

Testimony for HB1600 on 2/9/2011 2:00:00 PM

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

Sent: Monday, February 07, 2011 10:47 PM

To: CPCtestimony

Cc: emmatsumoto@hotmail.com

Testimony for CPC/JUD 2/9/2011 2:00:00 PM HB1600

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Eric M. Matsumoto

Organization: Mililazni Town Association

Address: 95-303 Kaloapau St. Mililani, HI

Phone: 282-4324

E-mail: emmatsumoto@hotmail.com

Submitted on: 2/7/2011

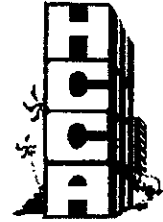
Comments:

AOAOs in foreclosures are relegated to the second or third in line to receive any funds. This has always been a concern over recouping dues owed the association under foreclosures, because all the otehr homeowners end covering the funds not collected. This bill seeks to foreclose without having to reference the foreclosure statute, but rather directly through Chapter 514B. We request this bill be passed.



**Hawaii Council of Associations
of Apartment Owners**
DBA: Hawaii Council of Community Associations

P.O. Box 726, Aiea, HI, 96701
Tel: 485-8282 Fax: 485-8288 HCAAO@hawaii.rr.com



February 6, 2011

Rep. Robert Herkes, Chair
Rep. Ryan Yamane, Vice-Chair
House Committee on Consumer Protection & Commerce

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

Re: HB1600 (Re Condominiums) and HB1544 (Re Foreclosures)
Hearing: Wednesday, Feb. 9, 2011, 2 p.m., Conf. Rm. #325

opposed

Chairs Herkes and Keith-Agaran, Vice-Chairs Yamane and Rhoads and
Members of the Joint-Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of
Apartment Owners (HCAAO) and I am a member of the mortgage foreclosure task
force.

HCAAO is the proponent of SB 1454, which includes most of the language in
these 2 bills and we ask this joint-committee to defer action on both bills and
consider SB1454 when it comes before you.

Both HB 1600 and HB 1544 seek to amend HRS 514B to incorporate the
language of chapter 667 (non-judicial foreclosures). Currently, condominium
associations are authorized to do nonjudicial foreclosures to recover their
delinquent maintenance fee liens by express language in HRS 514A-90(a) and
HRS 514B-146(a) providing that " [t]he lien of the association . . . may be
foreclosed by auction or by nonjudicial or power of sale foreclosure
procedures set forth in chapter 667. . . (emphasis added). Nonjudicial
foreclosures by condominium associations have been subject to legal challenges
because chapter 667 appears to deal exclusively with mortgage foreclosure.
Therefore, these bills incorporate the existing language of chapter 667 to the
condominium statutes to clarify that the associations have express authority to
continue to do nonjudicial foreclosures. Both of these bills seek to amend the
non-jury trial statute to include foreclosures by condominium associations.

HB 1600 (Re Condominiums)

HB 1544 (Re Foreclosures)

House Joint Committee on Consumer Protection & Commerce and Judiciary

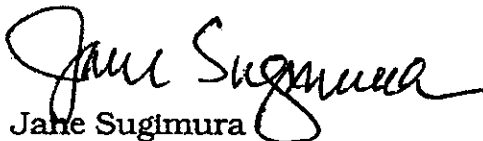
February 6, 2011

Page 2 of 2

The reason I ask that you defer action on these bills is that SB 1454 includes additional amendments not included in these 2 bills that are important to HCAAO's members and they are:

- Amend HRS 421J to allow planned community associations to do nonjudicial foreclosures to enforce their association liens; and
- Amends HRS 514B and HRS 421J to add new language to clarify and emphasize that when an association is the successful bidder at auction, that it takes title subject to any prior mortgage on the unit and that if an association wishes to sell that unit after they acquire it at auction, it must disclose in writing to any prospective buyer that the unit is subject to prior mortgages and liens; and
- Amends HRS 421J and HRS 514B to allow associations who participate in the auction sale to credit bid up to the amount of their lien; and
- Amends HRS 514A to incorporate the amendments proposed for HRS 514B so that condominiums in existence before July 1, 2006 (i.e., the effective date of HRS 514B) who have not yet opted in to HRS 514B as provided in that statute can also continue to do nonjudicial foreclosures; and
- Amends the non-jury trial statute to include foreclosures by condominium (under HRS 514A and HRS 514B) and planned community associations.

