

HB 879, HD 1

Measure Title: RELATING TO MORTGAGE FORECLOSURES.

Report Title: Mortgage Foreclosures; Task Force

Description: Implements recommendations of the mortgage foreclosure task force relating to service of notice, conversion from nonjudicial to judicial foreclosure, bar against deficiency judgments, notice of pendency of action, and extinguishment of a mortgagor's interest. Effective July 1, 2030. (HB879 HD1)

Companion:

Package: None

Current Referral: CPN, WAM



NEIL AMBERCROMBIE
GOVERNOR

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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 2011

Tuesday, March 22, 2011
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 879, H.D. 1, RELATING TO MORTGAGE
FORECLOSURES.**

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

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to **testify in support** of House Bill No. 879, H. D. 1, Relating to Mortgage Foreclosures. My name is **Stephen Levins**, and I am the Executive Director of the Office of Consumer Protection ("OCP"), representing the Department.

House Bill No. 879, H. D. 1, seeks to implement the recommendations of the Mortgage Foreclosure Task Force established by Act 162, Session Laws of Hawaii 2010. The recommendations were provided to the Hawaii legislature on December 28, 2010 through the Preliminary Report of the Mortgage foreclosure Task Force. They

contain significant improvements to the current non-judicial foreclosure law in Hawaii. The proposal will provide for superior notice to homeowners of an impending foreclosure, offer them the ability to convert a non-judicial foreclosure to a judicial foreclosure, and allow them to escape a deficiency judgment in a non-judicial foreclosure. The measure also will help to bring certainty to title issues by authorizing the mortgagee to record a copy of the notice of intent to foreclose with the land court or the bureau of conveyances and will harmonize state law with a recent Hawaii Bankruptcy decision.

The task force represented a broad cross section of our community and as such was able to obtain the input of virtually all interested parties. The executive director of the Office of Consumer Protection served as the chairperson. This measure is the product of hundreds of hours of hard work by its members. Because of their strong commitment to improving the mortgage foreclosure laws in Hawaii, consensus was reached on these important proposals. Since the Department believes that each of them will further the interests of consumer protection in Hawaii, it strongly supports this measure.

Thank you for providing me with the opportunity to testify on House Bill No. 879, H. D. 1. I will be happy to answer any questions that the committee members may have.



THE JUDICIARY, STATE OF HAWAII

Testimony to the Senate Committee on Commerce and Consumer Protection

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

Tuesday, March 22, 2011, 9:00 a.m.
State Capitol, Conference Room 229

by
Rodney A. Maile
Administrative Director of the Courts

Bill No. and Title: House Bill No. 879, H.D. 1, Relating to Mortgage Foreclosures

Purpose: Implements recommendations of the mortgage foreclosure task force relating to service of notice, conversion from nonjudicial to judicial foreclosure, bar against deficiency judgments, notice of pendency of action, and extinguishment of a mortgagor's interest.

Judiciary's Position:

The Judiciary is committed to assisting the public and appreciates the bill's intent to update the foreclosure statutes to better serve all parties. However, as stated in our previous testimony, we are concerned that without adequate funding from the Legislature, the purpose of this bill will be frustrated. Thus, we must respectfully oppose the bill's proposed "conversion" process unless it is amended to include a sufficient funding mechanism.

I. FUNDING IS CRITICAL TO THE SUCCESS OF THIS MEASURE

Previous testimony from the borrowers has included frustration at delays in loan modifications and at the failure to have their cases timely resolved. However, shifting these cases to the Judiciary, *without the Legislature's providing adequate funding for their adjudication*, will result in a similarly frustrating situation of a backlog of cases and further expenses and delay, prolonging an already stressful situation for borrowers and all those involved. Moreover, adding significant numbers of new cases may harm other parties who already have pending cases before the courts. The Judiciary understands that these are difficult economic times. In fact, there is talk in other spheres of government regarding cutting back of



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services. However, this bill envisions the opposite—an increase in services—without a counterpart provision for sufficient funding to support this measure, which is not realistic.

To illustrate the potential increase in the volume of cases and the resultant delay and detrimental effect on borrowers, other interested parties, and the overall public, should this measure pass without adequate funding, we note the following:

A. The Conversion Complaint Process Will Significantly Increase the Number of Additional Cases in the Circuit Court System, Requiring An Additional \$1,075,000 to \$4,300,000 Yearly.¹

Currently, most foreclosure cases--approximately 75% to 90%--proceed through the non-judicial process.² Last calendar year, there were approximately 1,331 *judicial* foreclosure filings³ state-wide compared with *a total of 12,425* foreclosure cases. *See Star Advertiser article dated January 13, 2011.* If the 12,425 foreclosure cases included both judicial and non-judicial foreclosures, approximately 90% or 11,094 cases last year proceeded through the non-judicial process.

The conversion “complaint” form appears to make it easier for a borrower without an attorney to simply complete the form to stop the non-judicial foreclosure of his or her home, while the court decides the issues. Looking at it from an operational standpoint, it appears that the intent was to benefit as many people who need the assistance as possible. The challenge in estimating how many cases might be converted to judicial foreclosures is that there is no “before and after” empirical data since this conversion procedure is entirely new in Hawaii. Thus, we are left with our best reasoned estimates. It would be far better to do our best to be prepared rather than to *underestimate* the number of possible additional cases, to the detriment of the public. In view of the above, we would like to provide estimates regarding a range of possible additional

¹ Though some currently pending bills allow borrowers to also opt for court-administered dispute resolution, it is unclear whether these borrowers will have “two bites at the apple” (i.e., opt for dispute resolution and if that fails, subsequently convert to a circuit court action.) Whether they would be allowed both options or one or the other may affect estimated costs.

² See attached 3/22/09 Honolulu Star Bulletin article (estimating that at least 75% of foreclosures proceeded non-judicially); see also Star Advertiser article dated January 13, 2011 (citing statistics from Realty Trac). Since the Judiciary does not track non-judicial foreclosures, we only have knowledge regarding the number of *judicial* foreclosures. Please note that the figures in this testimony are preliminary estimates based on recently-gathered information.

³ These figures may include agreements of sale.



cases so that the Legislature can have a better understanding of what the costs may be for a broader range of situations.

If about 50% of the 11,094 non-judicial foreclosure cases in 2010 were converted to judicial foreclosure actions pursuant to this bill, adding approximately 6,000 new cases (500 new cases per month), would constitute a very significant increase in the Judiciary's caseload. The Judiciary would not be able to timely process 6,000 new cases per year at the circuit court level, without additional resources and staffing. Our estimate to fund the cost of the additional judges and support staff to handle 6,000 new circuit court cases per year, is approximately \$4,300,000.⁴

Alternatively, if about 25% of the 11,094 non-judicial foreclosure cases would be converted, adding 3,000 new cases would still constitute a significant increase in our caseload. Our estimate to fund the cost of these additional cases is approximately \$2,150,000 *yearly*.

Finally, if 1,500 new cases (approximately 13% - 14% of the 11,094 cases) were added *per year*, this would still result in an appreciable increase in our caseload, costing us an estimated \$1,075,000 on a yearly basis. It is important to note that without adequate funding, these cases would continue to accumulate yearly and contribute to any backlog of existing cases.

B. Because of Budget Cuts, Furloughs, and Increase in Cases, There is Already Significant Delay in Our Cases, Including Foreclosure Cases

Since the budget cuts and furloughs, the median age of pending Circuit Court civil cases has increased by 41.8%. At the same time, there has been an increase in the number of cases filed with the courts. The number of pending judicial foreclosure cases increased by 80 percent and the median *age* of pending foreclosure cases increased by 44%. *Please see attached the Judiciary's report, "Justice in Jeopardy" dated December 2010 ("Justice in Jeopardy Report"), p. 12.* In other words, although judicial foreclosures comprise only approximately 10% to 25% of the total existing foreclosure cases, the length of time it takes to resolve the existing caseload has increased by almost 50%.

Moreover, the addition of foreclosure cases, as allowed by the bill, without requisite funding to service these additional cases, will further delay existing civil and criminal cases, including those critical to public safety. For example, in the District Court of the First Circuit,

⁴ The measure also provides that the action shall be dismissed if all interested parties fail to file a statement submitting themselves to the court process within a certain period of time after the filing of the conversion complaint. Additional resources would be needed to reduce delays in dismissal. Any delay in dismissal would further prolong the foreclosure process since the filing of the complaint stays the non-judicial foreclosure until the judicial proceeding has been dismissed. If this measure passes, the Judiciary requests that the action may be dismissed after the filing of a motion by any interested party, rather than requiring court clerks to monitor each case.



due to budget cuts, traffic and DUI trials that took 1-2 months to be heard prior to furloughs, now take at least 4-5 months to schedule. In fiscal year 2010, the courts processed approximately 179,740 criminal cases, including murder, manslaughter, rape, narcotics, burglary, and DUI cases. This does not include Family Court proceedings which address domestic abuse protective orders, foster custody cases, and juvenile probation cases and other civil circuit court cases. *See Justice in Jeopardy Report, pp. 3 & 12.* Adding a significant number of foreclosure cases (which may involve time-consuming and complex issues) to this caseload, *without providing sufficient funding for these new cases*, does not realistically take into consideration the logistical costs of delivering judicial services to the public.

Please note that even if these funds were allocated this Legislative session, it would take time for the Judiciary to hire qualified staff for the new positions and be in a position to provide the judicial services envisioned by the bill. Even with immediate attention, the Judiciary estimates that between nine (9) and twelve (12) months would be required before the new judges and staff would be fully integrated into the judicial foreclosure process. In the interim and/or alternative, with no additional funding, the existing court staff will be required to process the new cases presented. This would significantly delay the timely provision of judicial services and ultimately, the public would bear the consequences of inadequate funding of the bill.

The bill also provides that the fee for filing a conversion complaint shall not exceed an amount yet to be specified. It is unclear whether this amount would include the filing fee and all other costs, surcharges, and other fees associated with filing a complaint.⁵

II. REQUIRING THE BORROWER TO BECOME THE PLAINTIFF AND LENDER TO BECOME DEFENDANT MAY BE CONFUSING TO BORROWERS WHO ARE NOT REPRESENTED BY ATTORNEYS

The proposed conversion complaint requires the borrower to become the “Plaintiff” and the lender to become the “Defendant.” The Judiciary believes that this portion of the bill can result in procedural confusion, especially for those who are not represented by attorneys. Because the lender is still in the position of seeking foreclosure, it makes sense to have the lender retain the title of “Plaintiff,” similar to normal judicial foreclosures. This would avoid any unintended conflicts with various court rules and procedures that use the terms “Plaintiff” and “Defendant” to define various duties to the court and others. For example, traditionally the “Plaintiff” bears the burden of proof; this measure might lead to confusion about which party bears the burden of proof.

⁵ Even if the bill were revised so that the filing fee would go directly to the Judiciary, the amount of the fee may be insufficient to handle the requirements of the mandate (i.e., \$400 x 3000 cases would generate \$1,200,000, significantly less than the required \$2,150,000.) In any case, the amount generated would still be reduced as it is likely parties would file *in forma pauperis* applications.



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Thus, in the event this measure passes, to avoid confusion, the Judiciary respectfully requests that (a) the “complaint” form be changed to a “Notice of Conversion” (“notice”); and (b) a provision be added to require that after receiving the notice, the lender, in order to proceed with the foreclosure, must file a complaint, in accordance with the rules of court, no later than 30 days after having received notice. The process can then follow the usual course for judicial foreclosures.

Finally, the proposed language requires the lender to serve notice of the non-judicial foreclosure “in the same manner as service of a civil complaint under chapter 634 and the Hawaii rules of civil procedure” However, the rules of court are generally applied only after a party has initiated a court case. We would like to avoid the parties’ being confused and incorrectly assuming that the person initiating and serving notice of the non-judicial foreclosure must also make a proof/return of service filing or any other filings in court.

In conclusion, the Judiciary would like to be able to provide meaningful assistance. However, as currently drafted, the bill does not provide for sufficient funding and adding to the Judiciary’s caseload without adequate funding may actually compound the problem. Until sufficient funding is provided, we must respectfully oppose this bill.

Thank you for the opportunity to testify on this measure.

Island Homes

Intents

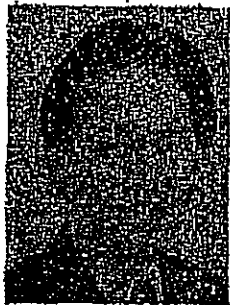
Rentals

Open Homes

* starbulletin.com/classifieds

Facing The Challenges Of Today's Real Estate Marketplace

Facing Foreclosure



Marvin S. C. Dang
Attorney and
Managing Member
Law Offices of
Marvin S. C. Dang, LLC

Foreclosure is a financial disaster home owners hope they will never have to face. Not only does foreclosure mean the loss of their real property - probably their biggest personal investment - but their credit is severely damaged and chances of obtaining another mortgage loan substantially diminished.

Attorney Marvin Dang has handled foreclosures as an attorney for lenders for 30 years and as a commissioner for 28 years. He believes many foreclosures could be avoided if the home owner acknowledged potential problems before they reached crisis proportions and contacted their lender to try to work out a solution.

He noted that there are many reasons why a borrower might be unable to continue making mortgage payments: loss of job, reduction in working hours and salary, huge medical bills, break-up of a marriage, an increase in the monthly mortgage payment, etc.

"Although there is no guarantee that a lender will make accommodations, chances are better that the lender will not start a foreclosure if the borrower contacts him with an explanation instead of simply halting payments," Dang said.

"Generally, lenders prefer to work out a 'win-win' solution rather than resort to foreclosure. The foreclosure process is costly and time consuming. It is a 'lose-lose' scenario. The only one who potentially benefits from a foreclosure is a buyer who manages to



pick up a foreclosed property at a bargain price at a foreclosure auction."

Dang explained that after one or two payments are missed, a lender will contact the borrower and mail out reminders to pay. If no mutual arrangement is made, a lender may refer the account to an attorney after three or four missed payments. But it could be sooner if the property is abandoned.

"Usually the first notification from the lender's attorney to the property owner is a letter confirming the default. This is sent out before the attorney begins the foreclosure proceeding. Once the borrower gets the attorney's letter, it still may be possible to work with the lender, so the property owner

should not ignore the letter," Dang said.

"If the borrower consults with a third party for assistance, it's also important to check the credentials of that person, as there are local and Mainland scam artists who have taken advantage of inexperienced Hawaii home owners with devastating results. It's best to talk with a Hawaii-based credit counseling service or a Hawaii real estate professional, rather than getting advice from the internet. People can also meet with a bankruptcy attorney to decide what their best course may be."

Dang noted that in Hawaii there are two types of foreclosure actions, judicial and non judicial. The judicial process is run through the court system. The lender files a complaint with the court regarding the delinquent loan and requests that the court allow the lender to foreclose on the mortgage on the real property. After the borrower is served with the complaint by a process server, the borrower needs to file a written answer with the court. If the borrower fails to respond, they will be in default as to the complaint.

The lender will ask the court to schedule a hearing to appoint a foreclosure commissioner to auction the property. At the hearing, the party being foreclosed on has an opportunity to tell the judge why a commissioner should not be appointed; for example, the property is in the process of being voluntarily sold and should close in a few months or the borrower is getting money to bring the loan current. If the judge is convinced that such a sale will close, or believes the loan can be reinstated he or she may be willing to delay the foreclosure proceeding for a short period.

If the property owner is able to pay off the loan or bring it current, the foreclosure can be dismissed.

"In a judicial foreclosure, the commissioner

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Facing Foreclosure

Continued from page 1

who is usually either an attorney or a real estate professional, is accountable to and acts on behalf of the court...not on behalf of the lender," Dang said. "It will be the responsibility of the commissioner to get access to the property to inspect it. Generally, during the foreclosure, the commissioner will not evict the home owner or the tenant of the property. But any tenant will now need to pay rent to the commissioner and not to the landlord.

"The commissioner will hold two open houses at the property, usually on Saturdays and Sundays, and place ads in newspapers, such as the Honolulu Star-Bulletin. The ads must run once each week for three consecutive weeks announcing the date and time of the open houses and the date, time, and place of the auction. The last ad needs to appear at least two weeks before the auction is to be held. In Honolulu, the foreclosure auctions are held Monday through Friday beginning at 12 noon at the Ewa Lani at First Circuit Court at 777 Punchbowl Street, where notices of upcoming auctions are posted. There could be more

than one property being auctioned at the same time by more than one commissioner."

According to Dang, anyone planning to bid at the auction will be required to show the commissioner before the auction proof of having a deposit in the form of a cashier's check or money order or cash, since the highest bidder needs to give the commissioner ten percent of the bid price at the end of the auction. The rules of the auction are announced by the commissioner and there is usually no upset price.

"Often the lender jumps in and bids at the auction," Dang said. "These lenders could be local and Mainland banks, credit unions, and other parties who may have bought the loan being foreclosed. Before they bid, lenders would have researched the condition and value of the property being foreclosed. Other bidders should do the same. The lender is not always the highest bidder. Investors and potential home buyers sometimes outbid the lenders.

"The highest bidder needs to understand that the judicial foreclosure sale is sub-

ject to court approval. After the auction, the commissioner will file a report with the court. The lender's attorney will schedule a court hearing to approve the sale, at which time the judge will ask if anyone wants to reopen the bidding for five percent higher than the auction price. Whoever is the highest bidder either from the first-public auction or at the reopening at the hearing, is generally approved by the court. The winning bidder has about 35 days to come up with the rest of the money to close the sale. Upon closing, the foreclosure commissioner will sign a deed to convey the property in 'as is' condition to the buyer. When the deed is recorded at Bureau of Conveyances, the title to the property is transferred."

Dang said that the second type of foreclosure in Hawaii, the non-judicial foreclosure, was rarely held until the late 1990s but now accounts for about 75 percent or more of foreclosure proceedings here.

"There are several basic differences between a non-judicial foreclosure and a judicial procedure," Dang pointed out. "A judicial foreclosure can take six to nine

months, whereas a non-judicial foreclosure takes two to three months since there are no court filings, no open houses, and no hearings. However, one similarity is that a newspaper ad announcing an auction will be required to run in a local newspaper once each week for three consecutive weeks, the last ad to appear at least two weeks prior to the auction. The notice of the non-judicial foreclosure sale needs to be mailed to the borrower and should be served by a process server. The notice must be posted on the property. No open houses are required to be held at the property, and there is no opportunity to inspect it in advance of the auction.

"For non-judicial foreclosures the auction and bidding procedures are similar to those of a judicial foreclosure. However, a non-judicial foreclosure auction is conducted by the lender's attorney or representative rather than a court appointed commissioner. At the conclusion of the non-judicial auction, the buyer pays the ten percent deposit. The rest of the sales price must be paid within thirty days

after the auction. Once the sales price is paid, the buyer will get a deed and becomes the owner of the property after the deed is recorded at the Bureau of Conveyances.

"For both judicial and non-judicial foreclosures, the new owner, that is, the successful bidder, is responsible for obtaining possession of the property. The new owner can keep the occupants there or can ask them to move out. In cases where occupants refuse to move, the new owner may need to go to

court to ask the judge to issue an order to evict them."

"The entire foreclosure process could possibly be avoided if the borrower simply phoned the lender before missing that first payment," Dang said. "And people who find themselves facing possible foreclosure should keep in mind that, even if the foreclosure is started, it can be delayed and the auction can be postponed if the borrower is able to work out an arrangement with the lender."

Star Advertiser

Foreclosure filings hit new high

Figures show 38 percent more Hawaii properties were affected last year compared with 2009

By Andrew Gomes

POSTED: 01:30 a.m. HST, Jan 13, 2011

Lenders pursued or completed foreclosure against a record number of Hawaii properties last year.

There were 12,425 properties statewide affected by foreclosure last year, which was 38 percent more than the 9,002 properties in 2009 and more than triple the 3,525 properties in 2008, according to the latest report from RealtyTrac, a real estate data company.

NO PLACE LIKE HOME

Hawaii's monthly foreclosures over the past year, including the year-over-year percentage gain:

2010		
MONTH	TOTAL	CHANGE
December	1,000	-34.8%
November	877	+0.6%
October	1,271	+37.4%
September	1,617	+66.9%
August	1,629	+87.5%
July	930	-6.1%
June	1,000	+41.6%
May	1,055	+29.3%
April	1,474	+115.5%
March	1,097	+51.5%
February	972	+81.0%
January	1,302	+286.4%
Total	14,224	+42.9%

BY THE NUMBERS

Five Hawaii communities with the most properties in foreclosure last year.

ZIP CODE	AREA	FORECLOSURES
96740	Kailua-Kona	1,244
96753	Kihui	905
96706	Ewa Beach	867
96761	Lahaina	646
96707	Kapolei	609

Source: RealtyTrac

Most of the properties were homes, though RealtyTrac doesn't exclude commercial real estate from its foreclosure data. If all the properties affected by foreclosure were homes, the total last year would represent 2.42 percent of all homes in the state, up from 1.8 percent the year before.

The growing number reflects the state's continuing struggle with economic recovery, and has strained families.

But so far foreclosures haven't reached epidemic proportions seen in states such as Nevada, Arizona and Florida.

"We've been relatively fortunate," said Jon Mann, a Honolulu real estate agent. "We haven't really been impacted as significantly as some mainland markets."

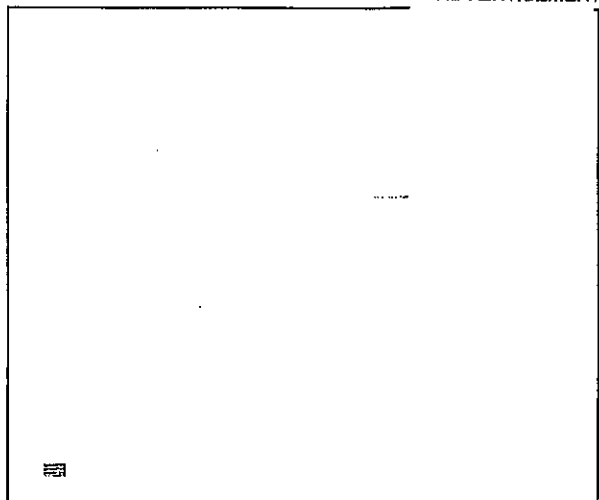
Hawaii's foreclosure level was close to the national average — 2.23 percent of housing affected by foreclosure last year — though Hawaii's rate was 11th highest.


The worst problem is in Nevada, where 9.42 percent of homes were affected by foreclosure last year. The lowest rate was 0.13 percent in Vermont.

In Hawaii, more than half the properties affected by foreclosure were on the neighbor islands, where many out-of-state investors bought vacation homes during the real estate boom in the mid-2000s.

On the Big Island, there were foreclosure filings against 3,370 properties last year, representing 4.23 percent of homes.

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Maui had 2,675 properties with foreclosure filings, or 4.05 percent of homes.

be counted on the same property in different months.

Kauai had 819 properties with foreclosure filings, or 2.75 percent of homes.

Oahu had the most properties affected by foreclosure but the lowest rate – 5,561 properties representing 1.65 percent of the housing market.

Real estate industry watchers caution that foreclosures could put downward pressure on housing prices if an overbearing number of foreclosed homes wind up on the market.

On Oahu, there were close to 3,200 single-family homes and condominiums on the market at the end of last year.

Mann said about 15 percent to 20 percent of the inventory was owned by lenders or homeowners trying to avoid foreclosure through short sales.

Whether the percentage will rise is hard to tell because not all homes that enter foreclosure are sold. Some owners work out their mortgage difficulties. In other cases, foreclosure can drag on for more than a year.

Mann notes that some additional inventory won't necessarily hurt the market because present inventory is relatively tight.

Hawaii's foreclosure problem is expected to worsen this year, according to local foreclosure attorneys.

There was a lull in the past two months, but the industry attributes that to lenders holding up cases to address improper processing issues raised a few months ago.

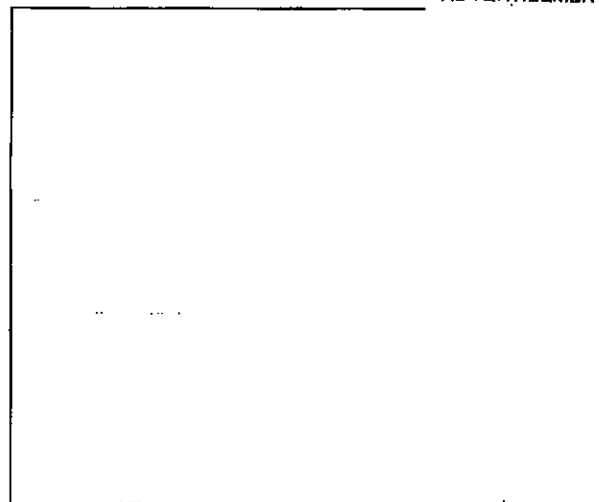
The number of foreclosure filings in December was 1,000. That was down 35 percent from 1,302 in the same month last year but was up from 877 in November.


Lenders filed a flurry of new foreclosure cases last month – 163 default notices, which according to RealtyTrac was the highest number in more than a year.

The bulk of filings last month were auction notices and lender repossessions.

RealtyTrac numbers for the full year are different in that they count properties going through foreclosure. The monthly counts are foreclosure filings, which can

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JUSTICE IN JEOPARDY

**THE IMPACT OF BUDGET CUTS AND
FURLOUGHS ON THE JUDICIARY, STATE OF HAWAI‘I
DECEMBER 2010**

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A MESSAGE FROM CHIEF JUSTICE MARK RECKTENWALD

These have been difficult economic times for all of Hawai'i, and the Judiciary has been no exception. In the last two years, the Hawai'i State Judiciary's general fund appropriation has been reduced by \$19.7 million (or 13.1% of its overall budget), while demand for Judiciary services has increased due to the impact of the difficult economy on our citizens. Furloughs alone have eliminated over 600,000 available staff hours of work.

These reductions have had substantial negative effects throughout the judicial system, by reducing, delaying and in some cases eliminating important services. Notably, Hawaii's families and most vulnerable citizens have been significantly impacted. The time it takes to process an uncontested divorce has doubled, and the wait time for children to participate in the Judiciary's Kids First program in Kapolei, which seeks to alleviate the impacts of divorce by having children participate in a group counseling session, has more than doubled.

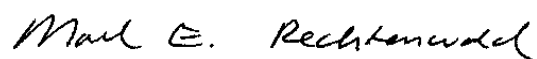
Budgetary reductions have also had negative effects in criminal cases. For example, 24 adult probation positions were eliminated in the First Circuit, including positions in high risk areas such as the sex offender unit and the domestic violence unit. Individual probation officers now supervise as many as 180 defendants, well above the nationally recommended ratio.

Justice has been delayed in civil cases as well. From FY2008 through FY2010, the median age of pending Circuit Court civil cases has increased by more than 40 percent. By delaying the time it takes to resolve civil disputes, the cost and uncertainty of litigation increases and our community's efforts at economic recovery are hindered.

Finally, the Judiciary's programs and services can save the public money in the long run. The cost of supervising a criminal defendant in the HOPE probation program, or providing intensive supervision and treatment through programs such as drug court, is far less than the \$137/day that it costs to incarcerate a defendant.

This report highlights some of the impacts that furloughs and budget cuts have had on the Judiciary's ability to fulfill its mission "to administer justice in an impartial, efficient, and accessible manner in accordance with the law."

Adequately funding the state court system is an investment in justice, and an investment in our democracy, that should not be compromised even during tough economic times.



Mark E. Recktenwald
Chief Justice

HAWAI‘I STATE COURTS AT WORK

The Hawai‘i State Judiciary resolves a wide-range of disputes facing our local community.

CIVIL JUSTICE

Hawai‘i residents and businesses rely on the courts to fairly resolve their civil conflicts. In FY2010, the Judiciary was involved with:

- ◆ 60,575 District Court civil cases including:
 - 44,292 Regular Claims Division cases (\$3,500 - \$25,000 damages range)
 - 6,141 Small Claims Division cases (up to \$3,500 damages limit)

- ◆ 37,251 Circuit Court civil proceedings including:
 - 14,090 condemnation, contract and personal injury cases
 - 8,736 probate proceedings
 - 6,938 conservatorship and guardianship proceedings
 - 1,422 trust proceedings
 - 6,065 land court, tax appeal and mechanic’s lien cases

“It is time to ensure that, in a country founded on the rule of law and the principle of access to justice, our judicial branch does not wither under the burden of financial stress...It is time for our lawmakers to recognize the value of our judicial branch as more than a line item in a budget. A strong judicial branch is essential to maintaining responsible government and protecting citizens’ rights.”

– Stephen N. Zack, President of the American Bar Association

CRIMINAL JUSTICE

The Judiciary strives to expeditiously and fairly adjudicate or resolve all criminal matters. In FY2010, the Judiciary was involved with:

- ◆ 68,041 criminal traffic cases including:
 - 13,593 DWI/DUI cases
 - 1,264 reckless driving cases
- ◆ 94,479 District Court criminal cases including:
 - 9,413 larceny/theft cases
 - 6,154 assault cases
 - 2,169 vandalism cases
 - 1,349 prostitution cases
 - 4,096 narcotics cases
 - 1,232 sex offense cases
- ◆ 17,220 Circuit Court criminal cases including:
 - 178 murder & manslaughter cases
 - 97 forcible rape cases
 - 1,602 aggravated assault cases
 - 1,235 burglary cases
 - 2,686 larceny/theft cases
 - 3,633 narcotics cases

“[A]s a practicing litigator, I can share with you the impact that the budget cuts on the Judiciary have caused. Among my case load, I have a case that is about four years old that has been ready to go to trial since late last year. It has been delayed because of the backlog of criminal trials and was recently reset to [redacted], 2011 - a year away. Many of my colleagues are reporting similar occurrences. The Judiciary allows economic, political and social life to function properly and it must be spared any further budget cuts.”

- An attorney in private practice

FAMILY COURT

The Family Court hears all legal matters involving children, such as delinquency, waiver of jurisdiction, status offenses, abuse and neglect, termination of parental rights, adoption, guardianships, and detention. The Family Court also hears domestic relations cases, including divorce, domestic violence, temporary restraining order, nonsupport, paternity, and uniform child custody jurisdiction cases. In FY2010, the Family Court workload involved:

- ◆ 57,696 Family Court proceedings including:
 - 10,761 divorces
 - 5,150 domestic abuse protective orders
 - 1,604 child abuse and neglect cases
 - 926 adoptions
 - 3,674 paternity cases
- ◆ 1,557 foster custody cases
- ◆ 2,326 juvenile probation cases

“As a current participant, the Family Drug Court program has helped me do things I never thought I could do. I have learned the skills I need to remain clean and sober for the rest of my life...Without the support and instruction given to me by the Family Drug Court, I would not have the hope I have in my life today, and I am currently on the path to being reunified with my children... I will continue to battle this disease of addiction with the skills the Family Drug Court has armed me with and my children will never return to the foster care system.”

- Family Drug Court participant

TREATMENT COURTS

Many criminal defendants have substance abuse and/or mental health issues. When appropriate, the Judiciary provides these defendants with probation and treatment in lieu of incarceration. Treatment can help defendants live a clean and sober life, allowing them to reunite with their families and become productive citizens. In FY2010, the Judiciary's treatment courts served 1,085 clients statewide. The strength of the treatment courts lies in their ability to lower recidivism rates and costs to the State of Hawai'i. Less recidivism means less court and incarceration costs. Hawaii's Adult Drug Courts have an average recidivism rate of about 8 percent as opposed to a recidivism rate of 50 percent for those persons on general probation. The cost of treatment in these courts averages about \$5,000 per client per year as opposed to a cost of about \$50,000 per year for incarceration.

PROBATION

Most convicted criminal defendants are sentenced to probation in lieu of or in addition to incarceration. The Judiciary supervises probationers to reduce recidivism and encourage the rehabilitation and reintegration of these individuals into the community. In FY2009, the Judiciary's 129 probation officers supervised:

- ◆ 20,586 probationers
- ◆ 23,534 cases

“It makes social and economic sense to provide treatment rather than incarceration when appropriate. Treatment courts besides being cost effective are a major tool in breaking the cycles of substance abuse, domestic violence and many other social issues facing our state.”

- Dee Dee Letts, Treatment Court Coordinator

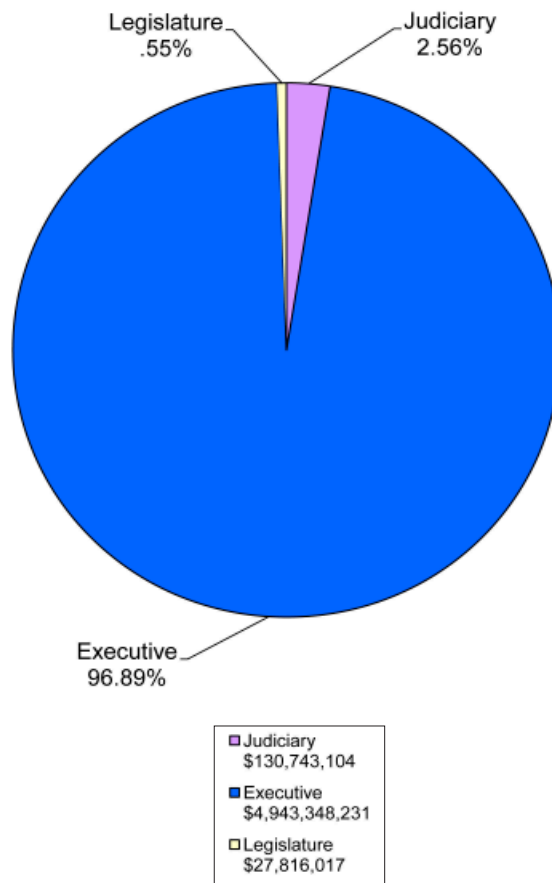
“Due to the limited number of slots available, we have a waiting list to get into Mental Health Court. There are not enough resources in the community for treatment and housing which puts defendants and community at risk.”

- Louise Crum , First Circuit, Adult Client Services, Mental Health Court

JUDICIARY GENERAL FUND APPROPRIATION

The Judiciary’s Hawai‘i general fund appropriation is its most important funding source, accounting for over 90 percent of its funding. The Judiciary receives less than three percent of Hawaii’s general fund appropriations.

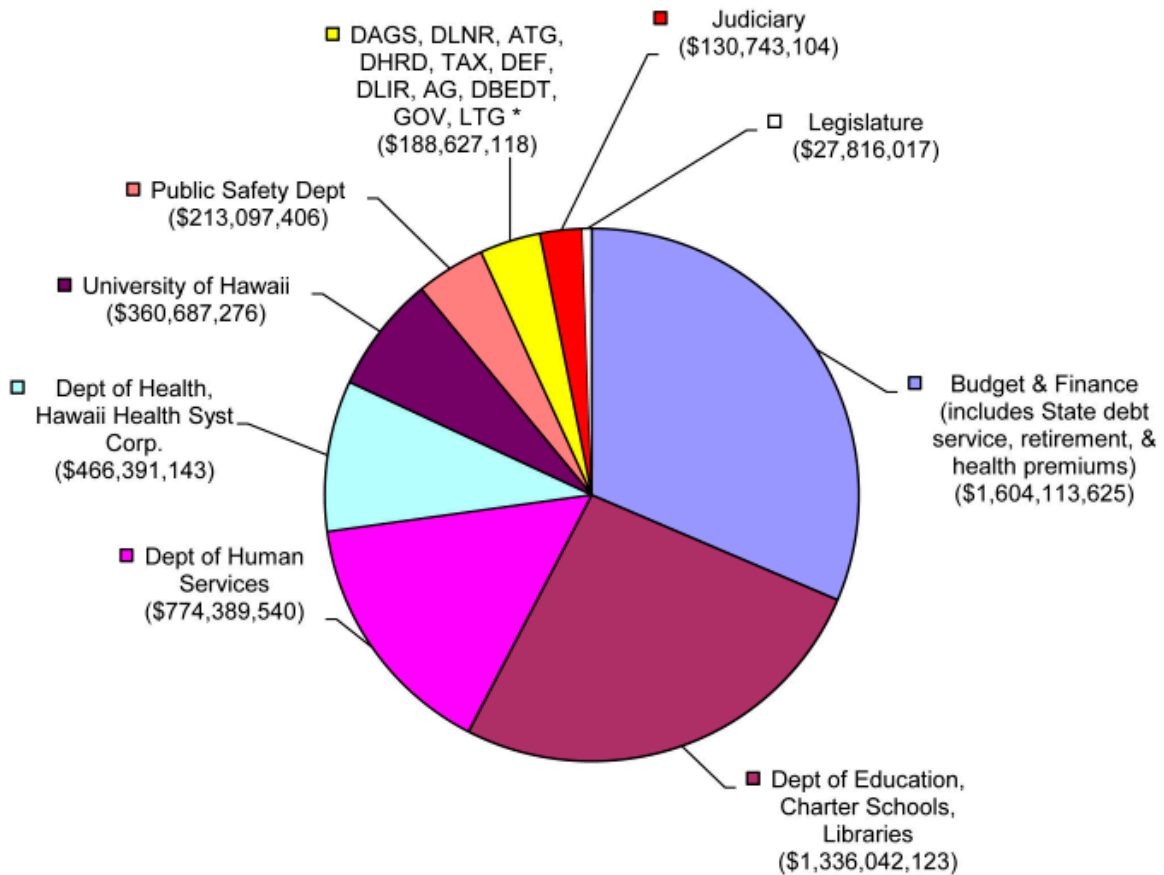
Hawai'i General Fund Appropriations (FY2011)



“The Legal Documents Branch of the Circuit Court on O‘ahu receives, files and processes, on average per year, approximately 300,000 original documents, depositions, and exhibits (approximately 116,000 Family Court, 80,000 criminal and Family Court criminal, and 104,000 civil documents, depositions, and exhibits).”

- Lori Okita, First Circuit, Legal Documents Branch 1

FY2011 Hawai'i General Fund Appropriations (\$5,101,907,352)

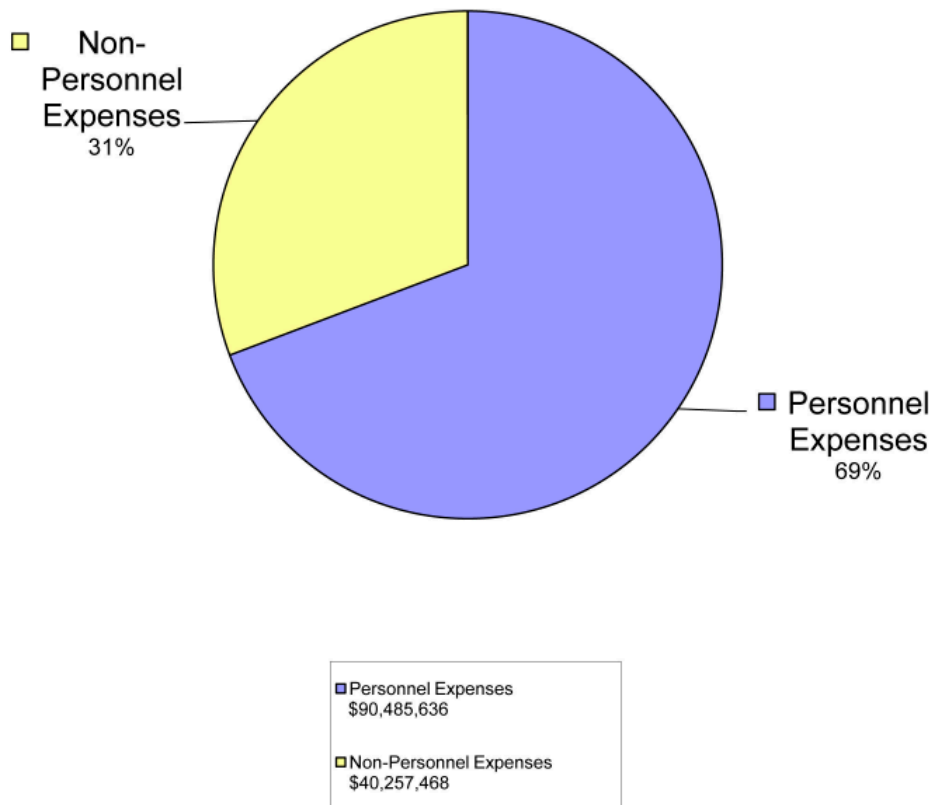


- * Dept of Accounting & General Svcs
 Dept of Land & Natural Resources
 Dept of Attorney General
 Dept of Human Resources Development
 Dept of Taxation
 Dept of Defense
 Dept of Labor & Industrial Relations
 Dept of Agriculture
 Dept of Business & Economic Development
 Office of the Governor & Lt. Governor

HAWAI‘I STATE JUDICIARY EXPENSES

The Judiciary uses its general fund appropriation to pay its 1,900 employees, operate its 21 facilities, and provide court services to thousands of Hawai‘i residents each year.

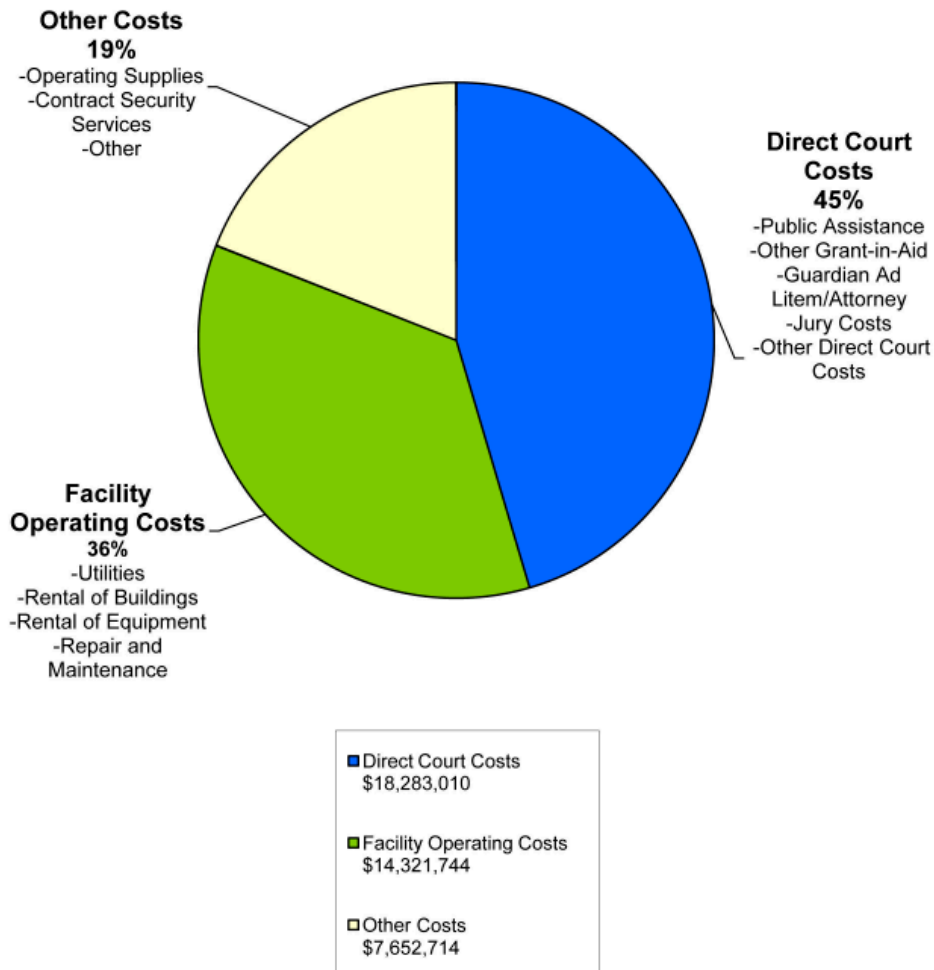
**Judicial Branch Expenses
(FY2011)**



“Our greatest concern is that the furloughs negatively impact our system’s response/coordination of cases involving children who are alleged victims of abuse or who are witnesses to crime. For example, delays in scheduling forensic interviews of these young victims and witnesses may result in concern for their safety. Justice may not be served for the crimes.”

- Jasmine Mau-Mukai, Children’s Justice Centers of Hawai‘i

Judicial Branch Non-Personnel Expenses (FY2011)



“The ‘Achieving Access to Justice for Hawaii’s People: The 2007 Assessment of Civil Legal Needs and Barriers to Low- and Moderate-Income People in Hawaii Report’ found that due to a lack of resources legal service providers are able to assist only one of three of those who seek their help. Since 2007 it has only gotten worse, resulting in more persons appearing in court without representation. Greater resources are required from the Judiciary to assist these persons to navigate the court system.”

- Judge Daniel Foley, Chair, Access to Justice Commission

JUDICIARY BUDGET REDUCTIONS

FY2009

- ◆ Judiciary's general fund appropriation was \$150.5 million
- ◆ The Legislature applied a 7 percent reduction (about \$1 million) in discretionary costs to the Judiciary's core budget base
- ◆ The Legislature provided Capital Improvement Program (CIP) funding of about \$13.8 million
- ◆ The Legislature took \$1 million from the Computer System Special Fund to help balance the state general fund budget deficit

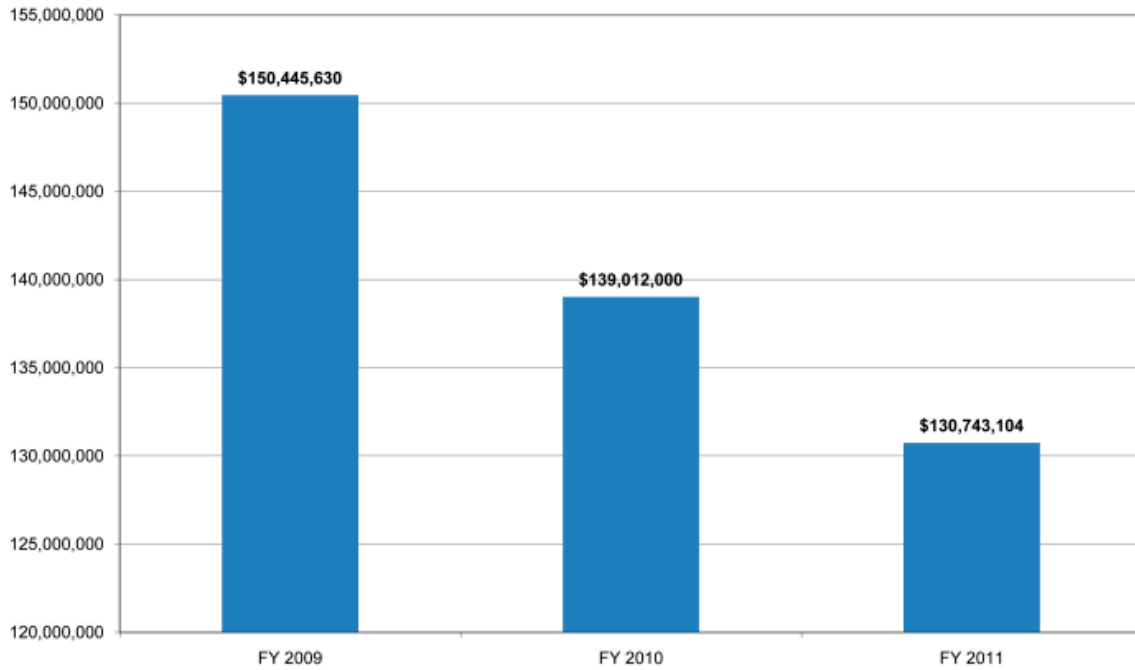
FY2010

- ◆ Judiciary's general fund appropriation was reduced to \$139 million, \$11.5 million lower than in FY2009
- ◆ The Judiciary initiated furloughs for its employees
- ◆ The Legislature reduced the salaries of state judges by 5 percent
- ◆ The Legislature eliminated 79 vacant positions
- ◆ The Legislature authorized \$2 million and 22 positions to staff the Kapolei Judiciary Complex
- ◆ The Legislature provided a one-time \$2.5 million ceiling increase for the Computer System Special Fund
- ◆ The Legislature provided CIP funding of about \$9.8 million

FY2011

- ◆ Judiciary's general fund appropriation was reduced to \$130.7 million, an \$8.3 million reduction from FY2010
- ◆ No CIP funding was provided as the Legislature indicated it would wait for the results of the Judiciary's Facilities Master Plan Study
- ◆ The Legislature allocated an additional \$2.5 million to the Judiciary for domestic violence (\$1 million) and legal/treatment service providers (\$1.5 million)
- ◆ The Legislature authorized the transfer of \$2 million in funds from the Computer System Special Fund and \$1.5 million from the Drivers Education Fund to the general fund

Judiciary General Fund Appropriations
 (including collective bargaining & specific appropriations)



“We are unable to keep up with the demands and backlogs that occur in almost every area due to lack of manpower resources. The law enforcement divisions work 24/7 and are making arrests and issuing citations around the clock. With the economic downturn, there are more lawsuits being filed thereby increasing the courts’ caseloads. There are two less work days a month due to the furloughs, however, the workload has increased.”

- Iris Murayama, First Circuit Court, Deputy Chief Court Administrator

SPECIFIC BUDGET IMPACTS ON THE COURTS

JUSTICE DELAYED

- ◆ From FY2008 through FY2010, there was a 28.4 percent increase in pending Circuit Court civil actions and a 19.6 percent increase in the number of cases filed. Since the budget cuts and furloughs, the median age of pending Circuit Court civil cases increased by 41.8 percent.
- ◆ From FY2008 through FY2010, the number of pending court foreclosure cases increased by 80 percent. The median age of pending foreclosure cases increased by 44 percent.
- ◆ From FY2008 through FY2010, there was a 98.2 percent increase in pending District Court civil actions and a 36.4 percent increase in the number of cases filed.
- ◆ At the District Court of the First Circuit, furloughs and position reductions have resulted in substantial delays in scheduling hearings and trials. Traffic and DUI trials typically took 1-2 months to be heard prior to furloughs and now take 4-5 months to schedule. Trials in regular claims cases were scheduled within two weeks prior to the furloughs but now take 4-6 weeks to schedule.
- ◆ In the Family Court of the First Circuit, the time it takes to process an uncontested divorce has increased from 3-4 weeks, to 6-8 weeks since furloughs and budget cuts were implemented. The wait to schedule a mandatory session with the Judiciary's Kids First program in Kapolei has increased from 4 weeks up to 10 weeks. Filing for divorce can be the start of a traumatic process for a child that may involve physical relocation, a new school, financial insecurity and the inability to see one parent. Delays in processing divorce cases increase the stress that children experience.

“The judiciary is currently on a two day per month furlough system where, in addition to state holidays, the courts close for two workdays per month. Two days equate to 16 hours per month of court time. On Oahu, there are approximately 12 circuit court criminal divisions. As a result, the furloughs result in about 192 hours of lost court time per month for the circuit court criminal calendar on Oahu. Conservatively speaking, that time could accommodate approximately 8 average-length criminal jury trials, 192 evidentiary motions, 384 plea hearings or 576 non-evidentiary motions. This is an illustration of the very direct and serious consequences that budget shortfalls are having on the criminal justice system.”

- John M. Tonaki, Office of the Public Defender

MORE SELF-REPRESENTED LITIGANTS

- ◆ More Hawai'i residents are entering the court system without the benefit of an attorney. Even with reduced hours and resources, the Judiciary's Ho'okele service centers on O'ahu assisted 103,009 self-represented litigants in 2009, a 5.6 percent increase from the year before.
- ◆ The Fifth Circuit Service Center in Lihue opened in March 2008 to assist self-represented litigants with court forms and questions about court procedures. It was closed in December 2008 due to staffing shortages.

COURT SERVICES REDUCED

- ◆ In 2005, the Honolulu Traffic Violations Bureau was open five nights a week to serve the public after working hours. It is only open one night a week now. In the near future, it will probably close at night altogether, requiring more non-criminal defendants to take off from work to resolve their cases.
- ◆ Due to a staffing shortage by the Department of Public Safety's Sheriff Division, there were not enough sheriffs to provide security for Judiciary facilities on the Big Island. The Judiciary was forced to close the North Kohala, Hamakua, and Ka'u rural courts in October 2010, requiring court customers to make a 20-60 minute drive to a courthouse.

“Increasing numbers of self-represented litigants in civil cases receive less in terms of court services because they are often disadvantaged due to lack of education, language barriers, and/or sometimes suffer from mental health issues.”

- Judge Barbara Richardson, Deputy Chief Judge, District Court

PROBATION STAFFING ELIMINATED

- ◆ In the Client Services Division of the First Circuit, 24 positions were lost last year due to budget cuts, including positions in both the Sex Offender Unit and the Domestic Violence Unit. These units work with some of the most dangerous offenders who are at a higher risk than others to recidivate. According to the American Probation and Parole Association, the caseload standard is 30:1 to 120:1 depending on the risk level of the probationer. In Hawai'i, the ratio of cases to probation officers is as high as 180:1.
- ◆ Furloughs also are affecting public safety. Our probation officers have 24 fewer days a year to supervise offenders. As a result, revocations of probation are being delayed, and probation officers are unable to provide the level of supervision necessary for certain clients because there are fewer hours in the week to monitor the same, or increasing, numbers of probation clients.

EFFECT ON FAMILIES AND VICTIMS

- ◆ To efficiently use public funds, the Judiciary contracts with external entities to provide services that are not performed internally. These contracts were cut by more than \$2.8 million in FY2010 to balance the Judiciary budget. The contracts involve the purchase of assessment and/or treatment services for substance abuse, child sex abuse, and mental health, as well as domestic violence emergency shelter services, juvenile client and family services, anger management, victim impact classes, and more.
- ◆ The reduction in purchase of service (POS) contracts has resulted in fewer social services for crime victims. For example, reduced Judiciary funding of Catholic Charities Hawai'i in FY2010 resulted in the loss of two positions which led to 165 fewer child sexual abuse clients being served compared to the previous year.
- ◆ Cutting treatment court budgets has resulted in taxpayers having to pay more, not less. As a result of the budget cuts, 5 of the 11 treatment courts have waitlists for admittance due to a reduction in the programs' capacity. Many people on a waitlist are incarcerated at a cost of \$137 per day to taxpayers as compared to about \$14 a day when they are in a treatment court.

- ◆ In FY2010, the Judiciary's Maui/Moloka'i Drug Court program lost four full-time equivalent (FTE) positions after it had its annual allocation cut over \$420,000. There is now at least a 13-month wait for men to receive drug treatment services on Maui. The wait for treatment was already between 8 and 12 months in May 2008 when the Legislature authorized four FTE positions to reduce the delay.
- ◆ Due to budget cuts, Drug Courts have had to reduce electronic and voice monitoring of clients by 30 percent. Since monitoring is used to ensure clients' compliance with curfew restrictions, the decrease in monitoring reduces community safety and increases the likelihood of clients relapsing. Furthermore, the Oahu Adult Drug Court lacks sufficient funding to accept new clients who need residential treatment after March 2011 until the start of the next fiscal year.
- ◆ The budget cuts forced a reduction to the Judiciary's POS contract for mediation and other dispute resolution services. The Mediation Centers of Hawai'i are now expected to provide services for approximately 3,100 cases, as opposed to 4,000 prior to the reduction in the contract amount for the POS. Mediation is provided in many types of cases including domestic and family, landlord/tenant, temporary restraining orders, and neighbor disputes.

"I felt all was lost and no one could help let alone begin to understand the difficulties I was facing. It is because of Girls Court that I now know that I am not alone...Help had finally arrived...I do not wish to imagine what our lives would be like had Girls Court not intervened. I implore that additional funding be granted so that this program may continue its vital work in helping young ladies and their families."

- Girls Court participant



**LEGAL AID
SOCIETY OF HAWAII**

Telephone: (808) 536-4302 • Fax: (808) 527-8088
Mailing Address: P.O. Box 37375 • Honolulu, Hawaii 96837-0375
924 Bethel Street • Honolulu, Hawaii 96813

George J. Zweibel, Esq.
President, Board of Directors

M. Nalani Fujimori-Kaina, Esq.
Executive Director

**The Honorable Rosalyn H. Baker, Chair
The Honorable Brian T. Taniguchi, Vice Chair
Senate Committee on Commerce and Consumer Protection**

**Hearing : Tuesday, March 22, 2011, 9:00 a.m.
State Capitol, Conference Room 229**

IN SUPPORT OF HB 879 HD1

Chair and Members of the Committee:

My name is **Ryker Wada**, representing the Legal Aid Society of Hawai'i ("LASH"). I am advocating for our clients who include the working poor, seniors, citizens with English as a second language, disabled, and other low and moderate income families who are consumers and families facing default and foreclosure on their homes. We are testifying in support of HB 879 HD1 as it may strengthen protections for consumers in the State of Hawaii.

I supervise a housing counseling program in the Consumer Unit at the Legal Aid Society of Hawaii. The Homeownership Counseling Project provides advice to individuals and families about homeownership issues. Specifically the project provides information on how to prepare yourself before purchasing a home, what to do if you are in danger of losing your home through foreclosure and issues relating to predatory mortgage lending.

The purpose of this bill is to implement the recommendations of the Mortgage Foreclosure Task Force, of which The Legal Aid Society of Hawaii was a member.

HB 879 HD1 would provide homeowners with the ability to convert a non-judicial foreclosure to a judicial foreclosure, allow them to avoid a deficiency judgment in a non-judicial foreclosure, provide better notice to homeowners of an upcoming foreclosure and clarify title issues and timelines for foreclosed homes. Effectively this bill would provide further protections for families in Hawaii how are having difficulty with the default, foreclosure and loan modification process.

The Legal Aid Society of Hawaii supports the bill, and its efforts to protect the consumers in the State of Hawaii.

Conclusion:

 LSC

www.legalaidhawaii.org
A UNITED WAY AGENCY

We appreciate these committees' recognition of the need to protect consumers in the State of Hawaii. HB879 HD1 attempts to strengthen protections for consumers by requiring mortgage lenders to engage in mediation before instituting foreclosure proceedings. We support HB879 HD1 its attempts to protect homeowners in the State of Hawaii. Thank you for the opportunity to testify.



Collection Law Section

Chair:
Steven Guttman

Vice Chair:
William J. Plum

Secretary:
Thomas J. Wong

Treasurer:
Arlette S. Harada

Directors:
Lynn Araki-Regan
Marvin S.C. Dang
David C. Farmer
Christopher Shea Goodwin
Steven Guttman
Arlette S. Harada
James Hochberg
Elizabeth A. Kane
William J. Plum
David B. Rosen
Mark T. Shklov
Yuriko J. Sugimura
Thomas J. Wong

Reply to: **STEVEN GUTTMAN, CHAIR**
220 SOUTH KING STREET SUITE 1900
HONOLULU, HAWAII 96813
TELEPHONE: (808) 536-1900
FAX: (808) 529-7177
E-MAIL: sguttman@kdubm.com

March 21, 2011

House Consumer Protection & Commerce
and Judiciary Committee Members
Senate Commerce and Consumer Protection
and Judiciary and Labor Committee Members

RE: Pending Foreclosure Legislation Testimony
In **Support of: HB 879 HD 1** and DB 652 SD 2
In Opposition to: HB 894 HD; HB 1411 HD 2; and
SB 651 SD 2

Dear Senators and Representatives:

I am writing to you as the **Chair of the Collection Law Section of the Hawaii State Bar Association ("CLS")**.¹ The CLS is a voluntary organization comprised of attorneys, real estate professionals and members of Hawaii's lending and debt collection communities. Our members also represent consumers, many of whom have dealt or are dealing with foreclosure. Consequently, we are cognizant of their concerns as well.

Together with other members of the CLS, I also personally served as a member of the Mortgage Foreclosure Task Force, which was created by the Legislature last session (Act 162, 2010) (the "Task Force"). The Task Force was charged with the responsibility of reviewing current foreclosure laws and other issues related to foreclosures in Hawaii and making recommendations to the Legislature.

As the Legislature recognized on its website: "This group has worked diligently to develop general and specific policies and procedures necessary to improve the manner in which mortgage foreclosures are conducted in the State." The result of the Task Force's hundreds of hours of meetings was a series of consensus recommendations which are set forth in **HB 879, HD 1 and SB 652, SD 2**. **The CLS strongly supports the recommendations set forth in both of these Bills and requests that they be enacted into law.**

¹ The opinions of the Collection Law Section are not necessarily the opinions of the Hawaii State Bar Association.

Pending Foreclosure Legislation Testimony

March 21, 2011

Page Two

The CLS believes that, if given an opportunity to be implemented, these recommendations will address many of the deficiencies in the current legal system and allow consumers appropriate mechanisms to assert their legal claims. At the same time, because the Task Force's recommendations were supported by all interest groups, we do not anticipate any significant resistance to them. However, enactment of the Task Force's recommendations will be effectively rendered meaningless if other pending legislation pertaining to foreclosures is also enacted.

Because of this, the CLS recommends that decision on the following Bills be deferred until the next Legislative session, and that these Bills be referred to the Task Force for evaluation and recommendations:

HB 894, HD 1. Proposing a 5 month moratorium on non-judicial foreclosures

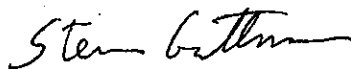
HB 1411, HD 2. Overhauling the existing foreclosure legal framework

SB 651, SD 2. Mandating mediation prior to foreclosure.

The CLS takes this position because, as professionals who deal with these issues on a daily basis, we believe that these three Bills have not been fully vetted and may have devastating, unintended consequences. Based upon our experience and knowledge, the CLS is concerned that these Bills will not assist those currently facing foreclosure. Moreover, these Bills could have a significant negative economic impact on homeowner associations, the local real estate industry, prospective home buyers and current homeowners who are not in foreclosure. This legislation could also overwhelm the Judiciary and cause lenders to either (i) choose not to do business in Hawaii or (ii) charge Hawaii borrowers more for mortgages.

We hope you agree that the concerns set forth above deserve further consideration. Please feel free to contact me should you wish to discuss the CLS' position further.

Sincerely,



STEVEN GUTTMAN
Chairman

cc: Lyn Flanigan



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808-521-4120
ADDRESS:
1000 Bishop Street, Suite 301B
Honolulu, HI 96813-4203

Presentation of the Committee on Commerce and Consumer Protection
Tuesday, March 22, 2011 at 9:00 a.m.
Testimony on HB 879 HD1 Relating to Mortgage Foreclosures

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

I am **Gary Fujitani**, Executive Director of the Hawaii Bankers Association (HBA), testifying on HB 879 HD1. HBA is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii. **HBA would support this bill with reservations, if the requested amendments shown below are made.**

The purpose of this bill is to implement recommendations of the mortgage foreclosure task force relating to service of notice, conversion from nonjudicial to judicial foreclosure, bar against deficiency judgments against owner-occupants, notice of pendency of action and extinguishment of a mortgagor's interest. HBA had a participating member serving on the Task Force.

The primary reason many borrowers are experiencing difficulty meeting their mortgage obligations is reduced income from unemployment or underemployment. Local lenders go to great lengths to work with borrowers before moving to foreclosure.

Our reservations stem from the possible piling on affect of other foreclosure bills still being considered by the legislature. These bills would add an inordinate amount of time to an already long process for lenders to get repaid on troubled mortgage loans. This in turn just drives up cost for all parties.

It is requested that this Bill be amended on page 10, line 22, and page 17, line 16, relating to deficiency judgment against an owner-occupant after a non-judicial sale, **by deleting the word "residential"**. This change would allow a deficiency if the mortgagor owns any other real estate. Obviously, if the borrower owns other type of real estate like a commercial building, etc., lenders should be able to look towards those properties to get repaid.

The recommendations of the task force are substantive and provide meaningful improvements to the non-judicial foreclosure process that benefits the borrower. The recommendations are the result of consensus by the 17 Task Force members who represented diverse, and in some instances opposing, interests.

Thank you for the opportunity to provide our testimony.

A handwritten signature in black ink, appearing to read 'Gary Y. Fujitani', written over a horizontal line.

Gary Y. Fujitani
Executive Director



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

March 21, 2011

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

Re: House Bill 879, HD 1 Relating to Mortgage Foreclosures

Chair Baker and Members of the Senate Committee on Commerce and Consumer
Protection:

I am **Mark James** representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of real estate lenders in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, and other financial institutions. The members of the MBAH originate the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending.

The MBAH **supports House Bill 879**, HD 1 Relating to Mortgage Foreclosures with reservations. While the bill, along with Senate Bill 652, includes some of the recommendations from the Mortgage Foreclosure Task Force that we support, both bills along with House Bill 1411, HD 2, and Senate Bill 651 overlap and can create a confusing situation that needs to be sorted out.

Thank you for the opportunity to present this testimony.

MARK JAMES
President, Mortgage Bankers Association of Hawaii



Hawaii Credit Union League

Your Partner For Success

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 Commerce and Consumer Protection
March 22, 2011 at 9:00 a.m.

Testimony in support of HB 879 HD1, Relating to Mortgage Foreclosures

To: The Honorable Rosalyn Baker, Chair
The Honorable Brian Taniguchi, Vice-Chair
Members of the Committee on Commerce and Consumer Protection

We are **Stefanie Sakamoto and Frank Hogan, Esq.**, and we are testifying on behalf of the Hawaii Credit Union League, the local trade association for 85 Hawaii credit unions, representing approximately 810,000 credit union members across the state.

We are in **support of HB 879 HD1**, Relating to Mortgage Foreclosures, with reservations. This bill implements the provisions of the report offered by the Mortgage Foreclosure Task Force. As members of the Task Force, we are in support of this bill, however, are concerned with the possible effects, should more than one mortgage bill be passed. The provisions in this bill, if coupled with other foreclosure bills, would have a "piling on" effect on local lenders, and could also conflict.

Credit unions have a long history of "serving the underserved", and do everything in their power to keep borrowers in their homes. Foreclosure is often the very last avenue that credit unions will take, after every option – such as loan modification - has been exhausted. Currently, 63 Hawaii credit unions offer mortgage loans. As of 2010, credit unions had approximately 23,000 real estate loans on the books. Out of those loans, credit unions currently only have 22 foreclosures in process.

Thank you for the opportunity to testify.

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 22, 2011

Senator Rosalyn H. Baker, Chair
and members of the House Committee on Finance
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 879, HD 1 (Mortgage Foreclosures)**
Hearing Date/Time: Tuesday, March 22, 2011, 9:00 A.M.

I am 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 supports this Bill, but recommends that its contents be replaced with Senate Bill 652, Senate Draft 2 (Mortgage Foreclosures).

The purpose of this Bill is to implement recommendations of the Hawaii Mortgage Foreclosure Task Force relating to service of notice, conversion from nonjudicial to judicial foreclosure, bar against deficiency judgments, notice of pendency of action, and extinguishment of a mortgagor's interest.

This testimony is based, in part, on my perspective as the Vice Chairperson of the Hawaii Mortgage Foreclosure Task Force ("Task Force"). I served as a member of the Task Force as the designee of the HFSA. This testimony is also based on my experience as an attorney who has actively done foreclosures for nearly 33 years since 1978.

This Bill contains the "Language for Proposed Legislation" that is in the Task Force's 2011 Preliminary Report. The recommendations of the Task Force are substantive and provide meaningful improvements to the non-judicial foreclosure process. The recommendations are the result of consensus by the 17 Task Force members who represented diverse ... and in some instances opposing ... interests. The four Hawaii mortgage lender organizations represented on the Task Force are: Hawaii Bankers Association, Hawaii Credit Union League, Mortgage Bankers Association of Hawaii, and Hawaii Financial Services Association.

The counterpart to this Bill is S.B. 652, S.D. 2. We prefer the wording in Senate Bill 652, S.D. 2, which contains minor revisions to the Task Force recommendations (e.g. the length of time to be an owner-occupant, and the types of properties which make a borrower subject to a deficiency judgment). S.B. 652, S.D. 2 also establishes public locations where nonjudicial foreclosure auctions can be conducted. We generally support those provisions and accordingly recommend that the contents of S.B. 652, S.D. 2 replace the provisions of H.B. 879, H.D. 1.

While the HFSA supports the Task Force recommendations, our support for S.B. 652, S.D. 2 and H.B. 879, H.D. 1 is conditioned on whether other foreclosure bills, which contain concepts that were not considered or recommended by the Task Force, do not pass the legislature this session. The Task Force recommendations are balanced and represent compromises by the various stakeholders on the Task Force. For that reason, the HFSA believes that legislative concepts in non-Task Force bills should be deferred until the final recommendations of the Task Force are made to the 2012 legislature.

Thank you for considering our testimony.


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

(MSCD/hfsa)

March 21, 2011

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

RE: H.B. 879, H.D. 1, Relating to Mortgage Foreclosures

HEARING: Tuesday, March 22, 2011 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 **supports the intent of** H.B. 879, H.D. 1, which implements recommendations from the Mortgage Foreclosure Task Force by: 1) changing the notice provisions for non-judicial foreclosure, 2) prohibiting a deficiency judgment against owner-occupants for non-judicial foreclosures 3) allowing an owner-occupant to convert a non-judicial foreclosure into a judicial foreclosure, 4) allowing the recordation of a notice of intent to foreclose to have the same effect as a notice of pendency of action, 5) providing that the mortgagor's interest in a non-judicial foreclose is extinguished when the affidavit is recorded in the bureau of conveyances or filed in land court.

While HAR supports the intent of the foregoing recommendations, HAR also believes that, overall, a comprehensive evaluation of the non-judicial foreclosure process and balanced approach to amending the foreclosure law is needed, such as in H.B. 1411, H.D. 2, and that the work of the task force is a step in the right direction. However, HAR further believes that, by only amending part I of the foreclosure law, the recommendations of the Task Force represent piecemeal solutions to the problem. Accordingly, HAR supports amending Part II relating to non-judicial foreclosures, and making Part II function by removing the requirement that the mortgagor must sign the deed.

With respect to H.B. 879, H.D. 1, HAR prefers S.B. 652, S.D. 2 which includes the substantive amendments made by this Committee.

Recognizing the possibility that homeowners may continue to face greater hardship, and that this bill would serve to address a part of the foreclosure problem facing our State, HAR respectfully requests your favorable consideration of this measure to continue the discussion, and ensure that all concerns can be addressed as fully as possible.

Mahalo for the opportunity to testify.

HAWAII CHAPTER


community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

March 21, 2011

Honorable Rosalyn H. Baker
Honorable Brian Taniguchi
Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **HB879 HD1 COMMENTS**

Dear Chair Baker, Vice-Chair Taniguchi and Committee Members:

I chair the CAI Legislative Action Committee. CAI asks that the Committee amend HB879 HD1 to conform to SB 652 SD2.

Section 6 of SB 652 SD2 rightly provides a separate procedure for serving notice of condominium association non-judicial foreclosures, in recognition of the distinct issues concerning condominiums. Section 5 of HB879 HD1 should be amended to conform to Section 6 of SB652 SD2.

Thus, HRS Section 667-5(a)(1)(A) would be amended to include the following language which already exists in SB652 SD2:

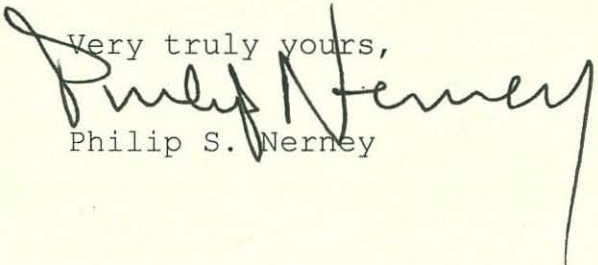
; provided that in the case of nonjudicial foreclosure of a lien by an association, the association shall mail the notice by certified or registered mail, not less than twenty-one days before the date of sale, to:

(i) The unit owner at the address shown in the records of the association and, if different, at the address of the unit being foreclosed; and

(ii) All mortgage creditors whose names are known or can be discovered by the association; and

CAI also asks that Section 2 HB879 HD1 be amended to adopt the definition of "Association" reflected in Section 2 of SB652 SD2, and also to adopt the language in Section 2 of SB652 SD2 which provides that: "(b) This section shall not apply to nonjudicial foreclosures of association liens." The Senate language is to be preferred because it is captures planned community associations as well as condominiums.

Very truly yours,


Philip S. Nerney

March 21, 2011

Honorable Rosalyn H. Baker
Honorable Brian Taniguchi
Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

Re: HB No.879 HD1 COMMENTS

Dear Chair Baker, Vice-Chair Taniguchi and Committee Members:

As attorneys, we represent numerous condominium and planned community associations, along with local lenders. While this submission is not made in a representative capacity, a portion of our clientele may be materially affected by the above-captioned bill. We hope that serious consideration will be given to the following comments as they are based on an in-depth and practical understanding of HRS §667, and its direct effects on homeowners' associations.

HB879 HD1 is primarily directed at protecting Hawaii consumers from improper foreclosures by mortgage-lenders. We request that the language of the above-captioned bill be revised to reflect certain appropriately drafted protections for homeowners' associations. As you are aware, said associations have not contributed to the complaints related to improper foreclosures. Adopting certain provisions of SB652 SD2 into HB879 HD1 would be necessary to prevent dire effects to such associations and their remaining owners.


Specifically we first recommend and request that the definition of "Association" under HB879 HD1 be revised to include planned community associations established under HRS 421J, as in SB652 SD2.

Second, we recommend and request that Section 5 of HB879 be amended to adopt the language of SB652 SD2 which states in relevant part:

: provided that in the case of nonjudicial foreclosure of a lien by an association, the association shall mail the notice by certified or registered mail, not less than twenty-one days before the date of sale, to:
(i) The unit owner at the address shown in the records of the association and, if different, at the address of the unit being foreclosed; and
(ii) All mortgage creditors whose names are known or can be discovered by the association; and

Finally, and most importantly, we ask that Section 2 of HB879 HD1 be amended to state that "This section shall not apply to nonjudicial foreclosure of association liens." Together, these three amendments would replicate and incorporate language found in SB652 SD2. Further, these amendments are necessary to protect innocent homeowners and their respective associations from the undue effects of mortgage-lender regulation.

Very truly yours,


Christian P. Porter, Esq.
Kaponu K. Klakona, Esq.
Bryson R. Chow, Esq.