

THE JUDICIARY, STATE OF HAWAII

Testimony to the House Committee on Consumer Protection & Commerce

Representative Robert N. Herkes, Chair
Representative Ryan I. Yamane, Vice Chair

House Committee on Judiciary

Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair

Wednesday, February 9, 2011, 2:00 p.m.
State Capitol, Conference Room 325

by

Rodney A. Maile
Administrative Director of the Courts

Bill No. and Title: House Bill No. 896, Relating to Mortgage Foreclosures

Purpose: Repeals laws authorizing and providing for non-judicial foreclosure processes.

Judiciary's Position:

The Judiciary expresses no opinion about the intent or purpose of this bill.

If this measure eliminating non-judicial foreclosures were to pass, however, the Judiciary respectfully requests additional funding and resources so that our assistance to the public is meaningful and effective.

It is our understanding that approximately 75% to 90% of foreclosures are currently proceeding non-judicially. *See, for example, attached Honolulu Star Bulletin article dated March 22, 2009 which was attached to the Preliminary Report of the Mortgage Foreclosure Task Force to the Legislature for the Regular Session of 2011 (indicating that non-judicial foreclosures account for at least 75% of foreclosure proceedings.)* A recent report indicates that the total number of foreclosure cases for January through December 2010 in Hawaii was



House Bill No. 896, Relating to Mortgage Foreclosures
House Committees on Consumer Protection & Commerce and Judiciary
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12,425.¹ See attached *Star Advertiser* article dated January 13, 2011 (citing statistics from *RealtyTrac*). During this same period, there were approximately 1,331 judicial foreclosure filings state-wide. If the *RealtyTrac* report includes both judicial and non-judicial foreclosures, approximately 11,094 cases or almost 90% of foreclosure cases proceeded non-judicially last year.

Applying the above statistics, if the non-judicial foreclosure process were eliminated, the Judiciary's caseload could significantly increase. It is also important to note that Hawaii has a larger share of condominiums and time share units compared to other states, which are also foreclosed upon, thereby adding to our case volume.

As a practical matter, in order to address the increased caseload, the Judiciary would need to receive approval and appropriations for additional judges, staff, and courtrooms, as well as for other administrative support. There would also be a delay in start-up time, because even if those funds were allocated this Legislative session, it would still take time to hire staff for the new positions. Even with immediate attention, it could be some time before the system could accommodate the change.

In view of the cuts the Judiciary has already taken and furlough days, the Judiciary respectfully requests financial support from the Legislature, if this measure were to pass, so that our requested assistance to the public would be effective.

Thank you for the opportunity to testify on House Bill No. 896.

¹ Since the January 13, 2011 *Star Advertiser* article indicates that the yearly figure of 14,224 may include some overlap, we are using the 12,425 estimate instead. Please note that these are preliminary estimates based on recently-gathered information.

Island Homes

rentals

rentals

Open Homes

* atarbulletin.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

Continued on Page 2

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 Eva 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.

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.

NO PLACE LIKE HOME
Hawaii's monthly foreclosures over the past year, including the year-over-year percentage gain

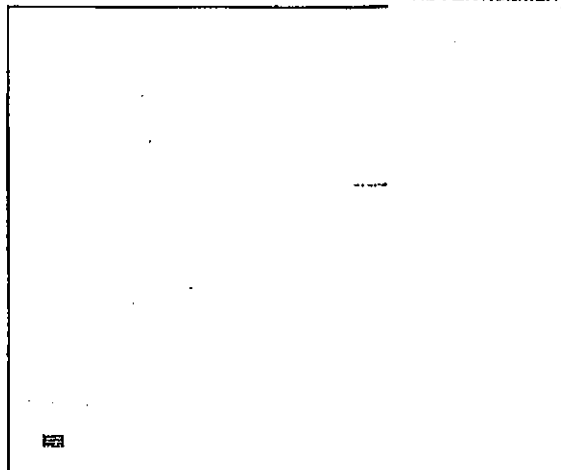
2010 MONTH	TOTAL	CHANGE
December	1,000	-34.8%
November	877	+0.6%
October	1,271	+37.4%
September	1,617	+66.9%
August	1,629	+87.5%
July	930	-6.1%
June	1,000	+41.6%
May	1,055	+29.3%
April	1,474	+115.5%
March	1,097	+51.5%
February	972	+81.0%
January	1,302	+286.4%
Total	14,224	+42.9%

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

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Star Advertiser

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.

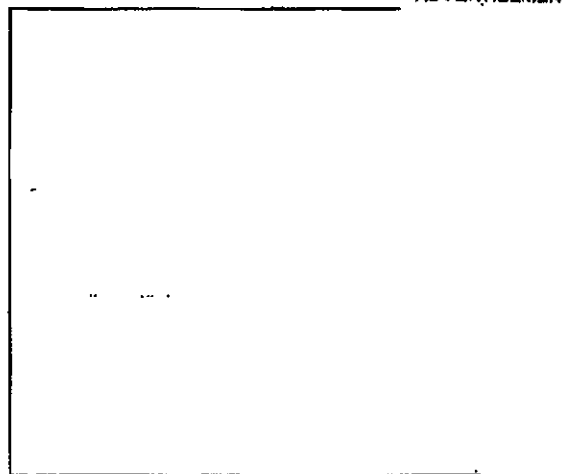
The number of foreclosure filings in December was 1,000. That was down 35 percent from 1,302 in the same month last year but was up from 877 in November.

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.

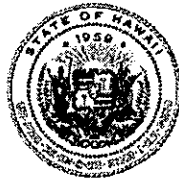
The bulk of filings last month were auction notices and lender repossessions.

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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GOVERNOR

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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE HOUSE COMMITTEES ON CONSUMER PROTECTION & COMMERCE
AND JUDICIARY

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Wednesday, February 9, 2011
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 896, RELATING TO MORTGAGE
FORECLOSURES.**

Comments

TO THE HONORABLE ROBERT N. HERKES AND GILBERT S.C. KEITH-AGARAN,
CHAIRS, AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify regarding House Bill No. 896, 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. 896 seeks to repeal all laws in Hawaii authorizing and providing for non-judicial foreclosure.

The Department acknowledges that there are several deficiencies with Hawaii's current system involving non-judicial foreclosure. There are problems relating to process as well as obstacles in bringing a borrower's concerns to the attention of the Judiciary. In response, the Mortgage Foreclosure Task Force provided several recommendations to the Hawaii Legislature for its consideration in order to attempt to rectify some of the inadequacies. The recommendations are detailed in House Bill No. 879, which the Department strongly supports.

While borrowers who are negatively impacted by Hawaii's non-judicial foreclosure law advocate for its repeal, the Department does not have sufficient information, at this time, to call for its complete elimination. In this regard, it believes that more information is necessary to determine all of the consequences of repealing the non-judicial foreclosure law in Hawaii and believes that the Mortgage Foreclosure Task Force is well situated to fully examine this issue during its 2011 meetings.

Thank you for providing me with the opportunity to testify on House Bill No. 896. I will be happy to answer any questions that the committee members may have.

HAWAII CHAPTER


community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

February 7, 2011

Honorable Robert N. Herkes
Honorable Gilbert S.C. Keith-Agaran
Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

Re: HB 896/OPPOSED

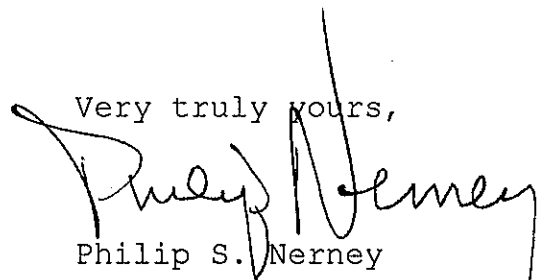
Dear Chair Herkes, Chair Keith-Agaran and Committee Members:

I chair the CAI Legislative Action Committee. CAI opposes HB 896. As related in testimony concerning HB 879, condominium associations should not be penalized for the mess made by the mortgage industry.

Condominium associations are in a completely different situation from mortgage lenders. If HB 896 passes, then it will be absolutely essential that HB 1600 also pass.

The proposed repeal of non-judicial foreclosure remedies for mortgage lenders is one thing. It is quite another to consider depriving non-judicial foreclosure remedies to condominiums for reasons detailed in other testimony.

Very truly yours,


Philip S. Nerney

1999 Session Laws 723 (Act 236) (partial findings)

SECTION 1. The legislature finds that associations of
2 apartment owners are increasingly burdened by the costs and
3 expenses connected with the collection of delinquent maintenance
4 and other common expenses.

5 The legislature further finds that the number of
6 foreclosures in this State has greatly increased, and that
7 associations of apartment owners are often required to bear an
8 unfair share of the economic burden when purchasers in
9 foreclosure actions exercise rights of ownership over purchased
10 apartments without paying their share of common maintenance fees
11 and assessments.

12 The legislature further finds that more frequently
13 associations of apartment owners are having to increase
14 maintenance fee assessments due to increasing delinquencies and
15 related enforcement expenses. This places an unfair burden on
16 those non-delinquent apartment owners who must bear an unfair
17 share of the common expenses, and is particularly inequitable
18 when a delinquent owner is also an occupant who has benefited
19 from the common privileges and services.

Testimony for HB896 on 2/9/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, February 07, 2011 6:19 PM
To: CPCtestimony
Cc: marcyfrommaui@gmail.com
Attachments: Forclosure and mediation t~1.doc (42 KB)

Testimony for CPC/JUD 2/9/2011 2:00:00 PM HB896

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Marcy KoltunCrilley
Organization: Individual
Address: 2962 Kauhale Street Kihei, HI
Phone: 808-874-5644
E-mail: marcyfrommaui@gmail.com
Submitted on: 2/7/2011

Comments:

HB 896

Dear Committee Members,

Thank you for this hearing and for this opportunity to testify.

I am Maui home owner who has been fighting to save our home from foreclosure and have been shocked and overwhelmed by the treatment from my mainland servicer.

I can not believe that the law either allows these banks to treat the people of Hawaii this way, or does nothing to stop them.

I SUPPORT this bill, HOWEVER, the best way for this bill to help stop unnecessary foreclosures in Hawaii is to Amend it to include Mandatory Mediation like the Senate Consumer Protection Committee passed last week.

I have heard testimony from Bankers saying that most homeowners can not be helped, That banks are already trying to work with them, the HAMP program was set up for this purpose and that lenders do not want to foreclose on home owners.

NOTHING could be further than the truth, as my own story will demonstrate.

Successful mediation for both parties MUST INCLUDE the following:

- 1) The bank representative has to have the full authority to negotiate and approve a fair loan modification during the mediation with Full Transparency, with no loop holes for the servicer to abuse.
- 2) The bank representative MUST bring to the mediation the original or a certified copy of the mortgage instrument and each assignment of the mortgage instrument.
- 3) An Immediate Temporary Moratorium on foreclosures until the mediation program is in place.

We are counting on you to make this a very strong Bill, because allowing loopholes will simply defeat the purpose and will NOT help home owners.

This can not wait another day, or I and many others will lose their homes.

Just this morning I received a fed ex from bank of America telling me they have no workouts for me and foreclosure will proceed. DESPITE the fact that I currently have a signed contract with them for a Special Forbearance until March 1st!

I have been trying to get a modification for almost a year, and I believe Bank Of America is hearing about the possibility of Hawaii passing bills to protect the people of Hawaii and are working to rush foreclosures before any bills are passed. ESPECIALLY if they do not have proper documentation that would be required for mediation and for people they have wrongly been denied HAMP modifications.

The above provisions are absolutely key to stop the major mainland servicers from unfairly foreclosing on the families of Hawaii.

I know this from my own personal experience, which I will describe and show why ONLY a STRONG Mediation Program will work.

I live with my husband (a Maui County Firefighter) and our son in Kihei.

We have been trying to get a HAMP loan modification from Bank of America since January of 2010 .

Our original Mortgage was taken out in 2003 with Country Wide Home Loans , than taken over by Bank of America who than sold our loan to Bank Of New York Melon. Our new servicer became " BAC Home Loans Servicing, LP " a division of Bank Of America

In December of 2009 I was notified by BAC mail about the HAMP program and to call to see if I qualified.

After a 2 hour phone interview in January 2010 I was told I was Approved for HAMP trial, and would make 3 payments to be sure I could pay and in the meantime they would verify my income and hardship. However, it would take 30 days to get my trial package by Fed -Ex, and I would start paying the new modified mortgage payment of 31% of my gross income for the three month trial. when it arrived. This seemed fair and affordable to us.

I was warned I had to want to keep, stay, and live in my home and not be trying to sell it.

I agreed because we very much wanted to keep our home!

At this time I had excellent credit, had no other debt, had never missed a payment but was experiencing a large loss of income and we were at the end of our savings.

I have a notebook full of calls and promises from BOA, but long story short, I never got to start a trial although they finally mailed me a packet to apply months later, only after I ran out of money and could only make a partial payment, and after they TOLD me I should miss payments because otherwise I was at the bottom of a stack and they were backlogged and only working with people who had missed payments.

They had lied directly to me when I had told them I only had a few months of savings to pay my mortgage. They assured me I would start the trail payments and I was already approved for a HAMP trial, and would get a permanent loan modification as long as the phone interview information I gave them was verifiable.

I finally got an APPLICATION three months later. NOT for a trial, as promised, but new paperwork to start all over again. Over the next few months I spent hours and hours

making phone calls, getting disconnected , faxing and re faxing documents, and being told everything was fine .

I have a filled a notebook with documentation of over 100 calls, conversations and transactions I have made and have started a second notebook.

Finally on 7/22/10 I got a fed ex telling me I was denied for negative NPV and that I could request my NPV info , and that they were working on alternatives for me.

Giving me the NPV data on request is a direct requirement of HAMP.

The reason they have to provide this information to you is to give you the opportunity to make any necessary corrections to the values they used as they make or break your ability to be considered eligible for the Home Affordable Modification Program.

The servicers are well known to put incorrect data into the NVP tool. From the numbers quoted back to me by some BAC reps, I am certain the DID use the wrong numbers, IF they even ran it.

As of today 2/07/11, I have not gotten the NPV. BAC has become notorious for this, as I found out from others with the same stories.

I asked many times, all documented. I had to verbally ask because they would not give me an address to ask in writing, nor was one provided in the letter.

One BAC rep told me he knew for a fact that NPV results had to come from my investor (Bank Of New York), and that BAC had nothing to do with it, and it was out of their hands.

I called BONY and they denied this completely. They told me they can not make any decisions about loan modifications, the servicer makes all the decisions "on their behalf". They told me it WAS in their best interest, in most cases, to do loan modifications, rather than foreclosure. I have documented all details of these conversations.

The servicers are not even acting in good faith with their investors.

Meanwhile, in April during the process, we had a change in circumstances. My husband suffered severe injury during a MFD fire call at work, was put on Workman's comp, and was getting less than his normal income .

After the HAMP denial but before getting our NPV data, BAC finally agreed to a Special Forbearance, because my husband required two surgeries before he could return to work.

The Forbearance ends this month and our income will have improved. We are trying to re-apply for a loan mode but fear we will be foreclosed on first. I can not trust BOA to Work with me "In Good Faith"!

We are now so behind on payments, we can not catch up without a modification, which they have already denied us, with no clear reason and after telling us we were approved!

Bottom line is THEY have USED the Government HAMP program to CREATE defaults that forces foreclosures.

Our once perfect credit is ruined. If we lose our home, renting will be difficult as landlords do credit checks. Even employers do credit checks, so looking for additional employment will become even more difficult ..

Had I known that it would take four months to get an application and four more months to get turned down, I would have sold my home when I still had some savings, time to sell it ,and when the market value was higher. We might have even had some equity or at least broke even, kept our excellent credit, and been able to rent and find additional work with out being denied for poor credit..

We tried to do the right thing, and we believed the law would never allow a bank to lie to us and mislead us without consequences, especially with the HAMP program.

Bank Of America lied to us and created this situation, I feel this is down right Criminal!

I BEG you to make the banks do the right thing, by passing POWERFUL bills.

If they declare during mediation a mod. can not be done because of a negative NPV than MAKE them show this, make it transparent. Otherwise they will just use this as an excuse to deny the modification, as they have done with me and so many others.

Make them prove they have the original note, all the assignments and investor servicing agreements, because they have already lied to me and others about this.

Please read the TESTIMONY OF MR. ADAM J. LEVITIN from the November 16, 2010 US Senate Committee on Banking , Housing and Urban Affairs Problems in Mortgage Servicing From Modification to Foreclosure,
<http://financialservices.house.gov/Media/file/hearings/111/Levitin111810.pdf>

" The servicing problems stem from servicers' failed business model. Servicers are primarily in the transaction processing business and are failing miserably at trying to adapt themselves to the loan modification business. Servicers' business model also encourages them to cut costs wherever possible, even if this involves cutting corners on legal requirements, and to lard on junk fees and in-sourced expenses at inflated prices. The financial incentives of mortgage servicers also encourage them to foreclose, rather than modify loans in many cases, even when modification would maximize the net present value of the loan for investors. "

Servicers have a conflict of interest and in most cases make money by foreclosing and even delaying foreclosures.

If you listen to these hearings as I have, I am sure you will be outraged, and you will see that Hawaii will NEED to have a very strong law, that does not allow loopholes, to stop these big servicers from unfairly foreclosing on the people of Hawaii!

This is what happened with HAMP but you have the opportunity to learn from HAMP and not make the same mistakes.

I know if these provisions were in place right now, Bank of America would give me the loan modification they keep trying to deny me BEFORE ever having to use the mediation.

They would do so because it would now be in their best interest to do so. Because I DO qualify, and because they have MORE TO LOSE if they had to do an honest Mediation with me in Hawaii, AND actually be REQUIRED to PROVE they have the legal paperwork to foreclose,

The State of Hawaii has the power right now to save thousands of homes and families. The savings for Hawaii would be huge, because when people lose their homes, government costs rise.

HOWEVER: If any mediation law is passed that does NOT included the above, or stronger measures, it will be a total waste of everyone's time and money, and will just be another excuse for the banks to say "we have tried to help but we can only do so much".

Thank You

Marcy and Larry Crilley
2962 Kauhale Street
Kihei, HI 96753
808-874-5644

Laulima, LLC.

Pupukahi I Holomua- Together we can move forward

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Robert N. Herkes, Chair
Rep. Ryan I. Yamane, Vice Chair

DATE: Wednesday, February 9, 2011
TIME: 2:00 p.m.
PLACE: Conference Room 325
State Capital
415 South Beretania Street
RE: Testimony on House Bill 896

My name is Kale Gumapac, President of *Laulima, LLC*, formerly known as *Hawaiian Alliance, LLC*. I am submitting my testimony in support regarding House Bill 896 which has to do with the repeal of HRS 667 of non-judicial foreclosures. My company used to provide education, counseling, forensic mortgage auditing, attorney referrals and paralegal research on mortgage foreclosures to homeowners and attorneys. Since my company's reorganization our business name was changed from *Hawaiian Alliance* to *Laulima*, referring to the cooperative nature of our company with our clients, and our focus is investigating land titles for the purpose of filing insurance claims with our client's title insurance companies from whom they purchased an owner's and lender's title insurance policies should there be a defect in title.

Previously unknown in contemporary legal understandings of Hawai'i's history are two executive agreements that settled the overthrow of the Hawaiian government and continue to remain binding upon the current United States President, Barack Obama, as successor of President Grover Cleveland, under both international law and U.S. Federal law. The first agreement is a temporary and conditional assignment of executive power by Queen Lili'uokalani to the U.S. President on January 17th 1893 calling for an investigation of the participation of U.S. troops and actions of its diplomat in the overthrow of the Hawaiian government, and after the investigation to restore to the Queen her constitutional authority. Pursuant to Article 31 of the Hawaiian constitution, the Queen's authority was that she was constitutionally vested with the executive power and it was her duty to ensure that certain insurgents be apprehended by the police for committing the crime of treason, being a violation of Chapter VI of the Penal Code. But for the presence of U.S. troops who were ordered by the U.S. diplomat to protect the insurgents, the police force, headed by Marshall Wilson, would have been able to apprehend the insurgents. President Cleveland accepted this temporary and conditional assignment on March 9th 1893, and initiated the investigation by appointing James Blount as Special Commissioner to report his findings to Secretary of State Walter Gresham. This first executive agreement is called the *Lili'uokalani assignment*, which also temporarily transferred and assigned to the President the administration of Hawaiian Kingdom law. The investigation was initiated on April 1 and completed on October 18, 1893.

The investigation concluded that the U.S. diplomat, John Stevens, and naval commander, Captain Wiltse, violated international law and were responsible for the overthrow of the Hawaiian government. On October 18th, Secretary of State Walter Gresham directed the new U.S. diplomat assigned to Hawai'i, Albert Willis, to begin negotiations for settlement and restoration of the Hawaiian government as it stood before the landing of U.S. troops on January 16, 1893, with the condition that after restoration and reassignment of the

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executive power, the Queen would grant amnesty to the insurgents. At this first meeting between the Queen and U.S. Minister Willis on November 13th 1893 at the U.S. legation (embassy) in Honolulu, Willis, on behalf of the President, sincerely apologized for the reprehensible conduct of its diplomat and naval commander and that the President determined that the Hawaiian government must be restored, but only after a guarantee that full amnesty could be granted to the insurgents by the Queen. At this first meeting the Queen refused to grant amnesty, but after three more meetings with the U.S. diplomat she agreed and a declaration was signed by her on December 18th and dispatched to the U.S. State Department on the 20th. This is the second executive agreement known as the *Agreement of restoration*, whereby the Queen would grant amnesty “after” the government was restored and the executive power returned.

The Hawaiian Kingdom’s status was that of a recognized sovereign and independent State under international law. Contrary to the language in Public Law 103-150 native Hawaiians are not indigenous peoples within the United States, but are nationals of a recognized sovereign and independent State. One might object, arguing, how can a State that has not had a government for 118 years still have citizens? Hawaiian nationality persists through time even without a government, because nationality arises as an incident of the continuity of State sovereignty and not the continuity or discontinuity of the governmental apparatus. One can be born the “national” of a State even if the State is “occupied” by a foreign government for a long period. Current examples would be Latvia, Lithuania and Estonia, which were occupied by the Soviet Union for more than fifty years. This would also be true of any child born in Iraq to Iraqi nationals since the beginning of the US occupation since 2003 to 2004.

Thus State sovereignty exists until properly extinguished, and this sovereignty is separate and distinct from another sovereign authority that may be effectively operating in its boundaries. This situation—two sovereigns in one country—is referred to by international law as *occupation*. Both the 1893 *Lili`uokalani assignment* and the international laws of occupation mandate that the occupying State administer the laws, both civil and penal, of the occupied State, being the Hawaiian Kingdom. This is not discretionary on the part of the occupant. It is a *mandate* caused by the fact that the occupied State’s sovereignty did not merge with the occupier’s sovereignty, and therefore the occupier is barred from administering the occupier’s national laws within the boundaries of an independent and sovereign State. American law was not applied in occupied Japan after World War II, Japanese law was. American law was not applied in Iraq, after the overthrow of the Iraqi government. Iraqi law was.

Since the United States is a Federal government, States within the Federal Union are subject to the supremacy of Federal laws and treaties, in particular, executive agreements. Article VI, clause 2, of the U.S. constitution, provides: “This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.” In *U.S. v. Belmont*, 301 U.S. 324 (1937), *U.S. v. Pink*, 315 U.S. 203 (1942), and *American Insurance Association, et al. v. Garamendi*, 539 U.S. 396 (2003), the U.S. Supreme Court affirmed that executive agreements entered under the sole authority of the President in foreign relations with foreign states does not require ratification from the U.S. Senate to have the force and effect of a treaty; and that executive agreements bind successor Presidents for their faithful execution. In particular, the Court stated in *Garamendi*, “Specifically, the President has authority to make ‘executive agreements’ with other countries, requiring no ratification by the Senate or approval by Congress.” And in *Belmont*, the Court stated:

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“We held that although [an executive agreement] might not be a treaty requiring ratification by the Senate, it was a compact negotiated and proclaimed under the authority of the President, and as such was a ‘treaty.’”

For the past 118 years, President Cleveland, and his successors in office have violated the *Lili'uokalani assignment*, being an executive agreement, which mandated the President and his successors in office to administer Hawaiian Kingdom law. As a result of the President's failure to administer Hawaiian law all acts performed by the provisional government and the Republic of Hawai'i on behalf of or concerning the Hawaiian Islands cannot be considered lawful because these individuals were insurgents and were not granted amnesty from the Queen because the Hawaiian Kingdom government wasn't restored and the executive power returned. According to §1255 of the Hawaiian Civil Code, the execution of a deed of conveyance and mortgage under Hawaiian law must first be acknowledged by “the party or parties executing the same, before the Registrar of Conveyances, or his agent, or some judge of a court of record, or notary public of this Kingdom,” and then pursuant to §1262, the deed must be recorded in the Bureau of Conveyances, where “all deeds, leases for a term of more than one year, or other conveyances of real estate within this Kingdom shall be recorded in the office of the Registrar of Conveyances.” According to Justice Judd in *Kaaihue v. Crabbe*, 3 Haw. 768, 773 (1877), “The Legislature deemed it advisable that deeds of landed property should be recorded.” §1267 of the Civil Code also provides that “no person who is not a subject of this Kingdom shall be eligible to the office of notary public.” Only Hawaiian subjects can serve as notaries public under Hawaiian law.

Deeds of conveyance of real property and mortgages after January 17, 1893 cannot be considered lawfully executed because the Registrar of Conveyances or notaries public were not lawfully vested with the authority to acknowledge the execution of deeds of conveyance and mortgages because they were insurgents and members of the so-called provisional government and its successor the Republic of Hawai'i—not officers of the Hawaiian Kingdom. Since August 12th 1898, execution of deeds of conveyance of real estate and mortgages also cannot be considered lawfully executed because these insurgents were maintained under the Territory of Hawai'i government, and only Hawaiian subjects can serve as the Registrar of Conveyance and notaries public. Because Hawaiian Kingdom law was not being administered, it in effect, renders all conveyances of real estate and mortgages securing the repayment of loans within Hawaiian territory since January 17, 1893 to the present null and void. The notary public and Registrar of of Conveyances were not competent to execute deeds or mortgages.

Our company operates in strict conformity to the *Supremacy clause* of the United States Constitution, whereby executive agreements are the supreme law of the land and anything in the constitution or laws of the State of Hawai'i to the contrary notwithstanding. Mortgages are liens mortgaged to the lender to secure the repayment of the promissory note. Without legal title vested in the mortgagor, there is no mortgage and therefore no foreclosure. To protect the lender should there be a defect in the title, the lender requires the borrower to purchase a lender's title insurance policy to pay off the loan; and in order to protect the owner should there be a defect in the title, the owner purchases an owner's title insurance policy to pay the owner the stated coverage of the policy, which is usually the value of the property. Title insurance policies are indemnity contracts that insures the accuracy of the title search performed by local title companies, and if accepted by the underwriters of the major title insurance companies, a policy is issued.

For these reasons, our company now focuses on investigations of land titles for the purpose of filing claims of defect in title, which is a covered risk in the lender's and owner's title insurance policy. *Laulima, LLC*, has retained an expert consultant and attorneys to represent their clients in their claims with the title insurance company and even goes as far to assist the lender to file their claim under the lender's policy, which

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the lender required the borrower to purchase for their protection. Therefore, in closing, I suggest that this committee reevaluate these mortgage and foreclosure bills in light of the executive agreements and the mandate of the Supremacy Clause of the United States Constitution. Because these executive agreements exist, there are no valid mortgages. Proper relief for lenders would be their lender's title insurance policy, which they required the borrower to purchase for their protection should there be a defect in title. Therefore, lenders cannot rely on foreclosure proceedings, whether judicial or non-judicial, to recover on the outstanding loan without committing fraud.

I've included with this testimony two articles by Ticor Title Insurance Company that explains the "what" and "why" of title insurance, which can also be accessed online at https://www.ticortitle.com/title_insurance.asp.

Kale Gumapac
President
Laulima, LLC

What Is Title Insurance?

(<https://www.ticortitle.com/whatistitle.asp>)

A Word About Real Estate

Real estate has traditionally been a family's most valuable asset. It is a form of wealth that is protected by many laws. These laws have been enacted to protect one's ownership of real estate and the improvements located on the land. The owner, the owner's family, and the owner's heirs have rights or claims in and to the property that you are buying. Those who may have an interest in or lien upon the property could be governmental bodies, contractors, lenders, judgment creditors, the Internal Revenue Service, or various other individuals or corporations. The real estate may be sold to you without the knowledge of the party having a right or claim in and to the property. In addition, you may purchase the real estate without having any knowledge of these rights or claims. In either event, these rights or claims remain attached to the title to the property that you are buying until they are extinguished.

The Past Can Determine Your Future

Generally, a person thinks of insurance in terms of the payment of future loss due to the occurrence of some future event. For instance, a party obtains automobile insurance in order to pay for future loss occasioned by a future "fender bender" or for the future theft of the car. Title insurance is a unique form of insurance. It provides coverage for future claims or future losses due to title defects which are created by some past event (i.e., event prior to the acquisition of the property.) These risks are far less obvious than those protected against by automobile insurance, but can be just as devastating. The following information will answer some commonly asked questions about title insurance.

Will You Get Clear Title?

It is of utmost importance that you receive clear title to the property when you purchase real estate. In order to do so, you must first be informed of any existing rights or claims that may, in the future, threaten your title and possession to the property. Title insurance provides you with this twofold protection.

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How Do You Find Out What Claims Exist?

In order to determine the status of title, Ticor Title conducts a diligent search of the public records for those documents associated with the property. Ticor Title then examines those recorded documents in order to determine if there are any rights or claims that may have an impact upon the title to the property. The title search may reveal the existence of recorded defects, liens or encumbrances upon the title such as unpaid taxes, unsatisfied mortgages, judgments and tax liens against the current or past owners, easements, restrictions and court actions. These recorded defects, liens and encumbrances are reported to you prior to your purchase of the property. Once reported, these matters can be accepted, resolved or extinguished prior to the closing of the transaction. In addition, you are protected against any recorded defects, liens or encumbrances upon the title that are unreported to you and which are within the coverage of the particular policy issued in the transaction. This is the first benefit you receive from title insurance.

What About Undiscovered Claims?

The title to the property that you have purchased could be seriously threatened or lost completely by hazards which are considered "hidden risks." "Hidden Risks" are those matters, rights or claims that are not shown by the public records and, therefore, are not discoverable by a search and examination of those public records. Matters such as forgery, incompetency or incapacity of the parties, fraudulent impersonation, and unknown errors in the records are examples of "hidden risks" which could provide a basis for a claim after you have purchased the property. In order to protect you against this possibility, Ticor Title provides insurance coverage for such claims. This is the second benefit you receive from title insurance.

How Does a Title Insurance Policy Protect Against All These Claims?

If a claim is made against your insured title, Ticor Title protects you by: (1) Defending your title, in court if necessary, at no cost to you, and (2) Bearing the cost of settling the case, if it proves valid, in order to protect your title and maintain your possession of your property.

Title Insurance Protects Your Asset

Title insurance gives you the assurance that possible clouds on title to the property you are purchasing - which can be discovered from the public records - have been called to your attention that such defects can be corrected before you buy. Additionally, it is insurance that if any undiscovered claims covered by your policy arises out of the past to threaten your ownership of real estate, it will be disposed of, or you will be reimbursed exactly as your title insurance policy provides.

Only One Premium

Unlike other forms of insurance, the original premium is your only cost as long as you or your heirs own the property. There are no annual payments to keep your Owner's Title Insurance Policy in force.

Why Do You Need Title Insurance?

(<https://www.ticortitle.com/whyneedtitle.asp>)

To protect possibly the most important investment you'll ever make - the investment in your home. With a title insurance policy, you as owner, have an indemnity contract that will reimburse you for loss in the event someone asserts a claim against your property that is covered by the policy.

How can there be a title defect if the title has been searched?

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Title insurance is issued after a careful examination of copies of the public records. But even the most thorough search cannot absolutely assure that no title hazards are present, despite the knowledge and experience of professional title examiners. In addition to matters shown by public records, other title problems may exist that cannot be disclosed in a search.

What title insurance protects against

Here are just a few of the most common hidden risks that can cause a loss of title or create an encumbrance on title:

- False impersonation of the true owner of the property
- Forged deed, releases or wills, Instruments executed under invalid or expired power of attorney;
- Undisclosed or missing heirs; Mistakes in recording legal documents
- Misinterpretations of wills Deeds by persons of unsound mind
- Deeds by minors
- Deeds by persons supposedly single, but in fact married
- Fraud
- Liens for unpaid estate, inheritance, income or gift taxes

What protection does title insurance provide against defects and hidden risks?

Title insurance will pay for defending against any lawsuit attacking your title as insured, and will either clear up title problems or pay the insured's losses. For a one-time premium, an owner's title insurance policy remains in effect as long as you, or your heirs, retain an interest in the property.

What this means to you

The peace of mind in knowing that the investment you've made in your home is a safe one.

Call Ticor Title

If you have any questions concerning title insurance coverage, please call a Ticor Title office, or any of our policy issuing agents. We are here to assist you.

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Eddie Amaral, Kalihi Valley Homeowner
Consumer Protection Committee & Judiciary Committee
February 9, 2PM
Room 325
Measure #879, 896, 582, 321, 220, 1484, 1410 and 1411

Support

My name is Eddie Amaral. I have been a proud homeowner in Kalihi Valley for 14 years, but Bank of America is now threatening to foreclose on my home. When my wife and I found out about the default, we did everything we could think of, we learned about loan modifications, the government HAMP program, we made dozens of phone call to Bank of America. We did everything Bank of America told us to do, and they made it sound like they were going to help us but then they denied us but we do not understand why. We hired a lawyer.

We want to pay our mortgage. We want the American Dream. **But the loan modification process is a nightmare because homeowners like me in Hawaii do not have the rights we need in this process.** It is hard to stand up against Bank of America, they are the 2nd largest corporation in the country. This Legislature could help me by passing the strongest mandatory mediation program possible.

I truly appreciate the time your committees are putting into reviewing these bills. Please make sure that one of these bill require that the lender's representative in the mediation is authorized to negotiate on behalf of the lender AND that both parties are required to negotiate in good faith or the foreclosure process is halted.

The moratorium on foreclosures you already passed will give us the breathing space we need to make sure that the mediation process is as good and fair as it can be.

Please do all you can to stop unnecessary foreclosures in Hawaii. Please make our families have the right to mandatory mediation.

Thank you for taking on these important issues. There are thousands of families out there just like me who need a strong state law. Many of these families are on Maui and Big Island and cannot pay to fly here to testify, but their stories are a lot like mine.

February 7, 2011

TESTIMONY FOR HB896

DATE: Wednesday, February 9, 2011
TIME: 2:00 pm
PLACE: Conference Room 325
State Capitol
415 South Beretania Street

TO:

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Robert N. Herkes, Chair
Rep. Ryan I. Yamane, Vice Chair
And Colleagues

COMMITTEE ON JUDICIARY

Rep. Gilbert S.C. Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair
And Colleagues

FROM:

JADE L. BROWN

Participant of FACE and Representing Homeowners of Hawaii
239 Upper Kimo Drive, Kula, HI 96790
(808) 344-1740

My name is Jade L. Brown. I am a responsible Maui homeowner at risk of losing my home and I represent thousands of families across our state who are also facing and/or trying to prevent foreclosure. **I am in support of HB896 which provides some protections for Hawaii's families, although the best way for this bill to help stop unnecessary foreclosures in Hawaii is to amend it to include mandatory mediation like the Senate Consumer Protection Committee passed last week.**

As the financial crisis hit, my income was significantly reduced and we began to struggle making our mortgage payment. President Obama appeared ready to help us with his Making Homes Affordable Program. We applied for a modification. We were told by our servicer (Chase Home Finance) that we had to be delinquent in order to qualify. We had never been late on a payment before, but after receiving this instruction 3 times from Chase, we trusted them, because after all, this was a government program and surely they were conducting themselves with integrity and in good faith. Attempting to modify our mortgage has become a 2nd full time job for me. After over 167 phone calls, 85 faxes because they kept losing our paperwork, a trial modification that was supposed to last 3 months – but dragged on for about a year, and a final modification agreement that we signed and sent back on time, we still have no permanent

modification. My husband and I are hard-working people and have acted in good faith to modify our mortgage. Now, we may be facing foreclosure. We take personal responsibility for saving our home, although we cannot help but feel "set-up" with this modification process. We have complained to the OCC, sought the help of our Senators, and now the assistance of an attorney. All we want is to keep our home that we have worked so hard to love and maintain over the years.

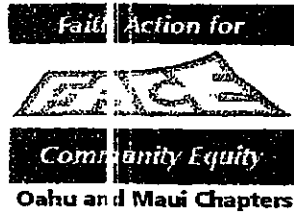
For 2 years now, I have spent countless hours trying to educate myself because I could not understand why Chase was putting us through these sham loan modification negotiations. It is time to end the myth that it is "deadbeat borrowers" who are to blame for the mortgage crisis, and show how the banks have made beggars out of decent, responsible people.

I have become shocked and sickened to learn what has become of our home ownership to the players of the banking industry and Wall Street. I have learned that the contracts we entered into when purchasing our homes were not really mortgages, but security instruments involving parties unknown and undisclosed to us. Our mortgages have been endorsed and assigned to parties unknown and undisclosed to us, often many times over. Such endorsements and assignments were conducted without proper recordkeeping, possibly making identification of our true creditor impossible and therefore, valid lien release upon payoff, also impossible. The banking industry allegedly avoided proper recordkeeping intentionally to bypass having to pay local recording fees. This lost revenue, which could tally millions of dollars, has robbed our local economy and contributed to the financial crisis that our state is in. Credit enhancements and insurance policies were attached to our mortgages without our knowledge, financially enriching parties unknown and undisclosed to us in the millions of dollars if we went into default. Often times, we were targeted for such default at loan origination. I have learned that because our titles are now clouded due to securitization, documents may have been falsified to fabricate a perfected chain of title allowing parties with questionable standing to foreclose on our homes. I have learned that our creditor or creditors have likely been made whole already through various insurance policies, credit default swaps, and when all those funds were exhausted, bailout money from our tax dollars. The banks and servicers are foreclosing on our homes anyway, perhaps being unjustly enriched yet again. **It is important to know that such fraud is no longer alleged. Testimony of loan servicing fraud, loan origination fraud, appraisal fraud, assignment fraud, foreclosure fraud, and securities fraud are part of the Congressional Record and are being elucidated in the judgments of courts around the country following civil litigation. Given the widespread questionable nature of these practices, a national investigation appears in order.**

I don't know about you, but this financial crisis caught me off guard. I did not know what was going on financially for the country. I do not believe the powers in the banking industry and

Wall Street are afforded the same benefit of the doubt. I do not believe that the genius financial engineers who created securities and other exotic products out of our mortgages were unaware of the fraudulent practices they were committing or of the potential financial consequences of their actions. Being financially shrewd, I think they counted on always being one step ahead of us. I can see that they have already planned their response to the financial, housing, and foreclosure crisis. Their game plan is strategically underway and being played out with a well-funded lobby and high powered law firms. They are taking away our land as quickly as possible so as to be ahead of the curve of any new consumer protections and local legislation that safeguards our People.

To us here in Hawaii "home" is a sacred meeting place for friends, family, and community. To the big banks and Wall Street, our home is a game piece on a monopoly board. But, our love of this Land is greater than the greed of Wall Street. **If we continue to passively respond and submit to these strategies of big banks and Wall Street, I do not believe we are acting in our best interest as a State. Surely, we as a people who still remember our stewardship of the Land, recognize that we are more qualified than Wall Street to direct this narrative in the State of Hawaii. I am encouraged that this legislature is considering HB896. As we focus our efforts on economic recovery in the State of Hawaii, it is especially important to protect our citizens from fraudulent practices that will lead to their economic failure. We, who love this Land so much, will cause Hawaii to thrive once again, but we need a fair chance to keep our homes so that we *can* recover and prosper. Thank you.**



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Statewide President

The Rev. Sam Domingo
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The Rt. Rev. Monsignor
Terrence Watanabe
Maui President

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Statewide Treasurer

Ms. Judy Ott
Statewide Secretary

Mr. Drew Astolfi
Executive Director

Mr. Patrick Zukemura
Oahu and Maui Organizer

Ms. Terri Erwin, PhD
Maui Lead Organizer

**Testimony requesting mandatory mediation to address foreclosures
Consumer Protection Committee/Judiciary
February 9 2011**

Measures: HB879, 896, 582, 321, 220, 1544, 1600, 1489, 1410, 1411

Comments

Everyone knows someone in default these days – even if they don't always know they do. Our people tend to struggle in silence, and everyone in Hawaii is struggling some today. This foreclosure epidemic is part of a larger picture of the slow erosion of Hawai'i's local culture.

In many ways investor driven capital is hurting our way of life. One example is the way our hotels – once owned by local businessmen are now owned by investor groups like Goldman Sachs – an institution which cares nothing for us here, and which thinks and plans quarter to quarter...maybe that explains why they ignore the crowd of homeless living in front of their hotel, imagining perhaps that it will have no effect on their business, or on the greater community their business depends upon.

Likewise the epidemic of foreclosures is driven by people from far away who neither know us, love us, or think about us. Local banks – staffed by our friends and neighbors are *not* foreclosing on local families in the casual way that off shore banks do.

Hawai'i should require as law what local banks do as part of their regular business – they sit down and talk to their customers to find solutions to problems. I wish that people would just sit down voluntarily to talk things out. We should not need a law to make things pono. Sadly there doesn't seem to be another way.

Other states and some counties have moved bills mandating mediation into law with very good results – but they all did three things. First they required lenders to prove they own the paper before they process a foreclosure. Second the mediation –the face to face connection –is mandatory. Mandatory means it is a condition of foreclosure – whether judicial or non-judicial. Third, their needs to be penalties applied when these conditions are not met. Simply put, a successful mediation process needs teeth.

One of the industry lobbyists explained at a hearing last week that mediation programs on the mainland have not worked so well. Take a closer look, and you will see that the programs without teeth are the ones that have not worked well. The programs with teeth, like Nevada, have been hugely successful.

I know that mandatory mediation will add a burden to DCCA or the judiciary, so I was excited to see that you are implementing a short moratorium on foreclosures while the new program is set up. Please make sure the key provisions of successful mediation make it to the version that is passed out of this committee.

Thank you for your attention to this important issue.

**Consumer Protection Committee February 9, 2011 2:00PM Measure #s
220, 321, 582, 879, 880, 896, 1410, 1411, and 1484**

Naty Lagaso [natylagaso@hawaii.rr.com]

Sent: Tuesday, February 08, 2011 11:38 AM

To: CPCtestimony

Comments

TESTIMONY

Good afternoon and Mahalo for allowing me to testify.

My name is Naty Lagaso and I live in Aiea. I am a leader in my community and the United Methodist Church. I am a member of Aldersgate United Methodist Church in Honolulu, which has been a member of FACE Faith Action for Community Equity for 15 years.

I have heard so many heart-wrenching stories of families losing their homes to big, impersonal mainland lenders like Bank of America, Wells Fargo, and Chase.

WE MUST DO SOMETHING TO STOP UNNECESSARY FORECLOSURES ON OUR ISLANDS! LET US HELP THE HELPLESS!

Please, please consider drafting a bill that would create strong mandatory mediation laws which would compel lenders to sit face to face with home owners and try to work out a modification of their loans. And please include penalties if the banks are just trying to stall.

I was not sure which bills took up the foreclosure mediation idea so I am testifying on all of them. I hope that it is not too confusing.

I implore you, for the sake of our families, pass a strong mediation bill that includes these measures.

Aloha and Mahalo;

Naty Lagaso

CPCTestimony@Capitol.hawaii.gov

To: Robert N. Herkes, Chair

Committee on Consumer Protection & Commerce

February 9, 2011 at 2:00 p.m.

From: Rev Alan Mark, State President of FACE

Re: Measures: 220, 321, 582, 879, 896, 1410, 1411 and 1484

Chairperson Herkes and Members of the Committee:

Comments

My name is Alan Mark, I'm the senior pastor of the Kilohana United Methodist Church in Niu Valley and the State President of FACE – Faith in Action for Community Equity. I speak for our state organization that includes FACE Maui. We have 50 churches, temples, associations, and organizations island wide. Our mission and purpose is to promote social justice and to better the quality of life for our people here and on the neighbor islands.

I know in our membership there are families who are in default on their mortgage. They are in fear of losing their homes and what will happen to their family. I am not sure which bills speak to having mandatory mediation to help out a large number of our families from losing their homes. But we are in support of the measure that will use mediation to stave off foreclosure. We believe that mandatory mediation will help families save their homes. It has worked in other states like Nevada and Florida.

Having spent ten years as a conflict dispute mediator, I believe mediation works. It allows both parties to clarify their issues and provides for a process where lenders and the home owners can work out their differences and dispute. It is a fair process and a just one for both family and lender. We believe if the mediation legislation is crafted in such a way it would lend itself to a winning proportion for both sides.

Thank you for your kokua and support for our families in keeping their homes.

Deacon Stan Franco
Consumer Protection Committee
February 9, 2011

Measures: 879, 896, 582, 321, 220, 1544, 1600, 1484, 1410, 1411

Comments
Aloha. I am Stan Franco, one of the founders of FACE Maui, and a past President of the organization. I am also the current chair of Housing for the Local Person (HELP), an affordable housing coalition in Maui County. I am in support of the concept of mandatory mediation which I believe will help stop the foreclosure crisis in our state.

The foreclosure situation on Maui is deeply depressing to me - I see it impoverishing local working and middle class families almost overnight. Our parents and grandparents worked very hard and sacrificed to give us a chance at home ownership, and it breaks my heart to drive through Dream City in Kahului and see all the foreclosure signs. Without local homeownership, there will be no more locals in another generation or so. This is a cause for much grief - not just for individual affected families - but also for all of us - their friends, neighbors, co-workers and fellow parishioners.

It is not easy to do the right thing here. The banks are very powerful - they give away a lot of campaign money, and they buy a lot of influence. It will take both Wisdom and Courage for the legislature to address this.

Right now the House bills are not as clear about mandatory mediation as I would have hoped. We need a bill that requires that the lender's representative be authorized to negotiate during the mediation. These provisions should be included in any final version of this bill. But we need to go further than that - there must be penalties if the mortgage servicer fails to participate in the mediation in good faith. After all, the family is facing very steep consequences - so the mortgage servicer needs to be serious too. Reading about the robo foreclosures in the paper make me think that we cannot rely on the good will of the lenders on this - especially the larger banks like Bank of America, Chase, Wells Fargo, and others. These banks had an out

sized influence on the task force which may be why mandatory mediation did not make it through.

Thank you for your attention, and for passing a moratorium last week. Please work to make these bills stronger, and move a strong version of the mandatory mediation to the Senate.

Mahalo again for letting me testify.

UNITE HERE!

LOCAL 5 HAWAII

Eric Gill, Financial Secretary-Treasurer

Hernando Ramos Tan, President

Godfrey Maeshiro, Senior Vice-President

Tuesday, February 8, 2011

The Honorable Robert Herkes & Gil Keith-Agaran, Chairs
and Members
Hawaii State Legislature
House Committees on Consumer Protection & Commerce and Judiciary
State Capitol
415 S. Beretania Street

In support of HB 879, HB 582, HB 1411, HB 1410, HB 896, HB 220, & HB 321.

Chair Herkes, Chair Keith-Agaran, and members of the House Committees on Consumer Protection & Commerce and Judiciary:

On behalf of UNITE HERE Local 5, a local labor organization representing nearly 11,000 hotel, health care and food service workers employed throughout our State, I hereby register our organization's support of HB 879, HB 582, HB 1411, HB 1410, HB 896, HB 220, & HB 321.

In my current capacity as a community/political organizer for an organization that represents service workers, among the most vulnerable in today's economy, I have come to better understand how prevalent the issue of foreclosure is throughout the State.

As was pointed out in a recent report issued by Faith Action for Community Equity (F.A.C.E.) titled "Facing Hawaii's Foreclosure Crisis," nearly all - over 97% - of the foreclosure notices published in Hawaii during November 2010 were from offshore lenders. As an island community, we must address the foreclosure crisis that is being driven by large offshore financial institutions like Bank of America and Wells Fargo, and we thank you and this Committee for providing the necessary public space for discussion on this important issue.

As your Committee continues discussion on the proper response and remedy for assisting Hawaii's working families, we humbly ask that you consider language that would also speak to mandatory mediation - a process that has proven itself as the best way to prevent foreclosures. Through our work with FACE and their partners nationwide, we have learned that the process of mandatory mediation is already working in other working class, tourist based economies such as Nevada.

Thank you again for providing us with the opportunity to participate in these discussions.

Sincerely,

Cade Watanabe
Community/Political Organizer

Measure #s 220, 321, 582, 879, 880, 896, 1410, 1411, and 1484

Jonathan Dailey [jonathand75@gmail.com]

Sent: Tuesday, February 08, 2011 11:13 AM

To: CPCtestimony

Jonathan J. Dailey, Licensed Acupuncturist, Dragon's Dream Acupuncture
Consumer Protection Committee
February 8, 11:00AM
Measure #s 220, 321, 582, 879,, 880, 896, 1410, 1411, and 1484

Aloha and Mahalo for letting me testify,

support

My name is Jonathan Dailey, and I am an Acupuncturist on Maui thinking about buying a house, but I'm worried about being able to pay the mortgage. I know several people who are in default on their mortgage. They are very afraid of losing their home.

I was not sure which bills took up the foreclosure mediation idea, so I am testifying on all of them - I hope that is not too confusing.

I am convinced that mandatory mediation will help a large number of people in our state save their homes. It has worked in other states - it saved almost half of the families in Nevada who would have been foreclosed last year. Mediation that works has to have several provisions - it has to be mandatory, banks and loan servicers should have to prove they own the mortgage (with original documents), and their need to be teeth - their need to be sanctions if the parties do not comply with the process.

This mediaition won't just help families stay in their homes it will also stem the loss of equity flowing out of our state and into the pockets of Bank of America, Wells Fargo, and Chase.

Please pass a strong mediation bill that includes these measures.

--

Jonathan J. Dailey, L.Ac.
Dragon's Dream Acupuncture
808 344 8653
<http://:dragonsdreamacupuncture.com>

1001 Bishop Street, Suite 780
Honolulu, Hawaii 96813-3410
February 8, 2011

HOUSE COMMITTEE ON CONSUMER PROTECTION
HOUSE COMMITTEE ON JUDICIARY
REGARDING HOUSE BILL 896

Hearing Date : WEDNESDAY, February 9, 2011
Time : 2:00 p.m.
Place : Conference Room 325

Chair Herkes, Chair Keith-Agaran, and Members of the Committees,

My name is John Morris and I am testifying on HB 896. I have been involved with condominiums since 1988, when I served as the first condominium specialist with the Hawaii Real Estate Commission (from 1988 to 1991). Since then, I have served as an attorney advising condominium associations and spent almost 20 years trying to collect delinquencies for them.

I'm testifying in opposition to this bill because it proposes to eliminate nonjudicial foreclosures - which play an essential part in helping associations collect delinquencies.

Eliminating a right to conduct nonjudicial foreclosure would force all foreclosures back into court, leading to much greater delays in placing a paying owner in a foreclosed unit. In the early 1990s, when the nonjudicial foreclosure was rarely used and judicial foreclosure was the norm, it often took three or four months just to get a hearing to have a commissioner appointed to sell a property and often took 12 to 15 months to complete a judicial foreclosure because the courts were so clogged with foreclosures. That was true even for properties that had been abandoned by their owners and sat empty while the judicial foreclosure dragged on.

1) **Nonjudicial Foreclosures By Associations Are Often Their Only Option.** Any action to limit nonjudicial foreclosure by homeowner associations may also limit their ability to make the best of a bad situation. While an association can take a money judgment against a delinquent owner, collecting on the judgment can be problematic and illusory if the owner has no assets or those assets have been carefully hidden. In that situation, conducting a foreclosure may be the association's only option to effectively pressure an owner to pay or, if that is not possible, to convert the unit to productive use by renting it out until the lender forecloses.

For example, if a unit is worth \$300,000 but is subject to a mortgage of \$350,000, it already has a negative worth. Since the association is usually a junior lien holder, it can

TESTIMONY REGARDING HOUSE BILL 896

February 8, 2011

Page 2

only sell the property subject to the mortgage, which generally means no one will buy the property except the association. At that point, the association can purchase the unit to try to rent it out to generate some income until the lender takes action. (Knowledgeable buyers will not even pay a dollar for a property that is only worth \$300,000 but is subject to a mortgage of \$350,000. In that situation, the mortgage will have to be paid off if the buyer intends to keep the property. Otherwise, the lender will foreclose on its lien and wipe out the buyer's interest acquired from the association, a junior lien holder.)

An association's purchase of a unit only makes economic sense, however, if the association can conduct a nonjudicial foreclosure. A nonjudicial foreclosure takes 3 to 4 months and costs \$3,000-\$4,000, while a judicial foreclosure costs \$8,000-\$10,000 and, again, can take 10 to 12 months, making it economically unfeasible for the association.

2) **A Prompt Lender Foreclosure Is Best For Associations.** Limiting the right of the lender to conduct nonjudicial foreclosures may also have an adverse impact on associations. Again, if an individual borrower cannot pay the amounts due on his unit to his homeowner association, the association's preferred solution is to, as quickly as possible, place an individual in the unit who can pay those amounts. Often the only way to do that is through a lender foreclosure. At present, a lender's nonjudicial foreclosure can usually be completed in 3 to 4 months, at which point the lender becomes responsible for paying the association (unless a third party buyer has purchased the unit). A lender's judicial foreclosure usually takes 10 to 12 months to complete. Therefore, an association's chance of being made whole is far greater in a lender's nonjudicial foreclosure than in a lender's judicial foreclosure. On that basis, the proposal to allow a borrower to convert a lender's nonjudicial foreclosure to a judicial foreclosure may mean greater losses for a homeowner's association.

Please contact me at 523-0702 if you have any questions. Thank you for this opportunity to testify.

Very truly yours,



John A. Morris

JAM:alt

G:\C\2011 Testimony HB 896 (02.08.11)

TESTIMONY FOR: HB 896

**TO: HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011**

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

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Rep. Angus L.K. McKelvey	Rep. Cynthia Thielen

NOTICE OF HEARING

DATE: Wednesday, February 9, 2011
TIME: 2:00 pm
PLACE: Conference Room 325
State Capitol
415 South Beretania Street

FROM: ANNE W. JENNY
Representing (former) Homeowners of Hawaii
1465 Baldwin Ave
Makawao, HI 96768 Phone 808 579-9456
My name is Anne W. Jenny

Support

The best way for this bill to help stop unnecessary foreclosures in Hawaii is to amend it to include at a minimum mandatory mediation similar to the process that Senate Consumer Protection Committee passed last week

Although it is too late for me we desperately need this legislature to pass HB 896 to ensure that the abuse and fraud engaged in by the mortgage industry is halted and our citizens no longer need live in fear of losing their homes.

I was a bank examiner for the US Treasury, Office of the Comptroller of the Currency during the banking crisis of the 1980's. While at the OCC I specialized in examining banks' compliance with consumer protection regulations and the Community Reinvestment Act. I was also selected as a Consumer Compliance Instructor and completed the Federal Financial Institutions Examination Council Instructor training course. Later I was the compliance officer for a bank holding company and an instructor for the ABA compliance school in Chicago. I have also been a licensed realtor in the state of Arizona. Along with being an expert on lending regulations, I am also a mediator working primarily with churches and non-profits. I am currently teaching economics and personal finance at the University of Hawaii, Maui College.

I consider myself to have an expert level understanding of the regulations and procedures that govern the making of mortgage loans. That understanding was not enough to protect me from the fraud and malfeasance that occurred when my loan was sold into the secondary market. That understanding did not protect me because I had no place to sue for redress. There is no one responsible for requiring the speculators and profiteers to follow the rules that I relied on to protect me from their greed. I am instead considered merely "collateral damage." (pun intended) My home, my marriage even my health came close to being destroyed because there was no way to enforce fair dealing on the part of those more interested in profiteering than in honoring a contract. Ironically these are the same people who received multi-million dollar bonuses paid out of my tax dollars because we were told that their contracts must be honored.

Why has my government, whose officials have sworn to defend and protect us, not acted in the face of this domestic terrorism? My safety and security is and continues to be at far greater risk from these financial thugs than from any foreign entity. **These people have destroyed far more lives, devastated many more communities and come closer to bringing the US economy to its knees than any Al Qaeda agent has managed, even in his wildest dreams.**

My husband and I are both military veterans and eligible for a VA guaranteed home loan. However we were told that they were not available and if we could get one it would be far more expensive than the 'really good deal' our realtor had arraigned for us. I found this hard to believe and started asking questions and doing some research. While waiting to close on our home, I happened to mention to the broker that I had once been a regulator and that I was looking into VA loans. Suddenly the realtor and the broker informed us that they could get my husband a much better deal if he was the only one who signed the papers. As we had recently moved across the country and I had only been employed for a short time this seemed marginally reasonable. Our realtor was the chair of the church council and my husband's boss. He knew exactly what our financial circumstances were. Although I had no reason to distrust him it felt odd to be barred from any input into further negotiations and I never did get to see the final contract. Eventually the loan was closed and sold to Countrywide.

After only a few months the payments began to rise precipitously and in a short time had doubled no prior notice was given as to the timing or amount of the seemingly arbitrary increases. The loan payments were principal and interest only and did not include taxes and insurance. Apparently the broker had not informed my husband that the contract did not include the usual escrow for taxes and insurance. We were suddenly faced with a tax bill of several thousand dollars on top of the drastically escalated loan payments. Our friendly realtor (still my husband's boss) offered to put the house on the market for us (at the full broker's fee, of course) and over the many months it was on the market we received not a single offer. Ironically, we continued to receive robo-calls offering special financing deals from countywide and other mortgage lenders. My husband tried diligently to find to refinance the mortgage on more conventional terms but he was continually transferred from one person to another who made promises but could never again be reached. He sent reams and reams of paperwork that was always lost and/or deemed to be incomplete. And, since my name was not on the papers and I had no legal standing to deal with Countrywide and no one would speak to me when I tried to do the leg-work myself.

My husband became clinically depressed and told me recently he had actually planned to commit suicide. In order to ensure that we at least had a place to sleep I purchased a small RV. After we were forced out of our house it became our home. (I've kept it, just in case we get offered another "trust me it's a really good deal" again.) Ironically the RV cost about the same as my first home but without all of the fees, charges, points, and other items that add to the expense of purchasing a regular property. Nor has the loan been sold in the secondary market, I can pick up the phone and speak to my lender immediately if I have a question or issue. Also, like a regular house I have been able to rent the RV out to help cover the loan and the interest is deductible as though it was a mortgage loan.

The worst part of the entire experience was the feeling of utter helplessness. **If just once someone from countrywide had acted in good faith, there were resources we had available.** But we had no leverage to bring them to the table. We consulted with an attorney but even he offered us no hope of any kind of remedy. The best solution he could offer was to consider filing for bankruptcy.

As a mediator I've worked with the state of Maryland Day of Trial Mediation program, done restorative justice conferences, facilitated interfaith dialogue after 9-11 and even mediated church sexual misconduct cases. I am amazed at how often even the most difficult problems can be resolved once the parties are all sitting face to face. **Mandatory mediation is the most equitable and cost effective way** to deal with what has devastated so many lives. It balances the both the deep pockets of the financial industry and requires them to come to the table rather than hiding behind their answering machines greedily counting the blood money bonuses sucked from another devastated family.

Hawaii is a state where we celebrate the spirit of aloha, the breath of life. The fraud and abuse of the mortgage industry has left us gasping for air, drowning in shame that is not of our making. It is time to reclaim the ethical high ground; to live pono and honor the traditions of talking story and ho'oponopono that the foundations of our culture. Mandatory mediation is a bare minimum, a baby step towards restoring a little of the dignity that has been stripped away from my husband and I and from so many other families.

The Constitution guarantees due process in the Fourteenth Amendment:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

When we (the state) refuse to provide a venue-- be it mediation or formal court process, we are taking property without due process. We have failed to ensure that the laws have been followed or provided recourse for people to challenge illegal contract provisions. Contracts entered into in the state of Hawaii should be able to be enforced in Hawaii. By not requiring the holders of the liens to prove their case or providing a neutral referee to ensure that the laws and regulations have been complied with we allow out of state entities without "standing in the law" to deprive our citizens of property. These actions in have had the effects of in some cases depriving them of life as well. The amendment specifically applies to states and in this case the state is the actor that auctions foreclosed property.

2. We also have the right to petition for redress

The **First Amendment** states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Again, without any forum to challenge the actions of the lien holders the government has effectively denied our right to petition for redress of grievances.

Testimony for HB896 on 2/9/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 08, 2011 12:40 PM
To: CPCtestimony
Cc: gfujitani@hawaiibankers.org
Attachments: Hse foreclosure bills 2-9 ~1.pdf (88 KB)

Testimony for CPC/JUD 2/9/2011 2:00:00 PM HB896

Conference room: 325
Testifier position: oppose
Testifier will be ~~present~~: Yes
Submitted by: Gary Fujitani
Organization: Hawaii Bankers Association
Address: 1000 Bishop Street Suite 301B Honolulu, HI 96813-4203
Phone: 808-524-5161
E-mail: gfujitani@hawaiibankers.org
Submitted on: 2/8/2011

Comments:

This testimony covers all the foreclosure bills being heard on 2/9 by the joint committees. We will be submitting the same testimony for all the other bills on the agenda.



TEL:
808-524-5161
FAX:
808-521-4120
ADDRESS:
1000 Bishop Street, Suite 301B
Honolulu, HI 96813-4203

Presentation of the Committees on Commerce and Consumer Protection and
Judiciary
Wednesday, February 9, 2011 at 2:00 p.m.
Testimony on Various House Bills Relating to Mortgage Foreclosures

TO: The Honorable Chairs Robert Herkes and Gilbert S.C. Keith-Agaran
The Honorable Vice Chairs Ryan I. Yamane and Karl Rhoads
Members of the Committees

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying on the various foreclosure related bills being heard today at this joint committee hearing. HBA is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii.

Below is listed our testimony on the bills being heard today.

1. HB 879 Mortgage Foreclosure Task Force Recommendations-SUPPORT with Amendments: 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, the bar against deficiency judgments, notice of pendency of action, and extinguishment of the mortgagor's interest pursuant to the old non-judicial foreclosure law.

This Bill reflects 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.

Proposed Amendments: a) We recommend that this Bill be amended on page 10, line 22 and 17, line 16 relating to deficiencies against an owner-occupant after a non-judicial foreclosure sale. As drafted, if an owner-occupant who is being foreclosed on has "a fee simple or leasehold ownership interest in any other residential real property", the foreclosing lender can pursue or obtain a deficiency judgment against that person. That provision is unduly restrictive.

Mortgage lenders should be allowed to also pursue an owner-occupant for a non-judicial foreclosure deficiency if that person owns any non-residential property (e.g. commercial property, etc.).

This Bill should be amended to delete the word "residential" on page 10, line 22 and page 17, line 16. The phrase should read: "a fee simple or leasehold ownership interest in any other real property".

b) Judicial foreclosure auctions and non-judicial foreclosure auctions in the State have usually been held at court locations. On the Big Island, they have been held at a State building (Hilo) and a public park (Kona). Late last year, the Department of Accounting and General Services slated that it would not allow foreclosure auctions at the State building in Hilo. The Judiciary took the position that it will not approve the use of any court facilities in the entire State for the purpose of conducting non-judicial foreclosure auctions. According to Hawaii Financial Services Association testimony for SB 1175, the Judiciary was concerned that the public would be confused about whether or not non-judicial foreclosures are court sanctioned. In Hilo, there is an additional issue of whether the non-judicial foreclosure auctions can be conducted on public sidewalks adjacent to court buildings and other State buildings. This issue, which was not voted on by the Task Force, is urgent enough that it needs to be addressed legislatively this session to codify what has been a general practice. Unless this problem is corrected, non-judicial foreclosure auctions might have to take place at numerous, inconvenient locations. This could discourage members of the public who would want to attend and bid at the auctions. It is in the interest of both the lenders and the borrowers to have members of the public bidding at non-judicial foreclosures.

The legislative wording to correct this problem is simple. This Bill should be amended to state that the auction, i.e. the public sale, should be allowed to take place at a state building in the county where the property is located, subject only to reasonable conditions on the time, place and manner of the public sale.

2. HB 582 Requiring Hawaii Servicing Agent: We support only the new provision in SECTION 2 (a) (5) that requires a mortgage servicer to maintain an office in the State. However, we believe that it would be unreasonable to require all servicers to open an office. The requirement should apply to servicers that service a certain number of mortgages in the State.

We **oppose** SECTION 1 pertaining to mediation and SECTION 3 pertaining to non-judicial moratorium.

Lenders do not want to foreclose on homeowners. Therefore, lenders will work borrowers that have the willingness and ability to keep them in their homes. Most lenders participate in the Federal Home Affordable Modification Program or have their own modification programs to help troubled homeowners stay in their homes. However, it is our experience that most residential owner occupants are unable to make their mortgage loan payments due a reduction in income caused

by unemployment or underemployment. So in most cases foreclosure mediation does not really solve the underlying problem of loss of income.

It is a possibility, if a foreclosure mediation program is implemented, lenders may initiate foreclosure sooner due to the additional time mediation would add to the foreclosure process. So instead of focusing on working with borrowers in the early stages of delinquency, lenders may opt to start the foreclosure process sooner, which really does not benefit homeowners.

The proposed moratorium would have a chilling effect on Hawaii's slowly recovering real estate market by sending a signal that lenders are not able to collect on delinquent loans. This in turn could dry up the availability of mortgage loans and send the State into an economic meltdown by weakening an already fragile real estate market.

3. HB 1411, 1410 and 896 Repealing or Modifying Nonjudicial Foreclosure Statutes-OPPOSE: We oppose these bills which attempt to repeal or modify nonjudicial foreclosure statutes.

Your Mortgage Foreclosure Task Force, which was created by Act 162 of the 2010 Session Laws of Hawaii, issued its 2011 Preliminary Report to the Legislature. The Task Force's recommendations are contained in other bills, such as House Bill 879. We believe that 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.

HBA believes that **only** the recommendations of the Task Force should be adopted by the Legislature. Any other issues can continue to be reviewed by the Task Force over the remainder of this year as the Task Force considers other recommendations for the 2012 Legislature.

4. HB 1484 Trust Foreclosure Prohibition-OPPOSE: This proposed bill places unrealistic requirements that would prevent a trustee of mortgage-backed securities to foreclose on any property.

In the United States, the most common securitization trusts are Fannie Mae and Freddie Mac, U.S. government-sponsored enterprises. Also Ginnie Mae, a U.S. government-sponsored enterprise backed by the full faith and credit of the U.S. government, which guarantees its investors receive timely payments, does buy limited numbers of mortgage notes.

For example a Fannie Mae-issued mortgage-backed security (MBS) represents an undivided beneficial ownership interest in a group or pool of one or more mortgages.

The mortgage-backed security process begins with a mortgage loan. The loan is made by a financial institution or other lender to a borrower to finance or refinance the purchase of a home or other property. These loans are made to

borrowers under varying terms (e.g., 15-year, 30-year, fixed-rate, adjustable-rate, etc.); during the life of the loan, the balance is generally amortized, or reduced, until it is paid off. The borrower usually repays the loan in monthly installments that typically include both principal and interest.

Because mortgage loans may take years to pay off, lenders must find ways to replenish their funds in order to make more mortgage loans. To do this, lenders sell groups of mortgages with similar characteristics into the secondary mortgage market to issuers or guarantors of mortgage-backed securities, including Fannie Mae.

Fannie pools loans that generally meet its standards and converts them into single-class mortgage-backed securities, which represents an undivided beneficial ownership interest in a group or pool of one or more mortgages.

These government sponsored enterprises provide a valuable funding source to allow your constituents to purchase homes. Any unrealistic statutes that are designed to freeze a trustee's ability to execute their fiduciary duties may make residential real estate loans harder to obtain for future homeowners.

5. HB 321 Foreclosure Documentation Requirements-OPPOSE: This bill would require a lender to include a plethora of documents with their notice of default, and in our experience, the more paper you send a borrower; the more likely the borrower will not read it or miss the essential information which is the action that the borrower must undertake to cure the default.

The borrower/mortgagor is already provided with copies of the promissory note and mortgage at the time of the loan closing. Subsequently, it is standard procedure to provide copies, for a fee, of the mortgage loan documents, at any time requested by the mortgagor.

We also note that this bill assumes certain facts about loan documentation which is incorrect. Many lenders document residential mortgage loans on Fannie Mae or Freddie Mac forms and those forms provide for only the borrower's signature. Thus, the requirement that we provide a copy of loan documents signed by both the mortgagor and mortgagee is inconsistent with marketplace realities, and thus renders the requirement moot.

Most importantly by requiring copies of all written agreements which modify a note, passage of this bill would hinder loan modification programs to help homeowners. We submit that this Committee should support efforts by lenders to help homeowners rather than by passing well-meaning legislation which has the opposite effect.

Not all loan modification programs are reduced to writing. Sometimes, the agreement can be oral and informal. For example, if a borrower says I can pay you in full in two months, we sometimes note that in our files rather than drafting a written agreement, or one drafted by a lawyer which only hurts the borrower because of costs. Basically, the foregoing example is a two month deferral of due

dates in the promissory note. If we had to reduce such an informal agreement to writing, that would be a disincentive to loan modification programs.

6. HB 321, 1600 and 1544 Foreclosure of Condominium Units-OPPOSE: We oppose these bills which attempt to place more of the financial burden from foreclosed condominium units on the back of lenders.

Increasing the losses that lenders incur on condominium foreclosures, may have the unintended consequence of restricting future loans to the condominium market. This in turn could have the negative effect on condo sales and purchases since lenders may require higher down payments to offset potential losses and/or higher interest rates to compensate for the added risk. If mortgage terms are tightened it may affect the value to these properties if prices have to be lowered in order to encourage sales.

It is our understanding that there may not be agreement among the association advocates regarding this legislation and request that this bill be held.

Summary

In a previous House hearing, it was mentioned, without citing a credible source, there will be approximately 250,000 Hawaii foreclosures in 2011. According to the State of Hawaii 2009 data book there were about 515,000 or so housing units in Hawaii. Hawaii Business Magazine February 2011 issue cited home ownership at almost 60% of occupied housing units. At 515,000 units or so, 250,000 is about 49% of units would be in foreclosure. If 250,000 were only owner occupant units, then the foreclosure rate would be 81%. At either rate, this would be very unlikely and would mean the State would have more systemic financial and social problems to face.

In setting foreclosure policy, we must consider the others in our communities, your constituents and our customers, who may be affected. Undoubtedly, this silent majority of your constituents have a stake in foreclosure legislation.

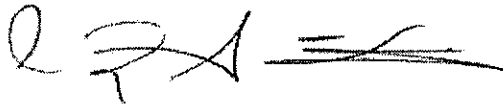
The economic impact from proposed legislation, which by design extends the foreclosure process and/or place a moratorium on foreclosure, applies to only a small segment of the housing market.

Will more stringent loan terms (higher down payment requirements, higher rate to compensate for added legislative risk, etc.) affect your constituents who want to buy or sell a home? What about home owners that see the value of their homes drop in neighborhoods with an inordinate amount of foreclosed homes, where the occupants no longer take pride in maintaining their homes, which adds to neighborhood blight? What about county governments that collect less real property tax revenues because of falling assessed values and face increased costs to enforce property code violations? What about the Realtors, mortgage brokers, appraisers, home builders, union trade workers and the many others that will experience loss of income if our slowly recovering real estate market

stumbles due to unintended consequences of legislation designed to help a few at the expense of the vast majority of your constituents and our customers?

While we understand the intent of the proposed foreclosure legislation to help troubled borrowers, the reality is that a vast majority of foreclosures result from reduced income due to unemployment or underemployment (for example, loss of second job). Therefore, it is best to let banks have the flexibility to help borrowers and not pass permanent legislation to solve a temporary situation.

Thank you for this opportunity to testify.

A handwritten signature in black ink, appearing to read 'Gary Y. Fujitani', with a horizontal line drawn through the end of the signature.

Gary Y. Fujitani
Executive Director

Testimony for bill #s 220, 321, 582, 879, 880, 896, 1410, 1411 and 1484

Dr. John Heidel [jheidel@hawaii.rr.com]

Sent: Tuesday, February 08, 2011 1:26 PM

To: CPCtestimony

To: House Consumer Protection & Commerce Committee and House Judiciary Committee

For: Hearing of bill #s 220, 321, 582, 879, 880, 896, 1410, 1411, 1484

Date: Wednesday, February 9, 2011, 2:00pm

Place: State Capitol, Conference Room 325

From: Rev. Dr. John R. Heidel, minister, United Church of Christ

Thank you for holding this hearing and for accepting this testimony.

My name is John Heidel and I offer this testimony in support of legislation that will help residents of Hawaii who are suffering from the foreclosure crisis. I'm an ordained minister of the United Church of Christ and have been a minister here in the islands for nearly 50 years; first as the Minister of Youth at Central Union Church in Honolulu and then as Chaplain of Punahou School for 32 years. I have heard the stories of people in our community whose lives are being torn apart because of their facing foreclosure - including one family who is a member of the church where I worship in Kailua.

Since there are many bills being proposed that relate to this crisis, I am primarily concerned that you pass legislation that will help our residents save their homes. If it takes the passage of all bills being proposed, then that is exactly what I strongly support.

From what I have learned, it appears that mandatory mediation is the solution to this foreclosure crisis. I understand it has worked in other states, saving the homes of many families in Nevada. The issue is complicated in Hawaii because many of the mortgages of island people are held by banks on the mainland with no local representative. Without local access to their bank, our residents are being victimized by an inaccessible bureaucracy. Mandatory mediation with provisions that will force the banks to comply with fair process will save many of our island families from suffering foreclosure.

Please pass a strong mediation bill that includes these provisions.

Testimony February 9, 2011, 2:00PM Measure #s 220, 321, 582, 879, 880, 896, 1410, 1411, and 1484

OH-NO Housing [ohnohousing@gmail.com]

Sent: Tuesday, February 08, 2011 1:42 PM

To: CPCtestimony

Cat Wong, President, OH-NO, Ohana-Housing Network Oahu

Consumer Protection Committee

February 9, 2:00PM

Measure #s 220, 321, 582, 879,, 880, 896, 1410, 1411, and 1484

Aloha and thank you for allowing me to provide testimony.

My name is Cat Wong and I am a resident living in City-owned Affordable Housing in Honolulu. I represent OH-NO, Ohana Housing Network Oahu, a representation of over 5,000 residents as well as seniors living in Kahuku Elderly Housing. Our goal is to preserve affordability of homes. The last year has seen many people struggling to keep their homes in this recession.

I am in support of any bills that propose mediation for foreclosure, particularly because saving local residents from losing their homes should be of utmost importance.

Mandatory mediation has worked in other states, and we need some defense against big out-of-state mortgage lenders and corporations who have no regulation whatsoever to comply with helping the local residents, especially when access to these institutions is so challenging. Moreover, the residents do not feel any support or defense in helping them through a complex, stressful and sometimes unlawful process. The government in Hawaii must step in, so that proper steps can be taken to protect our own residents from unlawful

foreclosures. We need more consumer protection, education, and mandatory regulation when dealing with Bank of America, Chase, or any of the big banks that have been doing business in our state and have so far not served in the best interest of the people.

Please pass a strong mediation bill that includes these measures to help protect the interests of Hawaii's homeowners.

Sincerely,

Cat Wong

OH-NO

Ohana-Housing Network Oahu

ohno.housing@gmail.com / 808-375-7071

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Ohana Housing Network Oahu, OH-NO

"Preserving Affordable Housing with Dignity"

"

Drew Astolfi
Director Faith Action for Community Equity
Consumer Protection Committee
February 9, 2011

Measures: 879, 896, 582, 321, 220, 1544, 1600, 1484, 1410, 1411

Thank you for the chance to testify on these important measures.

Comments

FACE recognizes the need for mandatory mediation to address Hawai'i's foreclosure woes. Looking at other states it is - done well - the only thing that seems to truly address the foreclosure crisis. The people of our state need swift strong action on this, and I hope the committee can take a lead on this. FACE leaders were enormously encouraged by this committee's consideration of a temporary moratorium last week. Thank you very much for that.

Successful mandatory mediation needs to adopt several three basic principles:

1. Banks and mortgage servicers must be required to prove they own the loan before foreclosing. Given the evidence of widespread fraud around the country on this matter - especially in light of the so called robo foreclosures this is an essential part of any successful mediation process. It should also be included in any other bill.
2. Mediation has had mixed results around the country - it has succeeded (Nevada and Maryland) where it is strongly mandatory, and where the mortgage servicer or bank is required to send a representative to the mediation that is empowered to make modifications to the loan. Mediation has not done as well when this is not required. In order to truly fix this problem we have to require that the servicers send people with authority to make changes to the mediation.
3. Finally a mandatory mediation program needs teeth to work - loan servicers must face penalties if they do not comply with the mediation process, otherwise there is strong evidence that they will ignore it. A bill that lacks enforcement tools risks failure.

Mahalo nui for your work on this.

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

February 9, 2011

Rep. Robert N. Herkes, Chair
and members of the House Committee on Consumer Protection & Commerce
Rep. Gilbert S.C. Keith-Agaran, Chair
and members of the House Committee on Judiciary
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 896 (Mortgage Foreclosures)**
Hearing Date/Time: Wednesday, February 9, 2011, 2:00 P.M.

I am the attorney for the Hawaii Financial Services Association ("HFSA"). The HFSA is the trade association for Hawaii's financial services loan companies, which are regulated by the Hawaii Commissioner of Financial Institutions. Financial services loan companies make mortgage loans and other loans.

The HFSA opposes this Bill.

The purpose of this Bill is to repeal laws authorizing and providing for non-judicial foreclosure processes.

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.

The Task Force, which was created by Act 162 of the 2010 Session Laws of Hawaii, issued its 2011 Preliminary Report to the Legislature. The Task Force's recommendations are contained in other bills, such as House Bill 879. We believe that the recommendations 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 provisions in this Bill (House Bill 896) are not part of the Task Force's recommendations. The HFSA believes that only the recommendations of the Task Force should be adopted by the legislature. Any other issues can continue to be reviewed by the Task Force over the remainder of this year as the Task Force considers other recommendations for the 2012 Legislature.

Under Act 162, the Task Force is to make recommendations to the 2011 and 2012 Legislature on various issues:

"... the task force shall consider the following areas for possible improvements:

...
(6) Revisions to part II of chapter 667, Hawaii Revised Statutes, to make it a viable vehicle for power of sale foreclosures."

This issue was addressed at the Task Force meeting on December 15, 2010. The Task Force members adopted a motion stating that the Task Force is in the process of reviewing and considering this item in more depth, but did not have sufficient time to consider and make specific recommendations, and is therefore making no statements on the merits of this item. Furthermore, the Task Force voted that it will address this item as part of its report to the 2012 Legislature and requested that the Legislature defer action on this item and related matters until the 2012 regular session.

Thank you for considering our testimony.


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

(MSCD/hfsa)

CPCtestimony

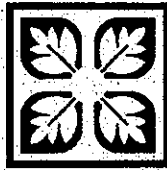
From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 08, 2011 11:33 PM
To: CPCtestimony
Cc: emmatsumoto@hotmail.com
Subject: Testimony for HB896 on 2/9/2011 2:00:00 PM

Testimony for CPC/JUD 2/9/2011 2:00:00 PM HB896

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Eric M. Matsumoto
Organization: MTA
Address: 95-303 Kaloapau St. Mililani, HI
Phone: 282-4324
E-mail: emmatsumoto@hotmail.com
Submitted on: 2/8/2011

Comments:

Mortgage foreclosures are not the same as associatoin foreclosures. Eliminating non-judicial foreclosures for associatins will delay the ability of these common interest communities from being able to collect dues owed much quicker, thus leaving the rest of the community meembers to pick up the shortage. In these cases, the short non-judicial foreclosure process best helps to restore the needed dues flow. As such, we request this bill be deferred.



CATHOLIC CHARITIES HAWAII

211 Kaulawahine St, Kahului, Hawaii 96732

Consumer Protection Committee

Testimony related to HB 582, 879, 896, 1410, 1411

Tuesday, February 8, 2011

As the chair of FACE Maui's Affordable Housing, Land Use and Foreclosure task force I would like to take this time to thank Senator Roz Baker and Senator Suzanne Chun Oakland for introducing legislation to protect our families that are facing foreclosure.

I am testifying in support of HBs 582, 879, 1410, 1411 and I am asking you to please consider adding tougher requirements to this really important legislation. We need your help to advocate strong mandatory mediation legislation that will hold mortgage servicers accountable to families facing foreclosure.

On Maui I get calls from many people who can't afford their mortgages, their homes are going into foreclosure or have already lost their homes and have no where to go. They have no idea what they can do or what their options are.

I have heard Na Hale O Maui's Executive Director say one of every 88 homes on Maui is in foreclosure. This is absolutely staggering and disconcerting. Families need to feel they have rights; they need to understand the process and what they can do to correct the situation to make it right (the whole concept of pono and doing what is right). They have the right to meet face to face with an authorized person not spend countless phone calls often speaking to a new representative every time they call, who requires them to resubmit required paperwork time and time again. They have the right not to live in constant fear, that every time they hear a car driving into their driveway it's not a sheriff representing a lender taking away their home and throwing them out in the street. Thus making them feel frustrated, powerless, a loss of control leading them to believe they have no rights and cannot win this losing battle.

In Hawaii our land is cherished and treasured; the idea of losing it means a loss for generations. Please give our families the ability to be pro-active and work towards solutions so they won't lose their homes to foreclosures.

Sincerely,

Thelma Akita-Kealoha
Maui Community Director
Catholic Charities Hawaii