

SB 1191



NEIL AMBERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
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HONOLULU, HAWAII 96809
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KEALI'I S. LOPEZ
INTERIM DIRECTOR

EVERETT KANESHIGE
DEPUTY DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Wednesday, February 2, 2011
8:30 a.m.

**TESTIMONY ON SENATE BILL NO. 1191, RELATING TO MORTGAGE
FORECLOSURES.**

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

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify regarding Senate Bill No. 1191, 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.

Senate Bill No. 1191 seeks to prohibit foreclosing mortgagees in nonjudicial foreclosures from pursuing deficiency judgments against the borrowers and prohibits junior lienholders from pursuing monetary judgments against the borrowers.

Testimony on Senate Bill No. 1191
Wednesday, February 2, 2011
Page 2

The Department believes that the specific recommendation contained in the Mortgage Foreclosure Task Force Preliminary Report to the legislature relating to deficiency judgments is preferable to that contained in Senate Bill No. 1191. Consequently, it would support adoption of those provisions, as reflected in Senate Bill 652 or Senate Bill 1074, in lieu of this measure.

Thank you for providing me with the opportunity to testify on Senate Bill No. 1191. I will be happy to answer any questions that the committee members may have.



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1000 Bishop Street, Suite 301B
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Presentation of the Committee on Commerce and Consumer Protection
Wednesday, February 2, 2011 at 8:30 a.m.
Testimony on SB 1191 Relating to Mortgage Foreclosures

In Opposition

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

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in opposition to SB 1191. HBA is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii.

This bill prohibits foreclosing mortgagees in nonjudicial foreclosures from pursuing deficiency judgments against the borrowers. It also prohibits junior lien holders from pursuing monetary judgments against the borrowers.

Your Mortgage Task Force addressed the issue of deficiency judgment in its recommendations to this Legislature. The recommended legislation provides meaningful improvements for borrowers facing non-judicial foreclosure including the issue of deficiency judgments.

This bill could dramatically affect the availability of first mortgage and other types of real estate secured loans or make loan terms so tuff that it would impact the public's ability to sell or purchase homes. This would further exacerbate our fragile real estate market and our economy.

We incorporate by reference the testimonies separately submitted by the Hawaii Credit Union League and Hawaii Financial Services Association.

Thank you for the opportunity to provide our testimony.

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



1654 South King Street
Honolulu, Hawaii 96826-2097
Telephone: (808) 941.0556
Fax: (808) 945.0019
Web site: www.hcul.org
Email: info@hcul.org



Testimony to the Senate Committee on Commerce and Consumer Protection
Wednesday, February 2, 2011 at 8:30 a.m.

Testimony in opposition to SB 1191, Relating to Mortgage Foreclosures

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

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

The Hawaii Credit Union League is in opposition to SB 1191, Relating to Mortgage Foreclosures. This bill would wipe out the debts owed by a mortgagor whose mortgage is sold in a nonjudicial foreclosure to any creditor who has a security interest in the foreclosed property to secure the debt owed by the mortgagor to that creditor.

SB 1191 would appear to apply equally to debts owed by the mortgagor to the counties for real property taxes, debts owed by the mortgagor to the State of Hawaii for other taxes, home equity lines of credit and second mortgage loans owed by the mortgagor to other lenders, as well as debts owed by the mortgagor to judgment lienors and mechanic's lienors. Under present Hawaii law, the foreclosure of a mortgage wipes out the liens of such creditors on the property sold at foreclosure if the creditors' liens are junior to the foreclosed mortgage, but leaves the ability of the creditors to collect the debts otherwise unchanged.

SB 1191 would not affect any other debt owed by the mortgagor, for example, auto loans, finance company loans or credit card debt. There is no reason to differentiate between debts that are not secured by the property and debts that are secured by the property.

The relief described in the proposed SB 1191 is available to a mortgagor through bankruptcy, where the bankruptcy court can address all of the issues and marshal all of the debts and assets of the mortgagor.

Thank you for the opportunity to testify.



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

January 31, 2011

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

Re: Senate Bill 1191 Relating to Mortgage Foreclosures

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

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

The MBAH opposes Senate Bill 1191 Relating to Mortgage Foreclosures. The Mortgage Bankers Association of Hawaii strongly feels that these bills relating to the matter of foreclosures should be vetted as part of the mortgage foreclosure task force since both consumer and lender groups are represented and can work on the details of each bill to come to a consensus. We feel that the bills, as presented, have merit but include processes which may potentially cause harm to consumers and lenders.

Thank you for the opportunity to present this testimony.

1001 Bishop Street, Suite 780
Honolulu, Hawaii 96813-3410
February 1, 2011

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
REGARDING SENATE BILL 1191

Hearing Date: WEDNESDAY, February 02, 2011
Time : 8:30 a.m.
Place : Conference Room 229

Sen. Baker and Members of the Committee,

My name is John Morris and I am testifying against SB 1191. 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.

Denying a homeowner association the right to a deficiency judgment against a delinquent owner is inherently unfair and essentially elevates the rights of someone who does not pay his bills over the rights of those who do. Every other member of the homeowner association has their own problems and their own bills to pay, and there is no reason to allow just one homeowner to avoid his debt by denying the association a right to deficiency judgment. Any action to eliminate the right of a homeowner association to take a deficiency judgment would in essence allow a homeowner to live scot-free at the expense of his fellow homeowners, receiving all the benefits provided by the association and paying for none of the burdens.

If an association cannot take a deficiency judgment, its changes of being made whole are severely limited. In this market, most units are worth less than their mortgages, meaning that there is no equity left to pay the association if the units are sold in a foreclosure. As a result, any sale of that unit in foreclosure will leave no proceeds from the sale for the homeowner association (in fact, even the first mortgage holder may take a loss). In that situation, if the legislature prohibits an association from taking a deficiency judgment, the remaining association members will have to make up the association's shortfall. Such a policy will simply encourage delinquent owners to walk away from their just debts.

TESTIMONY REGARDING SENATE BILL 1191

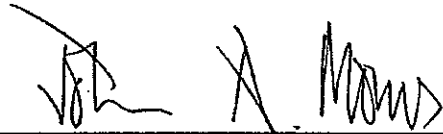
February 1, 2011

Page 2

Moreover, the guaranteed recovery the law provides for condominium associations is only six months of maintenance fees or \$3,600, whichever is less. Frequently, associations lose thousands or even tens of thousands of dollars more than that amount in a collection.

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

Very truly yours,

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

John A. Morris

JAM:alt

G:\C\2011 Testimony SB 1191 (02.01.11)

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

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February 2, 2011

Sen. Rosalyn H. Baker, Chair,
and members of the Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 1191 (Mortgage Foreclosures)**
Hearing Date/Time: Wednesday, February 2, 2011, 8:30 A.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 as drafted.

The purpose of this Bill is to: (1) prohibit foreclosing mortgagees in nonjudicial foreclosures from pursuing deficiency judgments against the borrowers; and (2) prohibit junior lienholders from pursuing monetary judgments against the borrowers.

This testimony is based, in part, on my role 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.

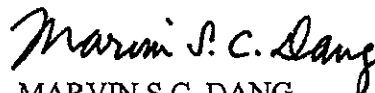
The issue of deficiency judgments is part of the recommendations of the Task Force and those recommendations are contained in other bills, such as Senate Bill 652. The recommendations of the Task Force are substantive and provide meaningful improvements to the non-judicial foreclosure process. The recommendations are the result of consensus by the 17 Task Force members who represented diverse, and in some instances opposing, interests.

The provisions in this Bill (Senate Bill 1191) 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.

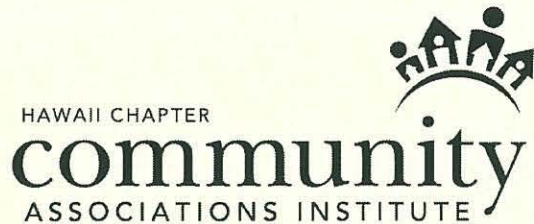
We incorporate by reference the testimonies separately submitted by the Hawaii Bankers Association and the Hawaii Credit Union League opposing this Bill.

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association



P.O. Box 976
Honolulu, Hawaii 96808

January 28, 2011

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

Re: SB 1191/OPPOSE

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

I chair the CAI Legislative Action Committee. CAI opposes SB 1191.

The obligation to pay common expense assessments is an incident of owning a condominium. It is entirely separate and distinct from any mortgage transaction, and a lender's action with respect to its borrower should have no adverse impact whatever on an association.

SB 1191 would be extremely harmful to consumers. The result would be to drive up the monthly maintenance fees for all owners, because money is the lifeblood of condominiums. Thus, for example, it has been held that:

"Because homeowners associations would cease to exist without regular payment of assessment fees, the Legislature has created procedures for associations to quickly and efficiently seek relief against the non-paying owner." (Emphasis added) Park Place Estates Homeowners v. Naber, 29 Cal. App. 4th 427, 432, 35 Cal. Rptr. 2d 51, 53 (Cal. App. 4 Dist. 1994).

In Park Place East Condo. v. Hovbilt, 279 N.J. Super. 319, 323, 652 A.2d 781, 783 (N.J. Super. Ch. 1994), the court noted:

Honorable Rosalyn H. Baker
Honorable Brian Taniguchi
January 28, 2011
Page 2 of 3

The legislative scheme for collection of assessments for maintenance charges against individual unit owners is a recognition that such charges are the financial life-blood of the Association. They are conceptually akin to the right of a municipality to levy and collect real estate taxes.

The hazards of enabling owners to avoid payment are aptly illustrated (in a related context) in Nottingdale Homeowner's Association v. Darby, 33 Ohio St.3d 32, 36, 514 N.E. 2d 702, 706 (Ohio 1987) (superseded by statute). After noting that the owner contracted freely to be bound by the condominium declaration, and that the owner enjoyed the services paid at common expense, the court stated:

No amount of legal wrangling can obscure the fact that appellees knowingly accepted the services and must pay for them. To obtain this inevitable result, appellant has been forced by appellees' intransigence to incur large amounts in attorney's fees to collect the relatively small amount of past due assessments. [footnote omitted] By refusing to enforce the provision which would require appellees to pay appellant's reasonable attorney fees, this court would make it virtually impossible for condominium unit owners' associations to recoup unpaid assessments from recalcitrant unit owners. The expense of collection would render the effort useless. The result would be that a unit owner, who for any reason does not wish to pay his monthly service assessment, can enjoy the benefits of such services and refuse to pay for them, secure in the knowledge that collection by the association will be prohibitively expensive. Under such circumstances, what incentive would exist for the unscrupulous unit owner to pay his assessments? Obviously, very little.

As can be seen, the fee-shifting agreement in this case protects the fund of the unit owners' association from potential bankruptcy, and the conscientious contributors thereto from the burden of paying for the delinquency of others. Without such fee-shifting arrangements, unit owners' associations may have to abandon claims against debtors, such as appellees, as too costly to pursue. *With* such agreements, the

Honorable Rosalyn H. Baker
Honorable Brian Taniguchi
January 28, 2011
Page 3 of 3

debtor will be encouraged to pay to avoid litigation, and if litigation becomes necessary, the association's resources will be protected if its suit proves meritorious. A more ideal arrangement can scarcely be imagined. (*Italics in original*)

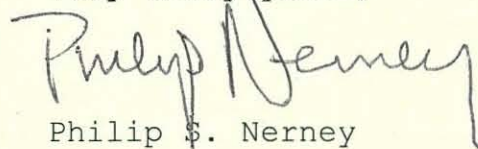
As noted above, condominiums collect money to pay bills, not to make a profit. A condominium association must maintain and repair the common elements of the project. Insurance premiums must be paid. Water and sewer bills must be paid. All of the common expenses must be paid by collecting a share of those expenses from each owner.

SB 1191 moves in precisely the wrong direction. The capacity of condominiums to collect maintenance fees should be enhanced and facilitated.

It is *lenders* that should bear the risk that someone they choose to lend money to will default on the obligation to pay maintenance fees. If that is not done, then the separate obligation to pay maintenance fees should not be addressed in the context of a lender's exercise of its remedies.

Condominium maintenance fees comprise a completely separate debt. The obligation to pay maintenance fees has nothing whatever to do with an owner's obligation to pay a mortgage lender.

Very truly yours,

A handwritten signature in cursive script that reads "Philip S. Nerney". The signature is written in dark ink and is positioned above the typed name.

Philip S. Nerney

January 31, 2011

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

Re: SB 235/OPPOSE IN CURRENT FORM
SB 652/OPPOSE
SB 1191/OPPOSE

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

My name is Livit Callentine, and I serve as President of the Board of Directors of my AOA, Kehalani Gardens. I am taking the time to write to you today to express my deepest concern about the likely result to me and 131 other owners in my townhome neighborhood. Kehalani Gardens was approved and constructed to meet the affordable housing requirement for the Kehalani Project District in Central Maui. The majority of the owners are law-abiding and pay their association dues on time. However, for the growing fraction of owners who fail to pay their dues, I have the frustrating task of overseeing collection efforts. My own dues have been spent on legal fees we are required to attempt to collect on behalf of the AOA, and have subsequently increased when these attempts are less than successful.

I wish to impress on you the gravity of our situation by illustrating my own circumstances, which are typical of the working class members this AOA: I am employed as a professional planner for the County of Maui, Department of Planning. Though I have continued to advance professionally and gain valuable experience, over the past 3 years, not only have I not gotten a pay raise, I have been forced to take a pay cut, while my expenses have continued to rise. Because a dozen or so of my fellow residents are not paying their fair share of the cost to maintain the common elements, my dues are scheduled to increase by at least 18% this year. If my AOA dues continue to rise to cover these losses, I run the risk of being unable to pay my bills, and I too may have to choose between paying my mortgage and my association dues, which would only compound an already untenable situation for the rest of our members.

I have read and fully support the attached testimony submitted by Philip S. Nerney on behalf of the Hawaii Chapter of the Community Associations Institute. I call on you to amend SB 235, defeat SB 652 and SB 1191 so that working people like me, and communities throughout Hawaii, are not subject to unfair laws that if passed will ultimately erode the social fabric of the state.

Homeowners Associations are not financial institutions; we are working people, trying to live our lives and be good citizens.

Sincerely,



Livit Callentine
631 Meakanu Lane Apt 101
Wailuku, HI 96793
(808) 268-5568

Senator Baker,

I am a Board member and long time owner at Kamole Beach Royale in Kihei.
I am writing in opposition to all legislation currently being considered which makes the collection of delinquent dues or other assessments more difficult, or impossible.

Legislative efforts have all been in the direction of providing a “break” or easing the burden for a person in trouble with their unit. But when this happens the burden is shifted to the others owners, who themselves may just be “holding on”.

Associations do not have a well of money to draw from. All the money we receive is from owners and is used to maintain the facility, take out the garbage, pay the light bill and many others, as well as to maintain the State Mandated Reserves. Board members volunteer their time and incur personal expenses.

THERE IS NO EXTRA MONEY for the Association to draw from. If someone does not pay their share the other owners need to make it up – it’s that simple. In other states, like Florida, where the foreclosure rate in some cases is 30% – 50% the remaining owners cannot pay the share of others and the whole process feeds on itself to put more people into trouble.

I sincerely and respectfully urge you to consider the real Impact on Associations and listen to organizations such as CAI and management Companies who understand the issues and problems with operating Condo’s.

Respectfully Submitted,

George Jacobson
Currently off Island 509-546-1754

HARRISON & MATSUOKA

Attorneys at Law

William A. Harrison
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Keith A. Matsuoka
E-mail: kmatsuoka@hamlaw.net
Gene K. Lau, of Counsel
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(Via E-Mail: CPNTestimonv@CapitolHawaii.gov)

February 1, 2011

Senator Rosalyn H. Baker, Chair
Committee on Commerce and Consumer Protection
Hawaii State Capitol, Room 230
415 South Beretania Street
Honolulu, Hawaii 96813

Re: SB 1191
Hearing Date: February 2, 2011
Hearing Time: 8:30 a.m.

Dear Chairperson Baker and Members of the Committee:

I fully support SB 1191 prohibiting deficiency judgments against a mortgagor by junior lienholders, including the holder of an Association lien.

In essence, it would appear that current law rewards junior lienholders who fail to avail themselves of remedies available to them; adds to the burdens of a foreclosed homeowner; and penalizes the superior lienholder whose rights have been extinguished despite having borne the cost and expense of the foreclosure process.

My analysis of the problems with Association liens is as follows:

CHAPTER 514B

H.R.S. 514B-144(f) –

In a voluntary conveyance, the grantor and grantee are made jointly and severally liable for all unpaid expenses up to the time of conveyance.



Comment: 514B-145 allows the Association to collect “the *unit’s share* of expenses” from tenants.

514B-146 speaks to common expenses chargeable to “*any unit.*”

H.R.S. 514B-145 –

Allows the Association the right to collect “*the unit’s share*” of expenses from any tenant.

Comment: This would appear to be an *in rem* type garnishee process not dependent upon personal liability on the part of the unit owner.

H.R.S. 514B-146 –

Allows for liens in favor of the association for common expenses chargeable to “*any unit.*”

H.R.S. 514B-146(a) –

Allows for foreclosure of the Association lien by action or by non-judicial or power of sale procedures set forth in *Chapter 667*.

However, it also allows for recovery of a money judgment.

Comment: This provision is inconsistent to the extent that it does not specify the party or property against which the money judgment can be obtained. As set forth above, it would appear that most of the remedies appear to be aimed at the unit rather than the owner.

H.R.S. 514B-146(b) –

Provides that the unpaid share of common expenses (in a foreclosure by a mortgagee) “chargeable to the *unit*” “*shall*” be deemed common expenses collectible from all of the unit “*owners*”.

Comment: This provision which is mandatory under rules of statutory construction appears to absolutely cut off liability on the part of the foreclosed mortgagor.

However, it is also inconsistent to the extent that liability appears to attach solely to the “unit” but then goes on to describe it as a liability of the other “owners.”

H.R.S. 514B-146(e) –

Allows for an Association to terminate services to an owner-occupied unit.

Comment: This provision would seem to be the most consistent with the differential between personal and *in rem* liability.

H.R.S. 514B-146(g) –

Provides that the Association “*may*” specially assess (a third party) purchaser in a foreclosure sale for unpaid common expenses.

Comment: This would at first blush appear to be consistent. However, there are “provided that” clauses which are not.

H.R.S. 514B-146(g)(1) –

Exempts a purchaser/mortgagee.

Comment: This would appear to contravene the provisions of 514B-146(b).

H.R.S. 514B-146(g)(2) –

Makes liability absolute as to one who subsequently purchases a unit from the foreclosing mortgagee.

Comment: This would appear to wholly contravene the mandatory provisions of 514B-146(b) [“shall” be common expenses collectible from “all of the unit owners.”]

CHAPTER 667

The foreclosure provisions of H.R.S. Chapter 667 also appear to conflict in purpose and effect.

Foreclosure Actions

H.R.S. 667-1 –

Allows the court to award judgment in a foreclosure action.

Case Law: Typically, the court will enter deficiency judgments in favor of the secured creditors who are not paid in full from the proceeds of sale. See: *Bank of Hawaii v. Char*, 43 Haw. 17 (Terr. of HI 1958).

Non-Judicial Sales

H.R.S. 667-37 –

Allows any lien creditor to file an action for judicial foreclosure of the mortgaged property at any time before the non-judicial foreclosure public sale is held.

H.R.S. 667-33(b) –

States in relevant part that after recordation of the conveyance document in a non-judicial foreclosure

* * *

(2) All persons claiming by, through, or under the mortgagor *and all other persons having liens on the mortgaged property junior to the lien of the foreclosing mortgagee shall be forever barred of and from any and all right, title, interest, and claims at law or in equity in and to the mortgaged property* and every part of the mortgaged property, except as otherwise provided by law;

(3) *The lien of the foreclosing mortgagee and all liens junior in priority to the lien of a foreclosing mortgagee shall be automatically extinguished from the mortgaged property;* and

* * * *

H.R.S. 667-38 further states:

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

Case Law: It has been stated that the purposes behind non-judicial foreclosures are:

First, the nonjudicial foreclosure process should protect the debtor from a wrongful loss of property; second, the process should ensure that *properly conducted sales* are final between the parties and conclusive as to bona fide purchasers; and third, the process should give creditors a quick, inexpensive remedy against defaulting debtors.

Lee v. HSBC Bank USA, 121 Haw. 287, 218 P.3d 775 (2009). [emphasis in original].

Comment: I would suggest that the non-judicial sale provisions as they apply to Association common expenses run counter to their purpose.

It is my understanding that Associations do not want to go through the expense of judicial foreclosures which historically would entitle them to a deficiency judgment. [I would still argue that the condominium laws do not provide for personal liability as discussed, *infra*].

Associations also do not want to initiate non-judicial foreclosure proceedings because in all likelihood only the senior liens would be paid and the Association's debt would be extinguished pursuant to H.R.S. §667-38.

Therefore, the Associations wait until a unit is foreclosed upon and then bring a personal action against the foreclosed unit owner which would seem to be contrary to the provisions of H.R.S. Chapter 514B.


Conclusion

In light of the foregoing, I would suggest that passing SB 1191 prohibiting deficiency judgments against a mortgagor by junior lienholders, including the holder of an Association lien, would go far in remedying the problems attendant with current law.

Thank you for your attention. Should you have any questions, please feel free to call on me.

Sincerely,

HARRISON & MATSUOKA



KEITH A. MATSUOKA

KAM:thk

cc: Terrence Aratani (via email aratani@Capitol.hawaii.gov)
Office of Senator Brian T. Taniguchi

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Eric M. Matsumoto

Organization: Mililani Town Association

Address: 95-303 Kaloapau St. Mililani, HI

Phone: 282-4324

E-mail: emmatsumoto@hotmail.com

Submitted on: 1/30/2011

Comments:

We oppose this measure because it does not differentiate between mortgage foreclosures and associations foreclosures, and will create extreme hardship for homeowners who pay their equal share of dues by adding the portion of dues not paid by the foreclosed units. Is this the intent of this measure, to hold responsible AOA members responsible for those who don't pay their fair share when foreclosing on their obligation?

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Al Denys

Organization: Individual

Address: c/o 3179 Koapaka St Honolulu, Hi

Phone: 306-9180

E-mail: adenys@hawaii.rr.com

Submitted on: 1/31/2011

Comments:

I am opposed to SB1191 as it will preclude any association from collecting delinquent fees from owners who aren't paying their fair share of the associations expenses. This will result in higher costs for the other owners to take care of business and will require higher maintenance fees to pay for these shortcomings. Therefore I am against this Senate Bill and strongly recommend that it not be approved. Thank you.

warmest aloha,

Al Denys

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Arthur A. Kluvo

Organization: Individual

Address: 94-1099 Heahea Street Waipahu, HI

Phone: 808-678-2029

E-mail: akluvo@gmail.com

Submitted on: 1/29/2011

Comments:

SB 1191 would be detrimental to me. The maintenance fees of my condominium at AOA0 Cathedral Point would eventually rise if this bill passes.

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Larry Starratt

Organization: Individual

Address: 112 Walaka St. #403 Kihei, HI 96753

Phone: 520 548-0579

E-mail: starratt2@hotmail.com

Submitted on: 1/28/2011

Comments:

Based on the reasons of the CAI legislative action committee I strongly oppose SB652, SB235 and SB1191

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Rory Enright

Organization: Princeville at Hanalei Community Association

Address: 4334 Emmalani Drive Princeville, HI 96722

Phone: 808.826.6687

E-mail: gen_mgr@pcaonline.org

Submitted on: 1/31/2011

Comments:

We oppose this bill. The proposed changes to this statute would make it impossible for the owner associations to collect dues on a foreclosed property. This unfairly puts additional financial burden on the other owners of the community to make up the difference.

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Jim Dodson

Organization: Ewa by Gentry Community Association

Address: 91-1795 Keaunui Drive Ewa Beach

Phone: 808 685-0111

E-mail: jdodson@ebgca.net

Submitted on: 2/1/2011

Comments:

Hawaii is a "prior lien theory" state. This law will negatively impact every common interest development in the state and seeks to discriminate against a single class of ownership.

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Gordon Langston

Organization: Individual

Address:

Phone:

E-mail: flashgordon10t@aol.com

Submitted on: 1/28/2011

Comments:

Member of the board of directors at Kahana Reef and I oppose the legislation.

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Clive B Davies

Organization: 49 Black Sand Beach Homeowners Assoc

Address: 68-1038 Honokaope Place, Kamuela,Hi 96743

Phone: 808 885 0675

E-mail: clivebd@aol.com

Submitted on: 1/28/2011

Comments:

The proposed bill adversely affects the ability of Homeowner Associations to recover unpaid dues and fees and unjustly penalizes the homeowners.

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: Yes

Submitted by: Marvin Dang/Jana Walden

Organization: Hawaii Financial Services Association

Address: P.O. Box 4109 Honolulu, Hawaii 96812-4109

Phone: 808-521-8521

E-mail: jwalden@lava.net

Submitted on: 2/1/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Barry G Snowbarger

Organization: Villas at Ke Alaula

Address: Kailua-Kona

Phone: 8083251552

E-mail: snow.man@earthlink.net

Submitted on: 1/28/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Lyndon Williams

Organization: Palette Community Association

Address: 92-1260 Umena st Kapolei, Hi

Phone: 672-3206

E-mail: Will.Lyndon@gmail.com

Submitted on: 1/28/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Tim Baier

Organization: Pearl Regency Home Owners Association

Address: Aiea, HI

Phone:

E-mail: timlid.baier@att.net

Submitted on: 1/29/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Patrick J. Wardell

Organization: Individual

Address: 3833 L. Honoapiilani Rd Lahaina, HI

Phone: 808 3443755

E-mail: pwardell@uplink.net

Submitted on: 1/28/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229
Testifier position: oppose
Testifier will be present: No
Submitted by: JOE ALMEIDA
Organization: Individual
Address: 94-314 MAIAOHE PLACE
Phone: 623-7991
E-mail: J55547@AOL.COM
Submitted on: 1/31/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Fred Allen

Organization: Individual

Address: 5855 e Carson street Lakewood, Calif 90713

Phone: 562.497.0370

E-mail: fred@allentire.com

Submitted on: 1/29/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Earl Park

Organization: Individual

Address: 75-6009 Alii Dr., Unit H-2 Kailua Kona, Hawaii

Phone:

E-mail: parkj052@hawaii.rr.com

Submitted on: 1/29/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Timothy Baier

Organization: Individual

Address:

Phone:

E-mail: timlid.baier@att.net

Submitted on: 1/29/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: John E Patton

Organization: Individual

Address: WAILUNA CONDO COMMUNITY Aiea

Phone:

E-mail: jpatton@uci.edu

Submitted on: 1/30/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Raymond D. Sauer

Organization: Individual

Address: 91967 Akaholo St, Ewa Beach, Hi.

Phone: (808) 689-3700

E-mail: RDSauer@mac.com

Submitted on: 1/30/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Mary Martin

Organization: Individual

Address:

Phone:

E-mail: mmartin40@hawaii.rr.com

Submitted on: 1/30/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Barbara Carlson

Organization: Individual

Address: 333 Aoloa Street kailua, HI 96734

Phone: 808-772-4292

E-mail: teawanga24@yahoo.com

Submitted on: 1/31/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Glen Hilton

Organization: Individual

Address:

Phone:

E-mail: glenhilton2@netscape.net

Submitted on: 1/31/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Debbie Smee

Organization: Individual

Address:

Phone:

E-mail: smee@charter.net

Submitted on: 1/28/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB1191

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: GARY M. YAKABU

Organization: Individual

Address:

Phone:

E-mail: gmyak@hawaiiantel.net

Submitted on: 1/31/2011

Comments: