie Hirano and the Escalation department with every written communication.

Also asked them for all of my tracking records, as per RESPA.

Asked them for proof of who actually is the note-holder, with proof and documentation of all assignments, as per RESPA.

Since all of this has happened, they have been nicer to me. The date for auction is still set, but I have had to go to extremes to get treated in a professional business manner.

Aurora has also accumulated massive late fees against me as well as attorney fees for the foreclosure.

All of this when they probably do not even have the legal ability to foreclose.

It seems their goal is to avoid any type of assistance program for me so that I will end up in foreclosure and they can take my property.

I have searched the Internet, and there are lots of class action law suits against Aurora for deceptive and dishonest practices.

I have rental units in my house, and since there are many single individuals looking for simple accommodations, I am going to rent bed space in my house at \$400 per month. It will be a class operation with each bed space having their own TV with headphones, wireless capabilities, and access to kitchen and common areas. It is ideal for hotel employees since they already eat at the hotel. So I have a plan for much larger income, and already have tenants lined up. This will suffice until a job or an opportunity comes up.

I will be submitting an updated HAMP application, with February and March bank statements and rental agreements relating to the bank statements. It will be a very complete package and spelled out so a grade school kid could understand it.

I have had the property for nineteen years, with perfect payment history, so my note was quite attractive. I had put \$60,000 down on my property, and have maintained since purchase.

I have a lot to loose.

Aurora loan Servicing seems to be a predator that needs some controls, and needs to have their board of directors investigated for extremely illegal practices.

Lauren Koch
2812 Kauhale St.
Kihei, Hi. 96753
408 833 5335

CPCTestimony@Capitol.hawaii.gov

To: Rosalyn Baker, Chair

Committee on Consumer Protection & Commerce

March 22, 2011 at 9:00 a.m.

From: Rev. Alan Mark, State President of FACE

Re: HB 1411

Chairperson Baker 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 54 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 support of HB 1411 that calls for mandatory mediation that will enable our families to keep their homes and keep their family in tack. We would like the bill to amend that 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 areas of conflict. It is a fair, humane and equitable process for both family and lender. Mediation is a winning proportion for everyone.

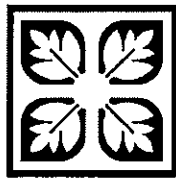
Thank you for your kokua and support for our families in keeping their homes.

Testimony for CPN 3/22/2011 9:00:00 AM HB1411

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Jadine L. Brown
Organization: FACE
Address:
Phone:
E-mail: jade@steadfastpt.com
Submitted on: 3/21/2011

Comments:

I am in support of HB1411 because Hawaii families need protection from the mega banks. I would not be in default or foreclosure if it weren't for the wrong advice and predatory modification process that my family has endured for two years now with Chase. I was told to miss payments in order to qualify for a modification. I was also told that after making 3 months of a trial modification payment, the modification would be made permanent. I have called Chase more than 170 times, faxed them my paperwork 85 times because they kept losing it, and I have acted in good faith trying to modify my mortgage. It is clear that Chase's intent all along was to drag out the modification to produce a default and foreclose, even though it is in the best interest of me the homeowner and the investors of interest to modify. HB1411 will at very least, give me an opportunity to negotiate in a fair way. Thank you for your careful consideration of this very important matter for Hawaii's families.



CATHOLIC CHARITIES HAWAII

211 Kaulawahine St, Kahului, Hawaii 96732

Consumer Protection Committee

Testimony related to HB1411

Monday, March 21, 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 HB 1411 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.

It is getting even worse on Maui. I recall going through one of the Maui News' classified ads and counted 6-7 entire pages dedicated to foreclosures on Maui alone. I get calls from many people who can't afford their mortgages, who are so worried that their homes are going into foreclosure or they 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,

Thelma Akita-Kealoha
Maui Community Director
Catholic Charities Hawaii



TESTIMONY IN SUPPORT OF HB1411, HD2

March 22, 2011; 9:00 a.m.; Conference Room 229

Relating to Mortgage Foreclosures

To: Honorable Senator Rosalyn H. Baker, Chair, Senate Commerce and Consumer Protection Committee
Honorable Senator Brian T. Taniguchi, Vice Chair
Honorable Committee Members

From: Ron Menor, Chair, National Federation of Filipino American Associations ("NaFFAA") Region XII

My name is Ron Menor. I serve as the Chair of the National Federation of Filipino American Associations ("NaFFAA") Region XII which represents the interests of Filipinos in Hawaii, Guam and the Commonwealth of Northern Marianas Islands. NaFFAA Region XII is an affiliate of the national NaFFAA. Washington policy-makers, private industry and national advocacy groups recognize NaFFAA as the voice of Filipinos and Filipino Americans throughout the United States. We are a non-partisan, non-profit national affiliation of more than five hundred Filipino-American institutions and umbrella organizations that span twelve regions throughout the continental United States and U.S. Pacific territories.

We would like to state for the record our support for the intent of the above-referenced legislation. This measure would help to clarify and strengthen the foreclosure process. The measure would establish additional safeguards for borrowers while at the same preserving the rights and interests of lenders. The passage of this legislation is necessary during these difficult economic times in Hawaii when homeowners are at increased risk of foreclosures.

Thank you for the opportunity to offer our views on this measure.

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Committee on Commerce & Consumer Protection

March 22, 2011 Date, 9:00am , Conference Room #229

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

RE: IN SUPPORT OF Bill #HB1411 RELATING TO MANDATORY MEDIATION

Aloha Senator Baker, Vice Chair & Committee Members:

We support SB651 calling for mandatory mediation because without this mediation, the banks will continue their shoddy treatment of homeowners by hiding behind their frontline operators in order to proceed with foreclosures without any regard for opportunities and solutions that will help them get repaid while keeping us in our homes.

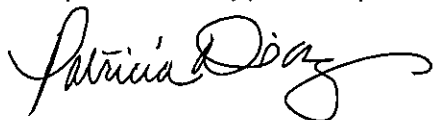
Since December 2009 my husband and I have been in pending status for the Making Homes Affordable Program. My husband lost his construction job in February 2009. At that time, our mortgage payment of \$2000 was manageable with the help of unemployment benefits and savings, so we patiently waited for a 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. It's like dealing with a 3rd world country.

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 again here we are pending again, not knowing where we stand. This underwriter cannot tell us whether Bank of America will be granting us a permanent modification or whether foreclosure proceedings are imminent. Why won't they answer us?

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:

HB 1411

RELATING TO MORTGAGE FORECLOSURES

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

NOTICE OF HEARING:

Committee: CPN
Hearing Date: 3/22/2011 @ 9:00:00 AM
Room: 229
State Capitol
415 South Beretania Street

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. 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. 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.

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.

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.

Dear Committee Members,

Thank you for this hearing and for this opportunity to testify in **SUPPORT of HB 1411**

I SUPPORT HB1411 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. Servicers, 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 ignored this law .

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-Crilly
2962 Kauhale Street
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808-874-5644**

baker2 - Kelli

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 21, 2011 8:37 AM
To: CPN Testimony
Cc: Melbahawaii@gmail.com
Subject: Testimony for HB1411 on 3/22/2011 9:00:00 AM

Testimony for CPN 3/22/2011 9:00:00 AM HB1411

Conference room: 229
Testifier position: support
Testifier will be present: Yes
Submitted by: Melba Amaral
Organization: My Mommy Daycare and Academy
Address:
Phone:
E-mail: Melbahawaii@gmail.com
Submitted on: 3/21/2011

Comments:

the need for this bill to pass in conjunction with SB651 is necessary & soon. To many families & their children are being brutally removed from their security & shelter. This is happening on the mainland as well as here. The only difference here, is they are considered the "silent" majority. They have way to much pride to come forward & ask for help. We need to change that. Law makers like yourself needs to recognize the very reason why you became a public official. Hence, realizing that when all is said & done. Your moral obligation to your constituents comes first.

CHAIR OF THE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Joseph Messier
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Unit 28
Kapolei, HI 96707
808-679-6405 (Cell)
Alohajoe2010@gmail.com

March 22, 2011

I support SB 651 and HB 1411 calling for a mandatory mediation program. Mandatory mediation is the best way to stop unnecessary foreclosures by forcing homeowners and lenders to work together to exhaust all means necessary in finding an alternative to the scourge of foreclosure. Many states now employ alternative dispute resolution methods, and in particular mediation, to help at-risk homeowners deal with looming foreclosures by mortgage lenders or servicers. Mediation reduces the impact of the housing crisis by unclogging courts, achieving faster, cheaper, and better resolutions for homeowners, mortgage lenders and the community at large. The majority of foreclosure proceedings in courts are the first time homeowners and their mortgage lenders and mortgage servicing companies have discussed these financial crises writ small across our country. The judges' experiences bear out estimates those more than 80 percent foreclosures with their lenders or servicers as of the end of last year!

These mediation programs are still young, but the best ones are showing impressive results, resolving in nearly three-quarters of all participating foreclosure cases without the need for formal foreclosure proceedings. Inclosing, I would ask that you consider the impact on future generations if our foreclosure trends continue; I would ask that you vote in support of SB 651 and HR 1411.

Respectfully,
Joseph B Messier

Testimony for CPN 3/22/2011 9:00:00 AM HB1411

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: Kalena Miyashiro

Organization: Individual

Address:

Phone:

E-mail: kminc67@hotmail.com

Submitted on: 3/20/2011

Comments:

Aloha my name is Kalena Miyashiro, as a new home owner I have a new sense of pride, I 'm achieving the American dream. I have had the good fortune that my job, benefits, and income were not negatively impacted in the downturn of the economy. But, if my good fortune changes in these uncertain times, I would like to make sure that homeowners are better protected. If the homeowner is still in their home and is going through a loan modification, it would benefit all parties involved and our communities to have a good mediation process to keep these families in their homes. It is simply the right thing to do. I would like the community I live in to be filled with proud home owners that care about Hawaii and not out of state investors or foreclosure signs. The banks have a responsibility to make sure the foreclosure process is done with a strong following of the foreclosure laws prior to the start of any foreclosure process. HB1411 will help Americans maintain the American dream of homeownership.

Mahalo,

Kalena Miyashiro

baker2 - Kelli

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 19, 2011 9:52 PM
To: CPN Testimony
Cc: schenbeckchang@hawaiiantel.net
Subject: Testimony for HB1411 on 3/22/2011 9:00:00 AM

Testimony for CPN 3/22/2011 9:00:00 AM HB1411

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Esther Schenbeck Chang
Organization: Individual
Address:
Phone:
E-mail: schenbeckchang@hawaiiantel.net
Submitted on: 3/19/2011

Comments: