

**HB1875, HD2,
SD1**



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March 28, 2012

Via Email (JDLtestimony@capitol.hawaii.gov) and Hand Delivery

Senator Clayton Hee
Chair, Committee on Judiciary
Hawaii State Capitol, Room 407

Re: H.B. 1875, H.D.2, S.D. 1 –Relating to Foreclosures
Hearing: Thursday, March 29, 2012 at 10:30 a.m.
Conference Room 16

Dear Chair Hee and Members of the Committee on Judiciary:

I am Michael Wong, an attorney with RCO Hawaii LLLC (“RCO Hawaii”), a law firm dedicated to the representation of the mortgage banking and default servicing industry. Our firm provides a wide range of services in banking and real estate law to more than 200 large and small companies located in several Western states, including Alaska, Idaho, Arizona, Washington, Oregon, California, Nevada and Hawaii. It also serves as retained counsel for Fannie Mae in Hawaii.

RCO is pleased to **submit comments** regarding H.B. 1875, H.D.2, S.D. 1, which implements the recommendations of the Mortgage Foreclosure Task Force, and makes numerous other changes to the Hawaii foreclosure law. RCO specifically supports the intent of the amendments made in H.B. 1875, H.D.2, S.D.1, which change the publication requirements for non-judicial foreclosures to a “newspaper of general circulation” and provide guidelines for qualifying as such a newspaper. This approach, which has been implemented in other states, ensures that a newspaper meets general circulation requirements, and that there is an opportunity for more than one paper to compete to publish non-judicial foreclosure notices. This helps to address the dramatic increase in costs that has occurred for publishing notices as a result of Act 48, Session Laws of Hawaii 2011. RCO believes the amendments proposed in H.B. 1875, H.D.2, S.D.1 are part of the solution to ensure that there is fair competition for the publication of notices.

In addition, RCO appreciates that H.B. 1875, H.D.2, S.D.1 goes one step further and allows for the alternative of notices of public sale for owner-occupant properties to be posted electronically on the DCCA’s website, for both judicial and non-judicial foreclosures. RCO believes that the Internet can and should play a role in improving the foreclosure auction process, particularly by increasing visibility and participation at foreclosure auctions. Specifically, allowing notices of a

foreclosure sale to be published electronically will increase bidders and third party sales. These third party sales are beneficial to everyone because the bidder absorbs the foreclosure costs, the borrower might derive income (if the bid exceeds the offset bid), the bank does not have to add a property to its REO portfolio, and the house is back moving in the market.

RCO notes that, in other states, in lieu of a government sponsored website, notices of sale are either allowed or required to concurrently be published in newspapers and qualified online websites. In Alaska, for example, this approach has been used, and a number of newspaper websites and other qualified websites compete to publish foreclosure sale notices online for a minimal cost. RCO believes that the best solution to the notice issue is to require both print and website publication, in line with the Alaska model.

If the Committee is inclined to leave the requirement as a print publication or website publication, RCO would recommend that it should be made clear that the choice of publication requirement is at the sole discretion of the foreclosing mortgagee, so that the choice of one publication method over the other does not become a point of dispute.

RCO remains willing to engage in further discussion and to provide input on this issue, based upon its experiences in Hawaii and other states. Thank you very much for the opportunity to testify regarding this measure.

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March 28, 2012

Testimony to the Senate Committee on Judiciary and Labor

To: Honorable Senator Clayton Hee, Chair
Honorable Senator Maile S.L. Shimabukuro, Vice Chair

Re: Testimony in Opposition to HB 1875 HD2, Relating to Foreclosures

My name is Cathy Gee H. Kong, and I am testifying on behalf of the Association of Apartment Owners of The Cliffs at Princeville located in Princeville, Kauai, Hawaii. We are in opposition to HB 1875 HD2, Relating to Foreclosures.

Associations are non-profit entities that provide essential services and maintain and repair the association premises. They are completely unlike mortgage lenders. Associations do not choose their members or underwrite risk. Association assessments lack a profit component, and other consumers must make up for the defaults of those who do not pay their share.

The Association opposes the lifting of the cap on an association's super-lien for maintenance fees. It was originally capped at the lesser of 6 months or \$3,200. Under Act 48, that cap lifted to the lesser of 12 months or \$7,200. Now, the super-lien is simply six months of monthly assessments with no monetary cap. The loss of six months of super lien is unfair to associations. This loss represents amounts that other members of the association will have to provide.

Although we oppose any limitation with regard to recorded liens, we do prefer a six year limitation as opposed to SB2429 SD2's two year limitation period.

Thank you for your time and consideration.

Dated: Honolulu, Hawaii, March 28, 2012 at 9:30 a.m.


Cathy Gee H. Kong