

HB2018 HD1

Measure Title: RELATING TO FORECLOSURES.

Report Title: Foreclosures; Unfair or Deceptive Act or Practice; Title Transfers

Description: Repeals the provision automatically making all violations of the mortgage foreclosure law an unfair or deceptive act or practice. Following the expiration of the mortgage foreclosure dispute resolution program in 2014, specifies certain foreclosure violations as unfair or deceptive acts or practices, limits the types of violations that may void a title transfer of foreclosed property, and establishes a time limit for filing actions to void title transfers of foreclosed property. (HD1)

Companion:

Package: None

Current Referral: CPN, JDL

Introducer(s): HERKES

Sort by Date		Status Text
1/18/2012	H	Pending introduction.
1/19/2012	H	Introduced and Pass First Reading.
1/19/2012	H	Referred to CPC/JUD, FIN, referral sheet 3
1/20/2012	H	Bill scheduled to be heard by CPC/JUD on Wednesday, 01-25-12 2:00PM in House conference room 325.
1/25/2012	H	The committees on CPC recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 13 Ayes: Representative(s) Herkes, Yamane, Brower, Carroll, Ito, Keith-Agaran, Luke, McKelvey, Souki, Tsuji, Thielen; Ayes with reservations: Representative(s) Ching, Marumoto; Noes: none; and 2 Excused: Representative(s) Cabanilla, Coffman.
1/25/2012	H	The committees on JUD recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 13 Ayes: Representative(s) Keith-Agaran, Rhoads, Brower, Carroll, Herkes, Ito, Luke, McKelvey, Souki, Tsuji, Fontaine, Thielen; Ayes with reservations: Representative(s) Marumoto; Noes: none; and 2 Excused:

		Representative(s) Cabanilla, Coffman.
2/2/2012	H	Reported from CPC/JUD (Stand. Com. Rep. No. 43-12) as amended in HD 1, recommending passage on Second Reading and referral to FIN.
2/2/2012	H	Passed Second Reading as amended in HD 1 and referred to the committee(s) on FIN with Representative(s) Ching, Marumoto, Pine, Ward voting aye with reservations; Representative(s) Riviere voting no (1) and Representative(s) Okamura excused (1).
2/26/2012	H	Bill scheduled to be heard by FIN on Wednesday, 02-29-12 10:00AM in House conference room 308.
2/27/2012	H	Broadcast of hearing/briefing available. See: www.capitoltv.org
3/1/2012	H	The committees on FIN recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 17 Ayes: Representative(s) Oshiro, M. Lee, Choy, Cullen, Giugni, Har, Hashem, Ichiyama, Jordan, Kawakami, C. Lee, Morikawa, Tokioka, Yamashita, Ward; Ayes with reservations: Representative(s) Marumoto, Riviere; Noes: none; and Excused: none.
3/2/2012	H	Reported from FIN (Stand. Com. Rep. No. 844-12), recommending passage on Third Reading.
3/6/2012	H	Passed Third Reading with Representative(s) Ching, Hanohano voting aye with reservations; Representative(s) Riviere voting no (1) and Representative(s) Cabanilla, Manahan excused (2). Transmitted to Senate.
3/8/2012	S	Received from House (Hse. Com. No. 114).
3/8/2012	S	Passed First Reading.
3/8/2012	S	Referred to CPN, JDL.
3/9/2012	S	The committee(s) on CPN has scheduled a public hearing on 03-14-12 9:00AM in conference room 229.



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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 2012

Wednesday, March 14, 2012
9:00 a.m.

TESTIMONY ON HOUSE BILL NO. 2018, H.D. 1 - RELATING TO FORECLOSURES.

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

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on H.B. No. 2018, H.D. 1, Relating to Foreclosures. My name is Bruce B. Kim and I am the Executive Director of the Department's Office of Consumer Protection ("OCP"). OCP offers the following comments on the bill.

In 2010, the Legislature created the Mortgage Foreclosure Task Force ("Task Force") pursuant to Act 162. The Task Force met over the course of the past two years and submitted separate reports to the Legislature. The reports covered many of the issues surrounding the foreclosure crisis affecting the State and proposed legislation

addressing this complex subject. The first report led to the adoption of Act 48 which sought to reform the foreclosure process and enact significant consumer protections especially in the area of nonjudicial foreclosures. This year the Task Force through its various working groups devoted a significant amount of time and effort in attempting to strengthen Act 48. Ultimately, the Task Force's working groups came up with a number of recommendations intended to provide clarity and certainty to both lenders and borrowers in the foreclosure process. It is OCP's sincere hope that the measures submitted by the Task Force this year will lead to further implementation of Act 48, particularly utilization of the DCCA's alternate dispute resolution program created back in October under Act 48.

