

**HB2019, HD1,
SD1**



Thursday, March 29, 2012, 10:30 a.m.
State Capitol, Conference Room 016
SENATE COMMITTEE ON JUDICIARY AND LABOR

Testimony in Opposition to HB2019, HD1, SD1

TO: The Honorable Clayton Hee, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair
Members of the Senate Committee on Judiciary and Labor

I am Todd Nohara, Executive Vice President of Mortgage Banking for Bank of Hawaii, testifying in opposition to HB2019, HD1, SD1. This bill, in part, prohibits deficiency judgments on certain purchase money mortgages, when a mortgagee has elected to foreclose under power of sale, and for certain residential property sold in a short sale.

While we are sympathetic to the hardship being endured by those facing foreclosure, passage of HB2019 could impose hardship on future borrowers. A likely unintended consequence of disallowing lenders to pursue deficiency judgments would be a tightening of underwriting criteria in order to protect against possible mortgage defaults. This bill shifts the risk of an “underwater” mortgage to the lender. Any prudent lender will seek to protect itself in advance against future losses due to a declining real estate market.

The predictable response by lenders would be to increase the down payment needed and lower the required loan-to-value ratio in order to help guard against loss in the case the borrower defaults. The segment of Hawaii’s population that would be harmed the most is the first-time homebuyer. Tighter underwriting and larger down payments means fewer potential borrowers will be able to qualify for loans. Due to Hawaii’s high home prices, the biggest challenge for many borrowers today is coming up with the required down payment. That would become only more difficult in the future.

The bill is also not clear on whether it is prospective or retrospective. Lenders underwrite loans in good faith that loans will be repaid by borrowers in full. This proposed legislation negatively alters that contract for lenders. If there is no opportunity for a lender to obtain a deficiency judgment, that only creates an incentive for “strategic default” scenarios – for homeowners to simply walk away from their homes when faced with foreclosure. That, in turn, prolongs any housing market recovery and would hurt the local economy.

Prior to foreclosing we take extensive mitigating actions to work with the borrower, our customer, to explore all possible opportunities to prevent foreclosure and allow them to stay in their home. We do our best to preserve their right to remain in their home. However, when circumstances dictate that this is no longer an option, the legislature should preserve the lender’s right to seek a deficiency judgment thereby allowing it to be repaid the money it is legally owed.

We respectfully ask that this measure be held in committee.

Thank you for the opportunity to offer this testimony.

Todd Nohara

A handwritten signature in black ink, appearing to read 'Todd Nohara', written over a horizontal line.

Executive Vice President



Winston K. H. Chow
Executive Vice President & Manager
Consumer Banking Group

March 28, 2012

VIA WEBSITE SUBMISSION

The Honorable Clayton Hee, Chair
Committee on Judiciary and Labor and
Members of the Committee on Judiciary and Labor
Hawaii State Legislature

Dear Senator Hee and the Members of the Committee on Judiciary and Labor:

Subject: HB2019, HD1, SD1 – Relating to Mortgages
Hearing scheduled for March 29, 2012, 10:30 AM

I am Winston Chow, Executive Vice President of the Consumer Banking Group (which includes the residential mortgage loans, origination and servicing), at First Hawaiian Bank. We respectfully request that the chair and committee members hold HB2019, HD-1, SD-1 – Relating to Mortgages.

Eliminating the possibility of a deficiency balance due or forgiveness of a contractual obligation for home buyers may appear on first glance to be a great benefit to consumers. However, the unintended consequences will impact the Hawaii real estate market and initially the first time home buyers and ultimately everyone needing a mortgage loan to purchase a home in Hawaii. The major factor affecting Hawaii's real estate growth is home financing. HB2019 will immediately impact the few local lenders (banks, credit unions, private seller financing) from relying on the motivation of borrowers to maintain their homes and honor their obligations when life events impede their ability to pay.

No deficiency will encourage the "strategic" default option where buyers merely walk away from their obligations. Such has been the case in non-deficiency states across the nation. We have seen entire neighborhoods defaulting and intentional defaulters living rent free while awaiting extended foreclosure processes which have further depressed values and economic recovery.

Unfortunately, the first time home buyer in Hawaii will feel the initial impact with more stringent qualification requirements including higher down payment requirements and less, if any, reliance on co-borrowers or guarantors to support mortgage loan requests (for example—parents and family helping children and grandchildren). This will further reduce demand by buyers who support market values of real estate especially condominiums which usually attract first time buyers.

Agreement of sale or seller financing are usually made available to borrowers who have challenged credit and/or insufficient down payment. These issues become more important in times of high interest rate environments.

As a large originator of purchase mortgage loans in Hawaii, First Hawaiian Bank will need to establish more cautious standards in underwriting for loans impacted by HB2019. Unlike national lenders, local Hawaii institutions do not spread cost of residential loan risk across multiple geographic regions. The competitive advantage of national lenders will be apparent as they will out price and underwrite local institutions. The national institutions will continue to remove jobs and capital to their out of state origination and servicing operations. Customers will be dealing with 800 numbers for service and bear the burden of service levels that has resulted in numerous proposals for new legislation both locally and nationally.

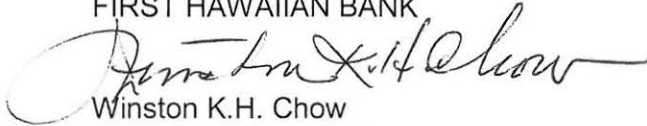
As previously mentioned, HB2019 appears to be very attractive for consumers, but the consequence will result in more stringent qualification requirements for home buyers.

In closing, we ask the committee to remain cognizant of these impacts to Hawaii and our home buyer real estate market. The move by the Federal Government to encourage private capital to begin substitution for our weakened government sponsored entities, FannieMae and FreddieMac, suggest we should encourage our Hawaii institutions as well as private parties to continue to support our home buyers and keep Hawaii less dependent on out of state capital sources.

Thank you for your consideration in holding HB 2019.

Sincerely,

FIRST HAWAIIAN BANK



Winston K.H. Chow
Executive Vice President