Thank you for allowing me to testify on this very important issue.


Jane Sugimura
President

HAWAII CHAPTER


community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

February 7, 2011

Honorable Robert N. Herkes
Honorable Gilbert S.C. Keith-Agaran
Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

Re: HB 1600 SUPPORT

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

I chair the CAI Legislative Action Committee. CAI strongly supports HB 1600.

HB 1600 is an important initiative. Condominiums are non-profit entities that collect money from members to pay bills. Those associations do not choose their members or underwrite risk.

One adverse consequence of the mortgage mess is that a high number of people bought units in condominiums and have since been unable to meet their obligations. This is a direct result of irresponsible lending practices in the for-profit mortgage industry.

The default of one owner results in a direct financial burden on other consumers in the association setting. It is appropriate to protect hard-working consumers from the adverse effects of financial defaults by owners who should have never been given a mortgage loan. It is also appropriate to hold lenders accountable for damage done to associations.

HB 1600 enables associations to foreclose their junior liens without reference to the mortgage foreclosure statute. The procedure described for the foreclosure of association liens provides due process and is consistent with current practice and procedure. Thus, HB 1600 essentially replicates mostly existing law, but puts it directly into the condominium statute.

Honorable Robert N. Herkes
Honorable Gilbert S.C. Keith-Agaran
February 7, 2011
Page 2 of 2

Such authority may be absolutely essential depending on what legislation passes concerning mortgage foreclosure. It is appropriate to provide such authority to condominiums in all events. Circumstances differ between mortgages and condominiums and condominiums should not be caught up in the mortgage industry's troubles.

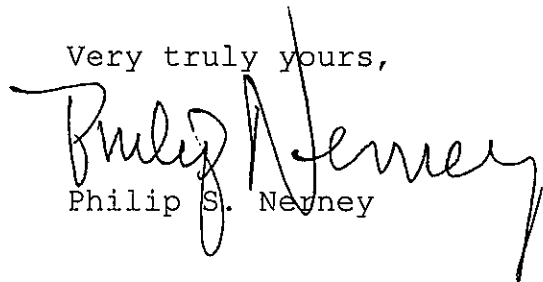
It is important to note that, although HB 1600 proposes new sections to H.R.S. Chapter 514B, those sections essentially re-package mostly existing law. HB 1600 will result in the addition of long verbiage to H.R.S. Section 514B-146, so other parts of the existing Section 514B-146 are being re-designated and broken into separate components.

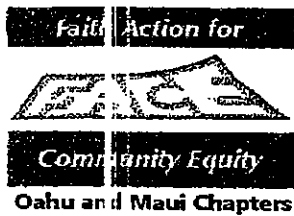
For example, the proposed Section 514B-A is essentially the existing Section 514B-146(g) through (i); Section 514B-B is essentially the existing Section 514B-146(c) and (d); and 514B-C is essentially the existing Section 514B-146(e) and (f). No substantive change in law is intended as to these re-designated sections, with one significant exception. HB 1600 does not include the \$3,600 cap that presently exists in H.R.S. Section 514B-146(h). The six month limitation is maintained, however.

CAI notes that certain amendments may be necessary to clarify some points and/or depending on other legislative action. For example:

1. References to "section 667-5" may require amendment depending on other legislative action;
2. There should be language to clarify that the association may credit bid up to the amount of its lien. For example, a sentence could be inserted on page 20, at the end of line 10, to provide: "The association may credit bid an amount less than or equal to the amount of its lien at the public sale."

Very truly yours,


Philip S. Nerney



Gamaliel Foundation Affiliate

1352 Liliha Street, Room 2
Honolulu, HI 96817

Phone (808) 522-1304
Fax (808) 532-7448
face.office@facehawaii.org
www.facehawaii.org

The Rev. Alan Mark
Statewide President

The Rev. Sam Domingo
Oahu President

The Rt. Rev. Monsignor
Terrence Watanabe
Maui President

Mr. Rishiro Baniaga
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Ms. Judy Ott
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Mr. Drew Astoff
Executive Director

Mr. Patrick Zukemura
Oahu and Organizer

Ms. Terri Erwin, PhD
Maui Lead Organizer

**Testimony requesting mandatory mediation to address foreclosures
Consumer Protection Committee/Judiciary
February 9 2011**

Measures: HB879, 896, 582, 321, 220, 1544, 1600, 1489, 1410, 1411

comments

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

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

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

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

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

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

I know that mandatory mediation will add a burden to DCCA or the judiciary, so I was excited to see that you are implementing a short moratorium on foreclosures while the new program is set up. Please make sure the key provisions of successful mediation make it to the version that is passed out of this committee.

Thank you for your attention to this important issue.

Deacon Stan Franco

Consumer Protection Committee

February 9, 2011

Measures: 879, 896, 582, 321, 220, 1544, 1600, 1484, 1410, 1411

Comments

Aloha. I am Stan Franco, one of the founders of FACE Maui, and a past President of the organization. I am also the current chair of Housing for the Local Person (HELP), an affordable housing coalition in Maui County. I am in support of the concept of mandatory mediation which I believe will help stop the foreclosure crisis in our state.

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

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

Right now the House bills are not as clear about mandatory mediation as I would have hoped. We need a bill that requires that the lender's representative be authorized to negotiate during the mediation. These provisions should be included in any final version of this bill. But we need to go further than that - there must be penalties if the mortgage servicer fails to participate in the mediation in good faith. After all, the family is facing very steep consequences - so the mortgage servicer needs to be serious too. Reading about the robo foreclosures in the paper make me think that we cannot rely on the good will of the lenders on this - especially the larger banks like Bank of America, Chase, Wells Fargo, and others. These banks had an out

sized influence on the task force which may be why mandatory mediation did not make it through.

Thank you for your attention, and for passing a moratorium last week. Please work to make these bills stronger, and move a strong version of the mandatory mediation to the Senate.

Mahalo again for letting me testify.

Testimony for HB1600 on 2/9/2011 2:00:00 PM

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

Sent: Tuesday, February 08, 2011 12:42 PM
To: CPCtestimony
Cc: gfujitani@hawaiibankers.org
Attachments: Hse foreclosure bills 2-9 ~1.pdf (88 KB)

Testimony for CPC/JUD 2/9/2011 2:00:00 PM HB1600

Conference room: 325
Testifier position: oppose
Testifier will be present: Yes
Submitted by: Gary Fujitani
Organization: Hawaii Bankers Association
Address: 1000 Bishop Street Suite 301B Honolulu, HI 96813-4203
Phone: 808-524-5161
E-mail: gfujitani@hawaiibankers.org
Submitted on: 2/8/2011

Comments:

This testimony covers all the foreclosure bills being heard on 2/9 by the joint committee. We will be submitting the same testimony for all the other bills on the agenda.

Presentation of the Committees on Commerce and Consumer Protection and
Judiciary

Wednesday, February 9, 2011 at 2:00 p.m.

Testimony on Various House Bills Relating to Mortgage Foreclosures

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

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying on the various foreclosure related bills being heard today at this joint committee hearing. HBA is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii.

Below is listed our testimony on the bills being heard today.

1. HB 879 Mortgage Foreclosure Task Force Recommendations-SUPPORT with Amendments: The purpose of this Bill is to implement recommendations of the Mortgage Foreclosure Task Force relating to service of notice, conversion from nonjudicial to judicial foreclosure, the bar against deficiency judgments, notice of pendency of action, and extinguishment of the mortgagor's interest pursuant to the old non-judicial foreclosure law.

This Bill reflects the "Language for Proposed Legislation" that is in the Task Force's 2011 Preliminary Report. The recommendations of the Task Force 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.

Proposed Amendments: a) We recommend that this Bill be amended on page 10, line 22 and 17, line 16 relating to deficiencies against an owner-occupant after a non-judicial foreclosure sale. As drafted, if an owner-occupant who is being foreclosed on has "a fee simple or leasehold ownership interest in any other residential real property", the foreclosing lender can pursue or obtain a deficiency judgment against that person. That provision is unduly restrictive.

Mortgage lenders should be allowed to also pursue an owner-occupant for a non-judicial foreclosure deficiency if that person owns any non-residential property (e.g. commercial property, etc.).

This Bill should be amended to delete the word "residential" on page 10, line 22 and page 17, line 16. The phrase should read: "a fee simple or leasehold ownership interest in any other real property".

b) Judicial foreclosure auctions and non-judicial foreclosure auctions in the State have usually been held at court locations. On the Big Island, they have been held at a State building (Hilo) and a public park (Kona). Late last year, the Department of Accounting and General Services stated that it would not allow foreclosure auctions at the State building in Hilo. The Judiciary took the position that it will not approve the use of any court facilities in the entire State for the purpose of conducting non-judicial foreclosure auctions. According to Hawaii Financial Services Association testimony for SB 1175, the Judiciary was concerned that the public would be confused about whether or not non-judicial foreclosures are court sanctioned. In Hilo, there is an additional issue of whether the non-judicial foreclosure auctions can be conducted on public sidewalks adjacent to court buildings and other State buildings. This issue, which was not voted on by the Task Force, is urgent enough that it needs to be addressed legislatively this session to codify what has been a general practice. Unless this problems corrected, non-judicial foreclosure auctions might have to take place at numerous, inconvenient locations. This could discourage members of the public who would want to attend and bid at the auctions. It is in the interest of both the lenders and the borrowers to have members of the public bidding at non-judicial foreclosures.

The legislative wording to correct this problem is simple. This Bill should be amended to state that the auction, i.e. the public sale, should be allowed to take place at a state building in the county where the property is located, subject only to reasonable conditions on the time, place and manner of the public sale.

2. HB 582 Requiring Hawaii Servicing Agent: We support only the new provision in SECTION 2 (a) (5) that requires a mortgage servicer to maintain an office in the State. However, we believe that it would be unreasonable to require all servicers to open an office. The requirement should apply to servicers that service a certain number of mortgages in the State.

We **oppose** SECTION 1 pertaining to mediation and SECTION 3 pertaining to non-judicial moratorium.

Lenders do not want to foreclose on homeowners. Therefore, lenders will work borrowers that have the willingness and ability to keep them in their homes. Most lenders participate in the Federal Home Affordable Modification Program or have their own modification programs to help troubled homeowners stay in their homes. However, it is our experience that most residential owner occupants are unable to make their mortgage loan payments due a reduction in income caused

by unemployment or underemployment. So in most cases foreclosure medication does not really solve the underlying problem of loss of income.

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

The proposed moratorium would have a chilling effect on Hawaii's slowly recovering real estate market by sending a signal that lenders are not able to collect on delinquent loans. This in turn could dry up the availability of mortgage loans and send the State into an economic meltdown by weakening an already fragile real estate market.

3. HB 1411, 1410 and 896 Repealing or Modifying Nonjudicial Foreclosure Statutes-OPPOSE: We oppose these bills which attempt to repeal or modify nonjudicial foreclosure statutes.

Your Mortgage Foreclosure 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 of the Task Force 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.

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

4. HB 1484 Trust Foreclosure Prohibition-OPPOSE: This proposed bill places unrealistic requirements that would prevent a trustee of mortgage-backed securities to foreclose on any property.

In the United States, the most common securitization trusts are Fannie Mae and Freddie Mac, U.S. government-sponsored enterprises. Also Ginnie Mae, a U.S. government-sponsored enterprise backed by the full faith and credit of the U.S. government, which guarantees its investors receive timely payments, does buy limited numbers of mortgage notes.

For example a Fannie Mae-issued mortgage-backed security (MBS) represents an undivided beneficial ownership interest in a group or pool of one or more mortgages.

The mortgage-backed security process begins with a mortgage loan. The loan is made by a financial institution or other lender to a borrower to finance or refinance the purchase of a home or other property. These loans are made to

borrowers under varying terms (e.g., 15-year, 30-year, fixed-rate, adjustable-rate, etc.); during the life of the loan, the balance is generally amortized, or reduced, until it is paid off. The borrower usually repays the loan in monthly installments that typically include both principal and interest.

Because mortgage loans may take years to pay off, lenders must find ways to replenish their funds in order to make more mortgage loans. To do this, lenders sell groups of mortgages with similar characteristics into the secondary mortgage market to issuers or guarantors of mortgage-backed securities, including Fannie Mae.

Fannie pools loans that generally meet its standards and converts them into single-class mortgage-backed securities, which represents an undivided beneficial ownership interest in a group or pool of one or more mortgages.

These government sponsored enterprises provide a valuable funding source to allow your constituents to purchase homes. Any unrealistic statutes that are designed to freeze a trustee's ability to execute their fiduciary duties may make residential real estate loans harder to obtain for future homeowners.

5. HB 321 Foreclosure Documentation Requirements-OPPOSE: This bill would require a lender to include a plethora of documents with their notice of default, and in our experience, the more paper you send a borrower; the more likely the borrower will not read it or miss the essential information which is the action that the borrower must undertake to cure the default.

The borrower/mortgagor is already provided with copies of the promissory note and mortgage at the time of the loan closing. Subsequently, it is standard procedure to provide copies, for a fee, of the mortgage loan documents, at any time requested by the mortgagor.

We also note that this bill assumes certain facts about loan documentation which is incorrect. Many lenders document residential mortgage loans on Fannie Mae or Freddie Mac forms and those forms provide for only the borrower's signature. Thus, the requirement that we provide a copy of loan documents signed by both the mortgagor and mortgagee is inconsistent with marketplace realities, and thus renders the requirement moot.

Most importantly by requiring copies of all written agreements which modify a note, passage of this bill would hinder loan modification programs to help homeowners. We submit that this Committee should support efforts by lenders to help homeowners rather than by passing well-meaning legislation which has the opposite effect.

Not all loan modification programs are reduced to writing. Sometimes, the agreement can be oral and informal. For example, if a borrower says I can pay you in full in two months, we sometimes note that in our files rather than drafting a written agreement, or one drafted by a lawyer which only hurts the borrower because of costs. Basically, the foregoing example is a two month deferral of due

dates in the promissory note. If we had to reduce such an informal agreement to writing, that would be a disincentive to loan modification programs.

6. HB 321, 1600 and 1544 Foreclosure of Condominium Units-OPPOSE: We oppose these bills which attempt to place more of the financial burden from foreclosed condominium units on the back of lenders.

Increasing the losses that lenders incur on condominium foreclosures, may have the unintended consequence of restricting future loans to the condominium market. This in turn could have the negative effect on condo sales and purchases since lenders may require higher down payments to offset potential losses and/or higher interest rates to compensate for the added risk. If mortgage terms are tightened it may affect the value to these properties if prices have to be lowered in order to encourage sales.

It is our understanding that there may not be agreement among the association advocates regarding this legislation and request that this bill be held.

Summary

In a previous House hearing, it was mentioned, without citing a credible source, there will be approximately 250,000 Hawaii foreclosures in 2011. According to the State of Hawaii 2009 data book there were about 515,000 or so housing units in Hawaii. Hawaii Business Magazine February 2011 issue cited home ownership at almost 60% of occupied housing units. At 515,000 units or so, 250,000 is about 49% of units would be in foreclosure. If 250,000 were only owner occupant units, then the foreclosure rate would be 81%. At either rate, this would be very unlikely and would mean the State would have more systemic financial and social problems to face.

In setting foreclosure policy, we must consider the others in our communities, your constituents and our customers, who may be affected. Undoubtedly, this silent majority of your constituents have a stake in foreclosure legislation.

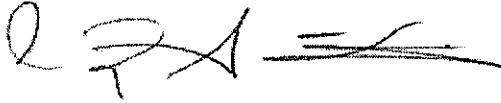
The economic impact from proposed legislation, which by design extends the foreclosure process and/or place a moratorium on foreclosure, applies to only a small segment of the housing market.

Will more stringent loan terms (higher down payment requirements, higher rate to compensate for added legislative risk, etc.) affect your constituents who want to buy or sell a home? What about home owners that see the value of their homes drop in neighborhoods with an inordinate amount of foreclosed homes, where the occupants no longer take pride in maintaining their homes, which adds to neighborhood blight? What about county governments that collect less real property tax revenues because of falling assessed values and face increased costs to enforce property code violations? What about the Realtors, mortgage brokers, appraisers, home builders, union trade workers and the many others that will experience loss of income if our slowly recovering real estate market

stumbles due to unintended consequences of legislation designed to help a few at the expense of the vast majority of your constituents and our customers?

While we understand the intent of the proposed foreclosure legislation to help troubled borrowers, the reality is that a vast majority of foreclosures result from reduced income due to unemployment or underemployment (for example, loss of second job). Therefore, it is best to let banks have the flexibility to help borrowers and not pass permanent legislation to solve a temporary situation.

Thank you for this opportunity to testify.

A handwritten signature in black ink, appearing to read 'Gary Y. Fujitani', with a long horizontal flourish extending to the right.

Gary Y. Fujitani
Executive Director

Drew Astolfi
Director Faith Action for Community Equity
Consumer Protection Committee

February 9, 2011

Measures: 879, 896, 582, 321, 220, 1544, 1600, 1484, 1410, 1411

Thank you for the chance to testify on these important measures.

Comments

FACE recognizes the need for mandatory mediation to address Hawai'i's foreclosure woes. Looking at other states it is - done well - the only thing that seems to truly address the foreclosure crisis. The people of our state need swift strong action on this, and I hope the committee can take a lead on this. FACE leaders were enormously encouraged by this committee's consideration of a temporary moratorium last week. Thank you very much for that.

Successful mandatory mediation needs to adopt several three basic principles:

1. Banks and mortgage servicers must be required to prove they own the loan before foreclosing. Given the evidence of widespread fraud around the country on this matter - especially in light of the so called robo foreclosures this is an essential part of any successful mediation process. It should also be included in any other bill.
2. Mediation has had mixed results around the country - it has succeeded (Nevada and Maryland) where it is strongly mandatory, and where the mortgage servicer or bank is required to send a representative to the mediation that is empowered to make modifications to the loan. Mediation has not done as well when this is not required. In order to truly fix this problem we have to require that the servicers send people with authority to make changes to the mediation.
3. Finally a mandatory mediation program needs teeth to work - loan servicers must face penalties if they do not comply with the mediation process, otherwise there is strong evidence that they will ignore it. A bill that lacks enforcement tools risks failure.

Mahalo nui for your work on this.

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

February 9, 2011

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

Re: **House Bill 1600 (Condominiums)**
Hearing Date/Time: Wednesday, February 9, 2011, 2:00 P.M.

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

The HFSA opposes this Bill.

The purpose of this Bill is to provide various protections, remedies, and notice requirements regarding condominium associations and foreclosure of condominium units.

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.

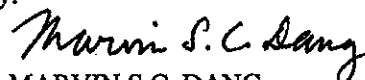
The Task Force, which was created by Act 162 of the 2010 Session Laws of Hawaii, issued its 2011 Preliminary Report to the Legislature. The Task Force's recommendations are contained in other bills, such as House Bill 879. We believe that the recommendations are substantive and provide meaningful improvements 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. Condominium associations were represented on the Task Force.

The provisions in this Bill (House Bill 1600) are not part of the Task Force's recommendations. The HFSA believes that only the recommendations of the Task Force should be adopted by the Legislature. Any other issues can continue to be reviewed by the Task Force over the remainder of this year as the Task Force considers other recommendations for the 2012 Legislature.

We understand that certain condominium organizations do not support the removal of the cap on past-due association fees that is paid by a mortgagee that purchases a foreclosed condominium unit. We similarly oppose the removal of that cap of \$3,600.

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

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association



Hawaii Credit Union League

Your Partner For Success

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



Testimony to the House Committee on Consumer Protection and Commerce, and
House Committee on Judiciary
Wednesday, February 9, 2011, at 2:00 p.m.

Testimony in opposition to HB 1600, Relating to Condominiums

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

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

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

We are in opposition to HB 1600, Relating to Condominiums. This bill would remove the \$3600 cap on that an Association can collect for common assessments assessed during the six-month period immediately preceding the completion of foreclosure. We oppose the removal of the cap.

Thank you for the opportunity to testify.

Testimony for HB1600 on 2/9/2011 2:00:00 PM

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

Sent: Wednesday, February 09, 2011 9:23 AM

To: CPCtestimony

Cc: oneald003@hawaii.rr.com

Testimony for CPC/JUD 2/9/2011 2:00:00 PM HB1600

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: David O'Neal

Organization: Individual

Address: 94-1038 Kaiamu Street Waipahu, HI 96797

Phone: 6880018

E-mail: oneald003@hawaii.rr.com

Submitted on: 2/9/2011

Comments:

AOAOs in foreclosures are relegated to the second or third in line to receive any funds. This has always been a concern over recouping dues owed the association under foreclosures, because all the other homeowners end up covering the funds not collected. This bill seeks to foreclose without having to reference the foreclosure statute, but rather directly through Chapter 514B. I urge you to pass this bill. Thank you.