

HB2019 HD1

Measure Title: RELATING TO MORTGAGES.
 Report Title: Mortgages; Deficiency Judgments; Foreclosure by Action; Short Sales; Deeds in Lien of Foreclosure
 Description: Prohibits deficiency judgments to recover the remaining balance on mortgage loans for certain residential property sold in a foreclosure action or short sale. (HB2019 HD1)
 Companion:
 Package: None
 Current Referral: CPN, JDL
 Introducer(s): HERKES

<u>Sort by Date</u>		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, UNAMENDED. 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, UNAMENDED. 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. 44-12), recommending passage on Second Reading and referral to FIN.

2/2/2012	H	Passed Second Reading and referred to the committee(s) on FIN with Representative(s) Ching, Marumoto, Pine, Riviere, Ward voting aye with reservations; none voting no (0) 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, WITH AMENDMENTS. The votes were as follows: 16 Ayes: Representative(s) Oshiro, M. Lee, Choy, Cullen, Giugni, Har, Hashem, Ichiyama, Jordan, Kawakami, C. Lee, Morikawa, Tokioka, Yamashita; Ayes with reservations: Representative(s) Marumoto, Ward; 1 Noes: Representative(s) Riviere; and Excused: none.
3/2/2012	H	Reported from FIN (Stand. Com. Rep. No. 946-12) as amended in HD 1, recommending passage on Third Reading.
3/2/2012	H	Forty-eight (48) hours notice Tuesday, 03-06-12.
3/6/2012	H	Passed Third Reading as amended in HD 1 with none voting aye with reservations; Representative(s) Ching, Marumoto, Riviere voting no (3) and none excused (0). Transmitted to Senate.
3/8/2012	S	Received from House (Hse. Com. No. 115).
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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BRIAN SCHATZ
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KEALI'I S. LOPEZ
DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE
AND CONSUMER PROTECTION

THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

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

TESTIMONY ON HOUSE BILL NO. 2019, H.D. 1, RELATING TO MORTGAGES.

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

The Department of Commerce and Consumer Affairs ("DCCA"), Office of Consumer Protection ("OCP") appreciates the opportunity to appear today and testify concerning H.B. No. 2019, H.D. 1. My name is Bruce B. Kim and I am the Executive Director of OCP. OCP supports the intent of the bill with comments.

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 my 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 Task Force did not consider changes relevant to H.R.S. Chap. 506 or to Chap. 667 concerning deficiency judgments. OCP generally supports the intent of the bill that eliminates deficiency judgments against "owner occupants" as that term is defined in Act 48 and only under certain limited circumstances. HRS § 667-21(b). However, it may not be equitable to grant an owner blanket forgiveness of the entire deficiency judgment in circumstances where the homeowner holds an interest in other real property, including investment properties. Perhaps additional conditions to that effect would be appropriate.

OCP appreciates the opportunity to testify on H.B. No. 2019, H.D. 1, and would be happy to answer any questions the committee may have.



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KEALI'S S. LOPEZ
DIRECTOR

TO THE
SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION
THE TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION OF 2012

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

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

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions ("Commissioner") testifying on behalf of the Department of Commerce and Consumer Affairs. We would like to provide comments on H.B. 2019, H.D. 1.

The Bill prohibits requesting and rendering deficiency judgments for short sales when mortgagors have been in continuous occupancy of properties used as their principal residence; when mortgagors used proceeds secured by the real property to

purchase the real property; and when mortgagors have not refinanced the mortgage after origination. The Department believes that when financial institutions agree to sell property at a price which is less than the mortgaged amount, the decision is based on a thorough and sophisticated evaluation of the factors relating to the property's value, the economy, and the financial interests of the financial institution. The Department notes that there are situations where the borrower is not delinquent with the mortgage payments, but would like to get out of the loan because the valuation of the property dropped below the amount of the mortgage.

The Department sympathizes with homeowners who entered into mortgage transactions with terms they might not have fully understood or for homeowners who thought they would be able to refinance their loans or resell their homes at a profit during the housing boom. As we saw, the housing bubble burst leaving many homeowners carrying a mortgage that they could not afford. Financial institutions also are enforcing the terms of the mortgage on homeowners.

The Department provides comments to the bill as we believe there are unintended consequences with eliminating deficiency judgments on short sales and deed in lieu foreclosures. A short sale and deed in lieu are tools used by financial institutions as an alternative to foreclosure. A both tools must be agreed to by the parties, and the financial institution must agree to a sale for less than the balance of the mortgage (short sale) or agree to take back the deed in which a borrower conveys all

interest in real property to the lender to satisfy a loan (deed in lieu). In addition, a financial institution may collect the unpaid balance as a deficiency judgment as part of the mortgage terms as a short sale does not release the borrower from their obligations under the mortgage.

1. When working with borrowers, financial institutions consider a number of options when the borrower experiences a financial hardship, one of which allows the borrower to request that the bank accept a discounted payoff (or short sale) in order to release the mortgage lien and allow a borrower to sell their home. Short sale agreements do not necessarily release borrowers from their obligations to repay any deficiencies of the loans, unless specifically agreed to between the parties.
2. Some borrowers have other properties or assets in which to use to pay the deficiency judgment. The Department sees many cases where borrowers have five or six mortgages and have defaulted on all of them. The Department provides assistance to borrowers in working with financial institutions for their own homes, not for any of the investment properties. The Department explains that any investment property in which the financial institution agrees to a short sale may be subject to a deficiency judgment.
3. Financial institutions may not use short sales as an option in working on a solution with the borrower if they are not allowed to seek deficiency

judgments. Since the financial institution must agree to the short sale, if the sale is significantly below the mortgaged amount, the financial institution may not agree to the sale price even if the seller agrees. The loss to the financial institution may cause the financial institution to be in a situation where it becomes unsafe in the eyes of the federal and state regulators. The Department reviews the short sales, along with all other credit risks when it examines and reviews the financial institution during its safety and soundness examination. The Department cautions the legislature, if there are too many of these loans on the financial institution books, the financial institution may be subject to enforcement orders.

4. Even if the first position lien holder agrees to the short sale, the junior lien holder may not agree to forgive the debt entirely and may require the borrower to pay the difference as a personal obligation which could result in a subsequent collection action against the borrower. Many times, the junior lien holder will not agree to forgive the second mortgage debt since the short sale will only likely satisfy the first lien holder.
5. Although a short sale is used as an alternative to foreclosure, because it may mitigate additional fees and costs to both the financial institution and the borrower, there may be a negative report filed against the property owner (borrower). As required by law, a financial institution must report the negative

trade line to the credit reporting agencies. After a short sale, borrowers may continue to find it difficult to obtain a new mortgage as a financial institution's underwriting guidelines might look unfavorably on a potential borrower who obtained a short sale in the past.

6. When a borrower suggests a short sale as an alternative to foreclosure, the borrower should realize that the financial institution does not have to agree to the short sale. The financial institution does its own analysis on whether the short sale is the best option for the financial institution and for the borrower.

Although the Department understands that allowing financial institutions to obtain deficiency judgments after agreeing to short sales may dissuade borrowers from participating in short sales to fulfill their financial obligations, the potential losses faced by financial institutions may create situations where financial institutions may not be considered safe and sound. Keeping our financial institutions safe and sound is the mission of the Division of Financial Institutions.

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



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Presentation to the Committee on Commerce and Consumer Protection
Wednesday, March 14, 2012
Testimony on HB 2019, 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 2019, HD1. HBA is the trade organization that represents all FDIC insured depository institutions operating branches in Hawaii.

This bill prohibits attempts to collect on any shortfall resulting from a sale that does not pay off the remaining balance on mortgage loans for certain residential property sold in a foreclosure short-sale or deed in lieu of foreclosure.

A **short sale** is a sale of real estate in which the proceeds from selling the property will fall short of the balance of debts secured by liens against the property and the property owner cannot afford to repay the liens' full amounts, whereby the lien holders agree to release their lien on the real estate and accept less than the amount owed on the debt. Any unpaid balance owed to the creditors is known as a *deficiency*. Short sale agreements do not necessarily release borrowers from their obligations to repay any deficiencies of the loans, unless specifically agreed to between the parties. In certain cases, the entire unpaid debt is forgiven but in other cases, an agreement is reached so the borrower does pay a portion or all of the remaining unpaid balance depending on the financial condition of the borrower.

A **deed in lieu of foreclosure** is a deed instrument in which a mortgagor (i.e. the borrower) conveys all interest in a real property to the mortgagee (i.e. the lender) to satisfy a loan that is in default and avoid foreclosure proceedings.

The deed in lieu of foreclosure and a short sale offers several advantages to both the borrower and the lender. The principal advantage to the borrower is that it immediately releases him/her from all or most of the personal indebtedness associated with the defaulted loan. The borrower also avoids the public notoriety of a foreclosure proceeding and may receive more generous terms than he/she would in a formal foreclosure. Another benefit to the borrower is that it hurts his/her credit less than a foreclosure does. Advantages to a lender include a reduction in the time and cost of repossession, lower risk of borrower vandalism, and additional advantages if the borrower subsequently files for bankruptcy.

If there are any junior liens a deed in lieu is a less attractive option for the lender. The lender will likely not want to assume the liability of the junior liens from the property owner, and accordingly, the lender will prefer to foreclose in order to clean the title.

A short sale and deed in lieu are often used as an alternative to foreclosure because it mitigates additional fees and costs to both the creditor and borrower. In fact, a short sale and deed in lieu of foreclosure are among the favored loan mitigation remedies under federal programs addressing the foreclosure issue.

This proposed law if enacted will have the unintended consequence of possibly limiting the use of a short sale and deed in lieu as loss mitigation tools. This proposal would take away the right of a lender to pursue a deficiency for both judicial and nonjudicial foreclosures.

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. Certainly, if mortgage loans become non-recourse, lenders would have to consider a larger down payment requirement from future borrowers to protect itself against loss.

The bill in 667-(1) limits collection of a deficiency to "a financial institution as defined in HRS 37D-1". A financial institution is defined under this section as follows:

"Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including without limitation banks, savings banks, savings and loan companies or associations, financial services loan companies, and credit unions."

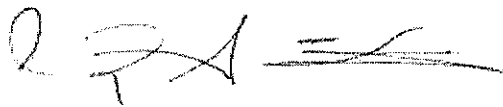
On January 11, 2012, a Consumer Financial Protection Bureau press statement contained a quote as follows: *"Until now, a significant part of the mortgage market — which includes independent lenders, brokers, servicers, and others unaffiliated with banks and depository institutions — has not been subject to federal supervision. This "nonbank" mortgage sector included many of the largest subprime lenders during the housing bubble. The Dodd-Frank Wall Street Reform and Consumer Protection Act significantly reformed the gaps in federal supervision of the mortgage market by providing the CFPB with authority to supervise a range of mortgage participants."*

Therefore, another unintended consequence may be to allow nonbank lenders, insurance companies, private individual lenders, etc. exemption under this law. This just further discriminates against Hawaii banks that did not contribute to this mortgage dilemma.

Most Hawaii banks use the judicial foreclosure process to preserve their right to obtain a deficiency judgment in order to limit their potential loss. The decision to seek a deficiency should be made on a case by case basis taking into consideration the troubled borrower's financial condition and any other circumstances and not dictated by law.

We asked that this bill be held.

Thank you for the opportunity to provide our testimony.



Gary Y. Fujitani
Executive Director



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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 Support of HB 2019, HD1 Relating to Foreclosures

Chair, Vice 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 support** of HB 2019, HD1, as it would greatly strengthen protections for mortgage consumers in the State of Hawai'i.

HB 2019, HD1 seeks to prohibit deficiency judgments to recover any remaining balances on mortgage loans, when the property is sold in a foreclosure action or through a short sale. HB 2019, HD1 would expand these protections to (1) cover refinanced mortgage loans; (2) eliminate the uninterrupted occupancy requirement; and (3) apply the measure to situations in which the homeowner relinquishes the property deed in lieu of foreclosure. These amendments would help to ensure that the bill helps many more distressed Hawai'i homeowners.

In essence, HB 2019, HD1 seeks to prevent a situation where a lender purchases the foreclosed property with a low bid, or agrees to sell the property at a price less than what is owed on the mortgage loan, and then subsequently seeks to recover in court the difference in sale price and mortgage owed from the prior homeowner. HB 2019, HD1 would prevent a “double recovery” by the lender when it subsequently sells the property to a third-party buyer while suing the homeowner for the mortgage deficiency.

HB 2019, HD1 would assist in helping consumers' financial recovery by avoiding state court actions by lenders to recover deficiencies, as well as bankruptcy filings by homeowners seeking to discharge debts arising from such deficiency judgments. In addition, the bill would reduce abusive debt collection practices by third parties who purchase at deep discounts the rights to collect deficiencies.

Legal Aid supports HB 2019, HD1, which incorporates the amendments in the House Committee on Finance's report to: (1) cover refinanced mortgage loans; (2) eliminate the uninterrupted occupancy requirement; and (3) apply the measure to situations in which the homeowner relinquishes the property deed in lieu of foreclosure. These amendments would significantly strengthen protections for mortgage consumers in the State of Hawai'i.

Conclusion:

For the above reasons, we respectfully request passage of HB 2019, HD1. We appreciate the committee's recognition of the need to protect mortgage consumers in the State of Hawai'i and support HB 2019, HD1's attempts at doing so. Thank you for the opportunity to testify.

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 SUPPORT OF HB 2019, HD1

Chair Baker, Vice Chair Taniguchi, and Committee Members:

My name is George Zweibel. I am a Hawaii Island attorney and have for many years represented mortgage borrowers living on Oahu, Hawaii, Kauai and Maui. 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 since its inception in 2010, although the views I express here are my own and not necessarily those of the Task Force.

HB 2019, HD1 would prohibit deficiency judgments for remaining balances on mortgage loans for most residential property following judicial foreclosures, short sales, and deeds in lieu of foreclosure. **I strongly support HB 2019, HD1 as passed by the House of Representatives.**

Further, to ensure that the intent of the bill is fully realized, I respectfully recommend deleting from Section 2 the language limiting its applicability to judicial actions in which the mortgagee is a financial institution as defined in § 37D-1. As presently drafted, the bill might not cover loans in which the current mortgagee is Fannie Mae, Freddie Mac or other owners of the massive securitized mortgage trusts that directly contributed to the Great Recession. This could inadvertently exclude the vast majority of Hawaii residential mortgages.

REASONS FOR ESTABLISHING ANTI-DEFICIENCY PROTECTION

There are many reasons for prohibiting residential mortgage deficiency judgments, including:

- **Prevent "double recovery" by loan holder.** In most foreclosures, the property is purchased by the loan holder, often with no competitive bidding. Also, third party bidders generally must pay 10% of the purchase price when the sale occurs. Thus, the mortgagee can bid low and obtain a judgment for the deficiency, then sell the property on the open market for a higher price, thereby receiving a double recovery at the expense of the

borrower, who remains liable for the “deficiency.” Barring deficiency judgments would eliminate the incentive to sell (or buy) property for less than it is worth.

- **Avoid borrower bankruptcy filings.** Struggling homeowners who have lost their homes to foreclosure but still face deficiency liability may be forced to file for bankruptcy. This is humiliating and traumatic for debtors and will be reported by credit bureaus for ten years. Bankruptcy also hurts creditors. With few or no assets to distribute, all unsecured creditors receive little or nothing when the debts are discharged in the bankruptcy.
- **Limit effects of foreclosure on homeowners.** Losing a home through foreclosure is devastating to homeowners and their families. It is hard to justify the added imposition of personal liability on a homeowner following the loss of his/her home, with the indefinite threat of garnishing wages or taking other assets. Protecting such persons from the additional burden of personal liability greatly increases their prospects for financial recovery and avoiding bankruptcy.
- **Reduce unfair shifting of risk to borrowers.** Borrowers cannot “negotiate” with lenders regarding deficiency liability or other boilerplate provisions buried in the voluminous mortgage documents they are required to sign. In effect, lenders thereby shift all risk to borrowers. This is unfair, particularly when recession has caused widespread unemployment and reduced property values.
- **Deficiency judgments provide minimal benefit to loan holders.** Deficiency judgments are often uncollectible and little effort has traditionally been made to collect on them. Accordingly, the adverse effects on former homeowners far outweigh any actual benefits to loan holders.
- **Deficiency judgments hinder Hawaii’s economic recovery.** The vast majority of mortgages foreclosed in Hawaii are held by out-of-state entities. Therefore, when deficiencies are collected, rather than returning money to Hawaii lenders or creditors, it goes to judgment creditors on the mainland.
- **Sale of deficiency judgments to debt buyers.** Deficiency judgments, or the right to seek a deficiency, are increasingly being sold to third parties who purchase them at a deep discount, then aggressively attempt to collect on them regardless of the former homeowner’s ability to pay, opening the door to abusive debt collection practices.

SCOPE OF EFFECTIVE ANTI-DEFICIENCY PROTECTION

To meaningfully protect residential owner occupants who have lost their homes, it is essential that HB 2019, HD1 continue to cover refinance as well as purchase mortgage loans, short sales, and deeds in lieu of foreclosure, and that occupancy as the borrower's principal residence when a default notice is delivered is sufficient to qualify for this protection.