The original Act 48 established important consumer protections for borrowers by making the violation of Act 48's provisions a violation of H.R.S. §480-2. This year the Task Force and its Act 48 working group spent a substantial amount of time attempting to reach a compromise between the lenders and borrowers on this contentious issue. This effort led to the Task Force's adoption of an amended H.R.S. §667-60 which identifies twelve (12) specific violations of §667-60 meriting unfair or deceptive acts or practices treatment under §480-2. The amendment also makes clear that only nine (9) violations out of the listed twelve (12) violations are serious enough to warrant setting aside the foreclosure sale under H.R.S. §480-12.

The proposed changes to §667-60 further impose an expedited statute of limitations of 180 days in which to bring an action to set aside a foreclosure sale under § 480-12.

This compromise addresses the lenders' concerns that even a small typographical error could expose them to §480-2 liability and expressly limits such liability to all but the most serious violations of Act 48. Further a borrower may only void a foreclosure sale if an action is filed within 180 days of the recording of the affidavit of sale. Significantly, these changes have the important effect of making the issuance of title insurance on a property purchased in foreclosure more predictable.

Based on the foregoing, OCP believes the Task Force's proposed changes significantly address concerns over the scope of §480-2 violations while continuing to provide important protections to borrowers. Accordingly, the OCP supports the Task Force's changes to H.R.S. 667-60 as approved.

Thank you for this opportunity to testify on H.B. 2018, H.D. 1. I will be happy to answer any questions that the Committee members may have.

LAW OFFICE OF GEORGE J. ZWEIBEL
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Senate Committee on Commerce and Consumer Protection

Hearing: Wednesday, March 14, 2012, 9:00 a.m.
Conference Room 229, State Capitol, 415 South Beretania Street

IN OPPOSITION TO HB 2018, HD1

Chair Baker, Vice Chair Taniguchi, and Committee Members:

My name is George Zweibel. I am a Hawaii Island attorney and have represented mortgage borrowers living on Oahu, Hawaii, Kauai and Maui for many years. Earlier, I was a regional director and staff attorney at the Federal Trade Commission enforcing consumer credit laws as well as a legal aid consumer lawyer. I have served on the Legislature's Mortgage Foreclosure Task Force ("Task Force") since its inception in 2010, although the views I express here are my own and not necessarily those of the Task Force.

I strongly oppose HB 2018, HD1 because it would drastically reduce existing homeowner rights and protections and encourage widespread noncompliance with chapter 667.

HB 2018, HD1 would repeal the provision of § 667-60 declaring that any violation of chapter 667 is an unfair or deceptive act or practice ("UDAP") under § 480-2. Effective October 1, 2014, it would restore more limited UDAP liability and establish a time limit for filing actions to void title transfers of foreclosed properties.

HB 2018, HD1 seeks to eliminate lenders' claimed reason for their decision to boycott nonjudicial foreclosures – potential liability for "trivial" violations of chapter 667 – so they will reconsider and participate in Act 48 dispute resolution. However, in attempting to solve one problem, HB 2018, HD1 would create a much bigger one.

In response to lenders' professed liability concerns, the Task Force painstakingly crafted a compromise that was approved by 13 of 17 voting members. Specifically, the Task Force's proposed subsections (a) and (b) of § 667-60 would limit foreclosing mortgagees' UDAP liability to listed, serious chapter 667 violations. To get Task Force approval, another major concession to lenders was added. Proposed subsection (c) would additionally limit to 180 days the time for filing a court action seeking to void the wrongful transfer of title in a nonjudicial foreclosure. Read together, the Task Force's recommended revisions

to § 667-60 address lenders' stated liability concerns but still preserve the most important homeowner protections. Although HB 2018, HD1 would implement the Task Force UDAP compromise, it would not do so until after the dispute resolution program is currently scheduled to end.¹

Delaying implementation of the revised § 667-60 until after the dispute resolution program ends is self defeating. Presumably, the rationale for sunsetting the program was an assumption that the foreclosure crisis would abate by then. Consequently, the intended protection afforded by retaining UDAP liability for the most serious chapter 667 violations would not be available until *after* the time when they are needed most has passed. Nor would they ever apply to violations related to dispute resolution, which HB 2018, HD1 specifically seeks to encourage.

Moreover, the Task Force UDAP compromise specifically sought to address lenders' stated concerns, thereby removing their claimed reason for not allowing the dispute resolution program to operate. Delaying the effective date of the compromise until after the dispute resolution ends eliminates the reason for the compromise. In that case, full restoration of the current version of § 667-60 would be much more appropriate than the "compromise" version now set forth in Section One of HB 2018, HD1.

For the above reasons, I respectfully request that HB 2018 receive no further consideration and that the Committee on Commerce and Consumer Protection instead approve the Task Force's recommended revisions to § 667-60, which reflect substantial compromise and balance the legitimate interests of homeowners and lenders alike.

Thank you for the opportunity to testify on this important issue.

¹ In my separate testimony on H.B. No. 1875, HD2 I request that Act 48's sunset provision relating to dispute resolution be repealed, because (1) mortgagees' decision to stop doing nonjudicial foreclosures will reduce to considerably less than the intended three years the period during which dispute resolution is actually available, and (2) by facilitating negotiations between owner-occupants and mortgagees to determine whether a loan modification or other agreement avoiding nonjudicial foreclosure is possible, the dispute resolution program will benefit homeowners and loan holders alike for as long as it is available.



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M. Nalani Fujimori Kaina, Esq.
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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 : Wednesday, March 14, 2012, 9:00 a.m.
State Capitol, Conference Room 229

In Opposition to HB 2018, HD1 Relating to Foreclosures

Chair and Members of the Committees:

My name is Madeleine Young, representing the Legal Aid Society of Hawai'i ("Legal Aid"). I am advocating for our clients who include the working poor, seniors, citizens who speak English as a second language, the disabled, other low and moderate income families who are consumers, and families facing default and foreclosure on their homes. I provide bankruptcy services as a staff attorney in Legal Aid's Consumer Unit. Specifically, I teach a clinic to show individual consumer debtors how to prepare and file their own petition for chapter 7 bankruptcy relief, as well as provide full representation to Legal Aid clients in bankruptcy matters. I give counsel and advice to clients on protected income sources, exempt assets, and settlement options regarding their consumer debts. I also provide legal services to clients regarding mortgage default and foreclosure matters, wage garnishment avoidance, fair debt collection practices, debt collection defense, as well as student loan, tax debt, and other consumer debt problems.

We are testifying in opposition to HB 2018, HD1 as it would seriously weaken protections for mortgage consumers in the State of Hawai'i.

HB 2018, HD1 would (1) repeal the provision of § 667-60, HRS, declaring that any violation of Chapter 667 is an unfair or deceptive act or practice ("UDAP") under § 480-2, HRS, subject to civil penalties; and (2) designate certain enumerated foreclosure violations as unfair or deceptive acts or practices that may result in the avoidance of transfer of title in a transfer pursuant to the foreclosure, to be effective when the mortgage foreclosure dispute resolution program sunsets on October 1, 2014. HB 2018, HD1 would also establish a time limit for filing actions to void title transfers of foreclosed properties.

Lenders have argued that HB 2018, HD1 would remove what they say is a chilling deterrent to using the mortgage foreclosure dispute resolution program established under Part V of Chapter 667. In response to lenders' concerns, 13 of 17 voting members of the Mortgage Foreclosure Task Force ("Task Force") carefully crafted a compromise regarding the UDAP provisions of Chapter 667. The Task Force's proposed subsections (a) and (b) of § 667-60 would expressly limit foreclosing mortgagees' UDAP liability only to specifically delineated Chapter 667 violations. Furthermore, proposed subsection (c) would limit to 180 days the time for filing a court action seeking to void the wrongful transfer of title in a nonjudicial foreclosure. As we have previously testified, these recommended revisions to § 667-60 address lenders' stated liability concerns but still preserve the most important homeowner protections.

HB 2018, HD1 would not only remove important UDAP protections for mortgage consumers, it would also greatly reduce the time now available for these consumers to file a court action to void the wrongful transfer of title in a nonjudicial foreclosure. Borrower representatives on the Task Force reluctantly agreed to a 180-day limit solely as a tradeoff for specifically retaining UDAP liability for the serious chapter violations listed in the Task Force's proposed subsections (a) and (b). Delaying the effective date of these UDAP provisions until the expiration of the mortgage foreclosure dispute resolution program in 2014 would make it more difficult for homeowners to establish foreclosure-related UDAP violations, and would severely restrict the time homeowners have to seek relief in court to save their homes by challenging wrongful foreclosures.

Conclusion:

For the above reasons, we respectfully request that HB 2018, HD1 receive no further consideration and that you instead approve the Task Force's recommended revisions to § 667-60, which reflect substantial compromise and balance the legitimate interests of homeowners and lenders alike. Thank you for the opportunity to testify.



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Presentation to the Committee on Commerce and Consumer Protection
Wednesday, March 14, 2012
Testimony on HB 2018, HD1 Relating to Foreclosures

In Opposition

TO: Honorable Rosalyn H. Baker, Chair
Honorable Brian T. Taniguchi, Vice Chair
Members of the Committee

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in opposition to HB 2018, HD1. HBA is the trade organization that represents FDIC insured depository institutions operating branches in Hawaii.

This bill repeals the provision automatically making all violations of the mortgage foreclosure law an unfair or deceptive act or practice. Following the expiration of the mortgage foreclosure dispute resolution program in 2014, specifies certain foreclosure violations as unfair or deceptive acts or practices, limits the types of violations that may void a title transfer of foreclosed property, and establishes a time limit for filing actions to void title transfers of foreclosed property.

The pending AGs settlement and the Consumer Financial Protection Bureau examining the major bank servicers should ameliorate many of the concerns regarding servicer misconduct. The settlement between the state attorneys general and the five leading bank mortgage servicers will result in approximately \$25 billion dollars in monetary sanctions and relief.

In addition to the monetary allocations, the settlement will require comprehensive reforms of mortgage loan servicing. The mandated standards will cover all aspects of mortgage servicing, from consumer response to foreclosure documentation. To ensure that the banks meet the new standards, the settlement will be recorded and enforceable as a court judgment. Compliance will be overseen by an independent monitor who will report to the attorneys general and the court.

Further the Consumer Financial Protection Bureau will be examining and enforcing compliance with new mortgage servicing standards at these five major banks along with bank with \$10 billion or more in assets.

If the Committee moves this bill forward, **we respectfully request the permanent repeal of section 667-60.**

A major concern of Government Sponsored Enterprises (GSEs), such as Fannie Mae and Freddie Mac, with ACT 48 was section 667-60 covering Unfair or deceptive act or practice (UDAP). However, we remain unsure if the GSEs and lenders would use the NJF process without further changes in other parts of Chapter 667.

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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March 14, 2012

Senator Rosalyn H. Baker, Chair
and members of the Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 2018, HD 1 (Foreclosures)**
Hearing Date/Time: Wednesday, March 14, 2012, 9:00 a.m.

I am Marvin Dang, 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 opposes this Bill as drafted.

The purposes of this Bill are to: (a) repeal the provision automatically making all violations of the mortgage foreclosure law an unfair or deceptive act or practice, and (b) following the expiration of the Mortgage Foreclosure Dispute Resolution program in 2014, specify certain foreclosure violations as unfair or deceptive acts or practices, limit the types of violations that may void a title transfer of foreclosed property, and establish a time limit for filing actions to void title transfers of foreclosed property.

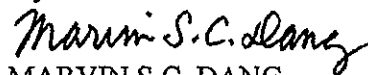
A provision in Act 48 (2011) is HRS Sec. 667-60 (unfair or deceptive act or practice). It is cited as one of various reasons why lenders have elected to pursue judicial foreclosures, rather than non-judicial foreclosures, after May 5, 2011 (the effective date of Act 48).

Section 2 of this Bill is a step in the right direction to address the problematic wording in HRS Sec. 667-60. This Section repeals HRS Sec. 667-60. We support Section 2.

However, we recommend that Section 1 of this Bill be deleted. This Section provides that after the Mortgage Foreclosure Dispute Resolution program expires on September 30, 2014, then beginning on October 1, 2014 there would be at least 21 foreclosure violations specified as unfair or deceptive acts or practices, there would be at least 18 types of violations that could void a title transfer of foreclosed property, and there would be a 180 day time limit for filing actions to void title transfers of non-judicially foreclosed property.

Section 1 should be deleted because the repeal of HRS 667-60 (unfair or deceptive act or practice) should not be dependent on whether there is a Mortgage Foreclosure Dispute Resolution Program. This Section should also be deleted because it would permit a court action to be brought to void the transfer of title after a non-judicial foreclosure sale up to 180 days after the transfer of title. This provision will have the negative consequence of discouraging third parties from bidding at reasonable price levels at non-judicial foreclosure auctions.

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

Testimony for CPN 3/14/2012 9:00:00 AM HB2018

Conference room: 229

Testifier position: Support

Testifier will be present: No

Submitted by: Marina Newby

Organization: Individual

E-mail: kate1662001@yahoo.com

Submitted on: 3/10/2012

Comments:

I want to keep my house and this bill can help me to stop foreclosure and negotiate a loan modification with my bank due to increase in adjustable mortgage rate.