



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

TO THE

SENATE COMMITTEE ON
JUDICIARY AND LABOR

THE TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION OF 2012

Thursday, March 29, 2012
10:30 a.m.

TESTIMONY ON H.B. 2019, H.D. 1, S.D. 1/
RELATING TO MORTGAGES

TO THE HONORABLE CLAYTON HEE, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Keali'i Lopez and I am the Director of the Department of Commerce and Consumer Affairs (DCCA). DCCA appreciates the opportunity to offer comments on this bill.

H.B. 2019 H.D.1, S.D.1 requires a court to find the fair market value of real property or interest in real property prior to issuing a money judgment following a power of sale foreclosure. The bill also 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.

The Department understands and empathizes with homeowners who are or have been involved in a mortgage foreclosure, and supports efforts to find equitable and fair solutions with the end result of preserving home ownership in a healthy and vibrant housing market. As a department with jurisdiction over both commerce and consumer affairs, we are mindful of the difficulties in drafting legislation that effects positive change to the mortgagor-mortgagee relationship without unintended negative consequences.

With regard to this bill, the department is concerned that restrictions on deficiency judgments may result in financial institutions further beefing up their underwriting standards for future homeowners by, for example, requiring a larger down payment. This could result in fewer residential mortgages originated by financial institutions, further impacting real estate recovery in Hawaii. Also, financial institutions may not use short sales as a tool for loss mitigation discussions with defaulting homeowners and may instead choose judicial foreclosures as the process to settle defaults with homeowners.

If this committee is inclined to restrict deficiency judgments in some fashion, the department notes that it may not be equitable to grant an owner blanket forgiveness of

TESTIMONY ON HOUSE BILL NO. 2019, H.D. 1, S.D. 1
March 29, 2012, 10:30 a.m.
Page 3

the entire deficiency judgment in circumstances where the homeowner holds an interest in other real property, including investment properties.

Thank you for the opportunity to provide testimony on this measure and I am available to answer any questions the committee might have.



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 Senate Committee on Judiciary and Labor
March 29, 2012

Testimony in Opposition to HB 2019 HD1 SD1, Relating to Mortgages

To: The Honorable Clayton Hee, Chair
The Honorable Maile Shimabukuro, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 81 Hawaii credit unions, representing approximately 811,000 credit union members across the state. Approximately 60 of our credit unions write mortgage loans in the State of Hawaii. We are in opposition to HB 2019 HD1 SD1.

HB 2019 seeks to bar the collection of a deficiency judgment in a short sale or foreclosure of a residential property.

Foreclosure is usually the measure of last resort for credit unions. Credit unions have a long history of "serving the underserved" and put the needs of their members first. It is common practice for credit unions to personally assist members that find themselves in a situation where it becomes difficult to pay their mortgage.

We submit that these provisions would inject unnecessary risk and uncertainty into the mortgage industry. The provisions regarding relief from deficiency judgments in Act 48, developed by the Mortgage Foreclosure Task Force in 2010, are adequate and should not be expanded. Further, this legislation would severely hurt future borrowers. Because lenders would be forced to bear significant additional risk with the passage of this bill, lenders may need to tighten underwriting, require higher down payments, raise fees, or shorten loan term lengths. All of these could make it much more difficult for people to obtain mortgages. Harming the mortgage market would only serve to harm an already struggling economy.

Thank you for the opportunity to provide testimony in opposition.



1050 Queen Street, Suite 201
Honolulu, Hawaii 96814
Ph: 808-587-7886
Fax: 808-587-7899
Toll Free: 1-866-400-1116

Senate Committee on Judiciary and Labor
Thursday, March 29, 2012, 10:30 a.m.
State Capitol, 415 South Beretania Street
Conference Room 016

HB2019, HD1, SD1: SUPPORT WITH AMENDMENTS

Aloha Chair Hee, Vice Chair Shimabukuro, and Committee Members,

My name is Jeff Gilbreath, Executive Director with Hawaiian Community Assets, a HUD-approved housing counseling agency that provides free foreclosure prevention counseling services through our statewide offices. Based on our reach and impact in community, Hawaiian Community Assets held representation on the State Mortgage Foreclosure Task Force since its inception in 2010. While I served as a member of the Task Force in 2011, the views I offer here are my own and not those of the Task Force or its members.

Hawaiian Community Assets **supports HB2019, HD1, SD1 with amendments.** While we support the intent and purpose of this bill, we recommend the Committee restore the language as reflected in HB2019, HD1, passed by the House Finance Committee. In particular, we encourage the Senate Committee on Judiciary and Labor to include the following Amendments:

Amendment #1: Cover refinance as well as purchase mortgage loans. With interest rates at record lows, most homeowners have refinanced their mortgages to reduce their monthly mortgage payments and weather the economic and housing storms. For homeowners who have not refinanced, the unprecedented \$25 billion National Foreclosure Settlement secured between Federal Regulatory Agencies, State Attorneys' General, and the five largest financial institutions in our nation, will ensure that refinancing becomes a reality for even more Hawaii families over the next few years. It makes sense that HB2019, to be truly effective for our families and communities both today and in the future, should cover refinance as well as purchase mortgage loans to reflect the reality of our local housing market.

Amendment #2: Cover deeds in lieu of foreclosure and short sales. Deeds in lieu of foreclosure and short sales both avoid foreclosure and require the homeowner to voluntarily relinquish the property. Homeowners who make this tough decision to "let go" should not have to incur penalty by way of a deficiency judgment for accepting and moving forward in a dignified way to prevent foreclosure.

To articulate the need for anti-deficiency protection for our Hawaii families, as well as the amendments listed above, I have provided the following key points for context.

Financial and emotional impacts of foreclosure on our families should be enough. Each day we work with homeowners going through the extremely painful process of foreclosure. As a homeowner it is not only the financial costs, but the emotional anguish, that has them questioning themselves as providers, adequate as a husband or a wife, and whether or not they will make good on a promise to leave their children better off than themselves. Losing a home to foreclosure is devastating to homeowners and their families. A 2010 National Coalition on Homelessness Report shows loss of housing has “real, lasting, and long-term affects on our children in all aspects of their lives”, today and tomorrow. The financial and emotional impact our families undergo should be enough – an additional deficiency penalty, due in part to across-the-board lower home values in our communities as a result of foreclosures, is not sufficient reason to increase the financial liability of a family.

Limited benefits of deficiency judgments for loan holders; high costs for homeowners. It is safe to say that the adverse effects of deficiency judgments on our homeowners far outweigh any benefits to loan holders. As it stands, loan holders realize limited benefit as a result of deficiency judgments. Such judgments are often uncollectible, and, as a result, loan holders have traditionally dedicated little time to collect them. However, the cost of a deficiency judgment on a family whose home was foreclosed upon due to loss of a job, reduced income, increased expenses, or out-of-control medical costs, could mean bankruptcy, or worse, homelessness – two realities that not only cost the families themselves, but our communities and our State as well.

Inherent disadvantage of homeowners in the deficiency judgment process. When loan holders follow through on collecting deficiency judgments from homeowners, it is the borrower who is at an extreme disadvantage. The housing industry has done a great job over the last 10 years of making mortgage documents extremely complex, hard to understand, and so lengthy that it often takes attorneys to weed through their meaning. Therefore, when deficiency judgments are pursued borrowers do not have the ability to negotiate with lenders on equal footing and thereby have to carry this extra financial burden after they have already lost their home to foreclosure. This practice is unfair, particularly when recession has caused more of us to become unemployed and our home values to decrease approximately \$42,000 according to the Center for Responsible Lending (2011).

Deficiency judgments hurt Hawaii’s economic recovery by sending money out-of-state. The vast majority of mortgages foreclosed in Hawaii are held by out-of-state entities. Therefore, when deficiency judgments are collected, rather than returning money to Hawaii’s lenders or creditors, it goes to offshore judgment creditors on the Continental United States and elsewhere.

In short, HB2019 would go a long way to our Hawaii families by prohibiting deficiency judgments for remaining balances on mortgage loans for certain residential property sold in judicial foreclosures and short sales. However, by including the proposed amendments, we can ensure our laws are truly effective for a majority of our homeowners today and our children as they grow to raise families of their own.

Thank you for your time and consideration.

Sincerely

A handwritten signature in black ink, appearing to read "Jeff Gilbreath". The signature is written in a cursive, slightly slanted style.

Jeff Gilbreath
Executive Director



The REALTOR® Building
1136 12th Avenue, Suite 220
Honolulu, Hawaii 96816

Phone: (808) 733-7060
Fax: (808) 737-4977
Neighbor Islands: (888) 737-9070
Email: har@hawaiiirealtors.com

March 28, 2012

The Honorable Clayton Hee, Chair
Senate Committee on Judiciary and Labor
State Capitol, Room 016
Honolulu, Hawaii 96813

RE: H.B. 2019, H.D. 1, S.D.1, Relating to Mortgages

HEARING: Thursday, March 29, 2012, at 10:30 a.m.

Aloha Chair Hee, Vice Chair Shimabukuro, 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 raises concerns on H.B. 2019, H.D.1, S.D.1 which requires a court to find the fair market value of the real property or interest in real property prior to issuing a money judgment following a power of sale foreclosure and 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.

HAR has concerns about this bill because it is a dramatic departure from the current law and may have significant impact on the real estate industry in Hawai'i. At a time when the economy is still in a fragile state, HAR believes that disallowing most residential property deficiency judgments (of less than 4 units) raises concerns about the effect on both current homeowners and potential future homebuyers – particularly first time homebuyers.

In the context of short sales, HAR believes the final agreement between the parties is the appropriate document to specify whether a deficiency judgment will be pursued, as the result of the negotiations between the parties. Therefore, we believe that disallowing deficiency judgments in this context is not sound public policy. Overall, the proposal to prohibit deficiency judgments for residential properties may create uncertainty for the real estate market, and should be fully analyzed to make sure that there are no unintended consequences.

Mahalo for the opportunity to testify.





808-521-5161
FAX
808-521-4126
ADDRESS
1000 Bishop Street, Suite 301B
Honolulu, HI 96813-4203

Presentation to the Committee on Judiciary and Labor
Thursday, March 29, 2012
Testimony on HB 2019, HD1, SD1 Relating to Mortgages

In Opposition

TO: Honorable Clayton Hee, Chair
Honorable Maile S.L. Shimabukuro, Vice Chair
Members of the Committee

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in opposition to HB 2019, HD1, SD1. HBA is the trade organization that represents all FDIC insured depository institutions operating branches in Hawaii.

This bill prohibits deficiency judgments on residential purchase money mortgages, seller take-back financing and short sales. This bill would take away the right of a lender to pursue a deficiency for both judicial and nonjudicial foreclosures.

We respectfully oppose this bill since it would harm future borrowers by making it more difficult to qualify to purchase a home, especially, for first-time and middle income borrowers.

A **deficiency** arises if the sale proceeds are not sufficient to pay the entire balance owed on a mortgage loan. The difference between what was owed and what the home sold for is called a deficiency balance. In certain cases, the entire unpaid debt is forgiven but in other cases, an agreement is reached so the borrower pays a portion or all of the remaining unpaid balance, depending on the financial condition of the borrower.

All mortgage loans were underwritten on the basis that the entire loan would be repaid over time. To change the contract between the lender and borrower that converts a recourse loan to a non-recourse loan after the loan was funded presents severe legal ramifications. Additionally, if mortgage loans become non-recourse, lenders would have to consider more stringent loan qualification terms, like a larger down payment requirement from future borrowers to protect itself against loss.

The option for a lender to obtain a deficiency judgment acts as a deterrent for borrowers walking away from contractual obligations. If this bill passes, it would encourage strategic defaults, which will increase foreclosures and impact the recovery of the real estate market. A strategic default is the decision by a borrower to stop making payments on a debt despite having the financial ability to make the payments.

The continued introduction of foreclosure legislation just creates more uncertainty for lenders in trying to determine risks. This in turn can negatively impact future borrowers, as lenders may tighten loan qualification criteria due to the unknown risk created by changing foreclosure laws.

Hawaii's banks, before taking any foreclosure action, will work closely with the troubled borrower to explore all possible opportunities to allow them to stay 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 to minimize any unintended consequences for future home buyers.

In crafting legislation, it is imperative that the needs of delinquent borrowers be balanced against the interests of future borrowers and the potential harm to the economy if credit is restricted.

While we remain sympathetic to those homeowners who are experiencing hardship, we ask that this bill be held.

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

Testimony to the Senate Committee on Judiciary and Labor
March 29, 2012

Testimony in Opposition to HB 2019 HD1 SD1, Relating to Mortgages

To: The Honorable Clayton Hee, Chair
The Honorable Maile Shimabukuro, Vice-Chair
Members of the Committee

My name is Tom Ohashi, and I am testifying on behalf of HawaiiUSA Federal Credit Union a Hawaii based federal credit union serving over 130,000 members. HawaiiUSA FCU ranks among the top credit union residential mortgage producers year in and year out. In 2006, HawaiiUSA FCU first offered a First Time Home Buyer portfolio loan program to our members that was designed to fill a void (such as low down-payment loans) in the marketplace. To date we have lent nearly \$30 million in purchase money mortgage loans to over 93 members and their families which helped turn their dream of owning their home for the first time into a reality.

Passage of HB 2019 will prohibit portfolio lenders like HawaiiUSA FCU to collect on any deficiency judgments for purchase money mortgages in a short sale or foreclosure of residential 1-4 unit properties.

Prohibitions such as these will force the credit union to rethink its First Time Homebuyer program, and may result in a scaled back version of our program that currently offers loan to values of up to 97% of the appraised value. Because the credit union will have to bear considerably more risk with the passage of this bill, we may need to tighten our underwriting criteria, increase the down-payment requirements, increase the interest rate and fees or shorten the loan term which will effectively price many potential first time homebuyers out of the market.

HawaiiUSA FCU is committed to assisting its qualified members in realizing their dream of homeownership however passage of this bill will create additional risk and uncertainty for the credit union and will negatively impact our ability to offer first time homebuyer portfolio loans such as these.

Thank you for the opportunity to provide testimony in opposition.



PO Box 2300
Honolulu HI 96804-2300

**Presentation to the Senate Committee on Judiciary and Labor
Thursday, March 29, 2012, 10:30 a.m., Room 016
HB 2019, HD1, SD1**

Chair Clayton Hee,
Vice Chair Maile S. L. Shimabukuro, and
Members of the Committee:

Aloha, my name is Jon Whittington. I am the president of American Savings Bank Home Loans. American Savings Bank ("ASB") is a Federal savings bank whose roots in Hawaii date back to 1925, and has assets of over \$4.9B.

ASB opposes House Bill 2019, HD1, SD1, and respectfully requests that this committee hold it.

In addition to Hawaii Bankers Association's testimony on this bill, please note that the possibility of a deficiency judgment helps to deter borrowers from strategically defaulting on their loans. Knowing that one may walk away from a note and not be responsible for the balance of the loan is a tempting proposition, and is not fair to lenders.

In projecting into the future should this bill become an act, when underwriting and per investor guidelines, lenders will have to create strategies to protect investors against the risk of *buy and bail*. This scenario is where an existing homeowner purchases a second property and then strategically defaults on his first property (knowing that a deficiency judgment cannot happen). To address this there will be more scrutiny of borrowers to try to detect a *buy and bail* situation, and possibly more conjecture regarding borrowers seeking a second home. Things may include requiring higher equity in the first home, and if the borrower represents an intention on renting the first home, supplemental proof of that (like a rental agreement, and the tenant's deposit).

I appreciate your kind attention.



CENTRAL PACIFIC BANK

March 28, 2012

VIA INTERNET

The Honorable Clayton Hee, Chair
The Honorable Maile S. L. Shimabukuro, Vice Chair
Members of the Committee on Judiciary and Labor
Hawaii State Legislature

RE: Testimony of Central Pacific Bank regarding HB2019, HD1, SD1
Hearing Date and Time: March 29, 2012, 10:30 AM

Ladies and Gentlemen:

I am Blenn Fujimoto, Executive Vice President of Specialized Markets at Central Pacific Bank ("CPB") and am submitting this testimony in opposition to HB2019, HD1, SD1 (the "Bill").

CPB is sensitive to the situations of many Hawaii homeowners facing foreclosure and the possibility of a deficiency judgment against them due to the diminished property value of their home. This Bill proposes to eliminate the possibility of a deficiency judgment in certain situations. While on its face, the Bill appears beneficial to consumers, unintended consequences of the Bill will, in the long run, prove detrimental to all consumers. To avoid such consequences, this Bill should be held in committee.

First, eliminating deficiency judgments for purchase money mortgages could result in more stringent loan qualification conditions to mitigate the risk of borrower default and diminishing property values. Lower loan-to-value ratio conditions will require increased down payments and result in fewer qualified buyers of new and existing homes. This will have a further negative effect on the real estate market which is already struggling to recover from the present economic downturn.

Second, it has been observed in other states where deficiency judgments are limited that the phenomenon of "strategic defaults" is exacerbated. Savvy borrowers will strategically default on loans where the property value of the mortgaged home is less than the outstanding balance of the loan. Lenders will be left to incur significant costs to foreclose on these properties with no prospect of recovering anything further from the defaulting borrower. Due to recent legislation and pending legislation regarding mortgage foreclosures, this process, whether completed judicially or non-judicially, could ultimately take up to one year or more to complete. In these instances, defaulting borrowers could live "rent-free" in their homes until the foreclosure process is complete. With no incentive to maintain these homes, the ultimate sale price for the home will drop even further, exacerbating the depressed values and further hindering economic revitalization of the neighborhood. These hard costs that will be incurred by lenders and the consequences of such costs go far beyond the perceived goal of reallocating the risk to the lender for depressed property values. These costs will invariably have to be recovered in other ways, either in increased fees for loans or higher interest rates. Essentially, the costs will be borne by all consumers, not just the ones who have defaulted on their loans.

Third, with respect to the appraisal requirement, will a Court recognize and set the appraisal fee to take into consideration the additional risk and potential time demands that may be incurred by the appraiser

Testimony of Central Pacific Bank
RE: HB2019, HD1, SD1
March 28, 2012
Page 2

issuing these new court-mandated appraisals? Will the appraisal industry be able to handle the increased demand for appraisal services? Will such demand raise the cost of all appraisals in the long run? If so, and it is hard to imagine that it wouldn't, such increased costs will again be borne by all consumers.

Finally, the most obvious response to this proposed legislation will be a further retreat from the non-judicial foreclosure process. Because of its relative efficiency and decreased costs as compared to judicial foreclosures, there are many instances where a non-judicial foreclosure is actually beneficial to the defaulting borrower and the public as a whole. Defaulted investor loans, or loans where the borrower has disappeared or fled to the mainland all could be more efficiently administered through the non-judicial process by reducing the deficiency of the borrower (less accrued interest and lower additional costs) and by placing the property on the market sooner than would be accomplished through a judicial foreclosure. This Bill however, makes the non-judicial process even more unavailable to the lender and further burdens the judiciary already faced with an exploding docket of judicial foreclosures in light of last year's passage of Act 48.

Ultimately, in light of the above, this Bill will not be beneficial to consumers and will further burden our already over-worked and crowded court system with even more judicial foreclosures.

In conclusion, we would be remiss if we did not make clear to the honorable members of this Committee that CPB and its employees are doing all they can to assist Hawaii homeowners during this current economic crisis. A myriad of foreclosure mitigation measures have been implemented by CPB and vital resources and employees have been reallocated to address this continuing problem. However, despite these efforts, foreclosure is sometimes inevitable and a necessary remedy to ensure that this state continues on its road to economic recovery. Legislation that attempts to benefit these groups of consumers may be beneficial and welcomed by those involved, but such attempts must be tempered by the unintended negative consequences these laws may have on all consumers. This Bill is an example of such an effort. While beneficial in the short-term to a limited number of consumers, this Bill nevertheless will ultimately have a longer-term, negative effect on all consumers and must not be allowed to leave this committee.

CPB thanks the Committee for the opportunity to present this testimony.

Sincerely,

CENTRAL PACIFIC BANK



Blenn Fujimoto

March 28, 2012

To: The Honorable Clayton Hee, Chair
The Honorable Maile Shimabukuro, Vice-Chair
Members of the Senate Committee on Judiciary and Labor

My name is Alan Arai, President/CEO of the Valley Isle Community Federal Credit Union. We are in opposition to HB 2019 SD1, Relating to Mortgages.

Valley Isle Community Federal Credit Union serves all residents on the island of Maui, offering full-service financial institution services. We have a long, proud history of helping Maui residents achieve their financial goals, beginning with our early days as a sugar plantation credit union. We take pride in putting the needs of our members' first, offering personalized services and assistance.

Our credit union does many different types of mortgages to help our members achieve their dreams of homeownership. Over the years, we have helped many families get their homes in Skill Village (Paia), Dream City (Kahului), and many other areas of Maui.

Should HB 2019 SD1 become law; our credit union will be forced to account for the additional risk. This could translate into higher down-payment requirements, higher fees, or tightened underwriting standards, all of which could harm the economic recovery of our community. It will definitely make it harder for people of modest means or the common man to qualify for a mortgage. Maui has been hit particularly hard with respect to the fall of the housing market, and while credit unions have been trying to be part of the solution, this bill will impede our ability to lend.

Thank you very much for your consideration of this important matter.

Mahalo.

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 29, 2012

Senator Clayton Hee, Chair
and members of the Senate Committee on Judiciary and Labor
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 2019, H.D. 1, S.D. 1 (Mortgages)**
Hearing Date/Time: Thursday, March 29, 2012, 10:30 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.

The purposes of this Bill are to: (a) require a court to find the fair market value of the real property or interest in real property prior to issuing a money judgment following a power of sale (non-judicial) foreclosure; and (b) prohibit deficiency judgments on certain purchase money mortgages, when a mortgagee has elected to foreclose under power of sale (non-judicial foreclosure), and for certain residential property sold in a short sale.

The concepts in this Bill, as originally introduced and in the current draft, were not part of the recommendations that the Hawaii Mortgage Foreclosure Task Force made to the 2012 Legislature. The contents of this Bill was lifted virtually "word for word" from the California law regarding deficiencies. Unique mortgage terms and real estate terms from the California law were pasted into this Bill, even though those terms aren't generally used in Hawaii. Just like the California law, this Bill is inconsistent, confusing, and overly complicated.

Hawaii already has laws restricting deficiencies in power of sale foreclosures, i.e. non-judicial foreclosures:

1. For non-judicial foreclosures under Part II of HRS Chapter 667, here is the existing statute:

§667-38 Recordation; full satisfaction of debt by borrower. The recordation of both the conveyance document and the affidavit shall operate as full satisfaction of the debt owed by the borrower to the foreclosing mortgagee even if the foreclosing mortgagee receives nothing from the sale proceeds, unless the debt is secured by other collateral, or except as otherwise provided by law. The debts of other lien creditors are unaffected except as provided in this part.

2. For non-judicial foreclosures under Part I of HRS Chapter 667, here is the existing statute:

§667-5 Foreclosure under power of sale; notice; affidavit after sale; deficiency judgments.

...

(e) The mortgagee or other person, excluding an association, who completes the nonjudicial foreclosure of a mortgage or other lien on residential property pursuant to this part shall not be entitled to pursue or obtain a deficiency judgment against an owner-occupant of the residential property who, at the time the notice of intent to foreclose is served, does not have a fee simple or leasehold ownership interest in any other real property.

This Bill would now allow a deficiency judgment to be issued by a court under certain circumstances after a non-judicial foreclosure. Inconsistently and confusingly, the existing statutes restricting deficiencies after non-judicial foreclosures, i.e. HRS Sec. 667-38 and HRS Sec. 667-5(e), remain unchanged.

This Bill would prohibit a deficiency judgment on a purchase money mortgage loan that is used to purchase a residential property which is to be occupied by the borrower. This prohibition seems to apply to non-judicial foreclosures, but it's unclear if it applies or doesn't apply to judicial foreclosures.

Additionally, this Bill prohibits a deficiency after a "short sale" where a residential property is voluntarily sold by an owner, the lender consents to the short sale, and the sales proceeds is not enough to pay off all the mortgage loan. This restriction is so broadly worded it applies regardless whether the residential property is occupied by a homeowner or by a tenant, and it applies even if the residential property is an investment property.

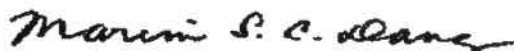
To add to the complexity of this Bill, there is a list of exceptions to the prohibitions.

Just like the California law from which this Bill is copied, the wording in this Bill is confusing and complicated as to when a deficiency judgment can or cannot be obtained. The unique facts and circumstances for each mortgage loan will need to be analyzed and re-analyzed by lenders and borrowers ... and each of their attorneys ... based on what is contained in this Bill.

Aside from those problems with this Bill, we believe that it is not sound public policy to create new ways for borrowers to escape their contractual obligation to pay the balance of their mortgage loans. If this Bill becomes law and if lenders have to absorb the monetary losses because they can't pursue deficiencies, there could undoubtedly be negative consequences. Loan underwriting standards of lenders could be tightened so that borrowers would be required to put more money down to lower the ratio of the amount of the loan to the value of the property. More loan fees or higher interest rates could be charged. Lenders might not readily consent to future short sales. As a result, existing and potential borrowers would be adversely impacted if this Bill becomes law.

Accordingly, we ask that your Committee "hold" this Bill and not pass it.

Thank you for considering our testimony.



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



375 KEKUANAOA ST HILO HI 96720-4360
PHONE (808) 961-6691 USA TOLL FREE (800) 762-3958 FAX (808) 935-0306

Testimony to the Senate Committee on Judiciary and Labor
March 29, 2012
Testimony in Opposition to HB 2019 HD1 SD1, Relating to Mortgages

To: The Honorable Clayton Hee, Chair
The Honorable Maile Shimabukuro, Vice-Chair
Members of the Committee

My name is Bernard A. Balsis, Jr., and I am testifying on behalf of the Independent Employers Group Federal Credit Union (IEG FCU) in Hilo Hawaii. We have approximately 3,000 members. We write mortgage loans in the State of Hawaii. We are in opposition to HB 2019 HD1 SD1.

HB 2019 seeks to bar the collection of a deficiency judgment in a short sale or foreclosure of a residential property.

Foreclosure is our measure of last resort in the collection of any debt. There are never winners. IEG FCU has a long history of "serving the underserved" and the working citizens of Hawaii. IEG FCU is a Certified Community Development Financial Institution and puts the needs of our members first. We work with members that find themselves in a situation where it becomes difficult to pay their mortgage. We look for ways to help. In short, we do business humanly.

We submit that these provisions in HB 2019 will inject unnecessary risk and uncertainty into the mortgage industry. The provisions regarding relief from deficiency judgments in Act 48, developed by the Mortgage Foreclosure Task Force in 2010, are adequate and should not be expanded. Further, this legislation would severely hurt future borrowers. Because we lenders would be forced to bear significant additional risk with the passage of this bill, lenders may need to tighten underwriting, require higher down payments, raise fees, or shorten loan term lengths. All of these could make it much more difficult for people to obtain mortgages. Harming the mortgage market would only serve to harm an already struggling economy.

Thank you for the opportunity to provide testimony in opposition.

hee6 - Dinna

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 28, 2012 2:42 PM
To: JDLTestimony
Cc: marcyfrommaui@gmail.com
Subject: Testimony for HB2019 on 3/29/2012 10:30:00 AM

Testimony for JDL 3/29/2012 10:30:00 AM HB2019

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Marcy Koltun-Crilley
Organization: Individual
E-mail: marcyfrommaui@gmail.com
Submitted on: 3/28/2012

Comments:

I STRONGLY SUPPORT HB2019 and I am very grateful to Rep. Herkes for introducing it and to all on the committee who support it.

While it is a very complicated process, banks DO get to double dip on homeowners.

Furthermore, under the recent landmark \$25 billion foreclosure abuse settlement, billions of that money can be used by banks as "credit"; when they do things like principal reductions, demolition of empty homes, and mortgage forgiveness. The settlement may give them another opportunity to dip once again.

It is up to the State Of Hawaii to make sure the banks to do not continue to profit from their bad behavior and to level the playing field for home owners.

Marcy Koltun-Crilley
Maui, Hawaii



LIFE TESTIMONY

Testimony to the Senate Committee on Judiciary and Labor
March 29, 2012

Testimony in Opposition to HB 2019 HD1 SD1, Relating to Mortgages

To: The Honorable Clayton Hee, Chair
The Honorable Maile Shimabukuro, Vice-Chair
Members of the Committee

My name is Clayton Fuchigami and I am the President/CEO of Maui Federal Credit Union. I am testifying on behalf of Maui Federal Credit Union, a Maui chartered federal credit union serving employees of over 90 select employee groups with 5,262 members. The mortgages we originate are primarily second mortgages and home equity line of credits (HELOC's). We are in opposition to HB 2019 HD1 SD1.

HB 2019 seeks to bar the collection of a deficiency judgment in a short sale or foreclosure of a residential property.

Foreclosure is usually the measure of last resort for credit unions. Credit unions have a long history of "serving the underserved" and put the needs of their members first. It is common practice for credit unions to personally assist members that find themselves in a situation where it becomes difficult to pay their mortgage and to provide our members access to capital for such important things as medical expenses, college tuition, improvements to their homes, consolidating their overwhelming consumer debt to name just a few using real estate secured loans.

Preventing us from collecting deficiency judgments would especially expose us to losses due to the secondary position of our lien.

This would result in increasing the pricing of the mortgage loans we offer and implementing more stringent underwriting and qualification standards which would limit the availability of this type of loan to our members going forward. Changes to current legislation would contribute to the curtailing of loans at a time when members need it the most and be available at a higher cost.

The provisions regarding relief from deficiency judgments in Act 48, developed by the Mortgage Foreclosure Task Force in 2010, are adequate and should not be expanded.

Thank you for the opportunity to provide testimony in opposition.



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The Honorable Senator Clayton Hee, Chair
and members of the Senate Judiciary and Labor Committee
Hawaii State Capitol
415 S. Beretania Street, Room 407
Honolulu, Hawaii 96813

Dear Chair Hee and Committee members:

**Subject: HB 2019, HB1, SD1
Relating to Mortgages**

I am Richard K.C. Lau, Senior Vice President of Territorial Savings Bank. Our Bank has 27 branches throughout the islands, including 3 on Maui, 2 on the Big Island and one on Kauai. For 2011, we were ranked number 7 by Pacific Business News in the amount of residential mortgage loans made in Hawaii.

Territorial Savings Bank strongly opposes HB 2019, HB1, SD1, which prohibits deficiency judgments against owner occupants in judicial foreclosures. Unlike the mainland lenders that sell the mortgage loans they make in Hawaii, our bank keeps many of these loans.

Without deficiency judgments, lenders must rely only upon the real property asset and become asset lenders. Today, asset loans typically have higher interest rates and larger down payment requirements. Today, our bank does not make asset based residential mortgage loans.

We believe that without deficiency judgments, we may need to be like California lenders and sell all our loans because there will be a growing number of borrowers who will speculate that the price of their home will go up and, if they made a poor investment, will walk away from their loan without any real consequences.

With deficiency judgments, we find that borrowers will take that into account and generally honor their loan obligations to avoid foreclosure and preserve their credit. In turn, upon our borrowers' request and when appropriate, our Bank has modified their home loan to provide temporary relief for medical or unemployment reasons.



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National lenders and the secondary mortgage market have already made it harder to qualify for mortgage loans. If this bill becomes law, our Bank is likely to add new underwriting restrictions on these standards if we choose to continue to keep the majority of our mortgage loans.

Very truly yours,

A handwritten signature in cursive script that reads 'Richard K.C. Lau'.

Richard K.C. Lau
Senior Vice President