1. Cover refinance as well as purchase mortgage loans. Most homeowners have refinanced their mortgages, *e.g.*, to reduce their monthly payments when interest rates dropped. Moreover, most loan-related abuses occurred in refinance transactions after time or appreciation created substantial home equity. Some states broadly prohibit deficiency judgments in residential judicial foreclosures. For example, Oregon broadly bars deficiency judgments after residential foreclosure sales. Or. Rev. Stat. § 86.770(2)(2009). North Dakota prohibits deficiency judgments for owner-occupied residential property with four or fewer units up to 40 contiguous acres in size. N.D. Cent. Code § 32-19-03 (2011). California prohibits deficiency judgments where a loan holder consents to a short sale of a dwelling of not more than four units. Cal. Civ. Proc. Code § 580e.

2. Cover deeds in lieu of foreclosure as well as short sales. Deeds in lieu of foreclosure and short sales both avoid foreclosure and involve the voluntary relinquishing of the property by the homeowner. Moreover, the reasons for prohibiting deficiency judgments described above apply equally in both situations. Accordingly, deficiency judgments should be prohibited in both situations.

3. Reasonable occupancy requirement. Other states referred to above appear to provide anti-deficiency protection for every case involving a residential trust deed (Oregon) or a residential property with four or fewer units (North Dakota). Arizona requires only that the property be utilized as a single one or two-family dwelling. Ariz. Rev. Stat. Ann. § 33-729 (2011). Though somewhat more restrictive, the requirement in HB 2019, HD1 that the mortgagor occupied the property as a principal residence when a default notice was delivered is reasonable but should not be further limited.

Thank you for your consideration of my testimony.



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March 14, 2012

The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

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

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

Aloha Chair Baker, Vice Chair Taniguchi, 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 which prohibits deficiency judgments to recover the remaining balance on mortgage loans for certain residential property sold in a foreclosure action or short sale.

In general, a short sale is a sale of real estate in which the proceeds from selling the property will fall short of the balance of debts secured by liens against the property. In a short sale, lien holders must agree to release their lien on the real estate and accept less than the amount owed on the debt. Any unpaid balance owed to the creditors is referred to as a deficiency.

HAR notes that, if deficiency judgments are prohibited for short sales, there may be certain tax implications for borrowers. Presently, the terms of a short sale are determined by negotiation with lien holders. Short sale agreements do not necessarily release borrowers from their obligations to repay any deficiencies of the underlying loans, unless it is specifically agreed to between the parties as part of the negotiation process.

Even if a borrower is forgiven from paying on the remaining deficiency owed after a short sale, there may still be additional tax obligations to the borrower. If the lender does not obtain a deficiency judgment, the borrower may be subject to paying tax on the amount forgiven, which is treated as income for federal tax purposes.

HAR believes that for short sales, 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.

Mahalo for the opportunity to testify.



HAWAII FINANCIAL SERVICES ASSOCIATION

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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 2019, HD 1 (Mortgages)**
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.

The purpose of this Bill is to prohibit deficiency judgments to recover the remaining balance on mortgage loans for certain residential property sold in a foreclosure action or short sale.

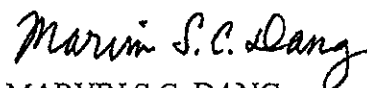
Section 1 of this Bill involves a "short sale" scenario where a property is voluntarily sold by an owner, but the sales proceeds is not enough to pay off all the liens on the property such as mortgage liens. Section 1 also involves a "deed in lieu of foreclosure" situation where instead of foreclosing on the property, the lender accepts title to the property from the owner, subject to the liens on the property. This Bill would allow a person who has occupied a residential property as a principal residence to avoid being responsible for any monies still owing on a mortgage loan after the property is sold through short sale or after title to the property is transferred through a deed in lieu of foreclosure.

Section 2 of this Bill covers a situation where a property is foreclosed and the monies from the foreclosure sale is not enough to pay off all the liens on the property such as mortgage liens. This Bill would allow a person who has occupied a residential property as a principal residence to avoid being liable under a deficiency judgment for any monies still owing on a mortgage loan.

It is not sound public policy to create a state law which uses a broad brush approach to enable homeowners to escape the obligation to pay the balance of their mortgage loans after a short sale, a deed in lieu of foreclosure, or a foreclosure sale. The federal bankruptcy law already provides such an option.

If this Bill becomes law, there could undoubtedly be negative consequences. Lenders might not readily consent to future short sales or to agree to deeds in lieu of foreclosure. Loan underwriting standards of lenders could be tightened. Existing and potential homeowners would be adversely impacted.

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 HB2019

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: