

# SB1454

**Measure Title:** RELATING TO FORECLOSURES.

**Report Title:** Homeowners Associations; Foreclosure

**Description:** Authorizes a planned community association or a condominium association to pursue nonjudicial foreclosure on units within the association for outstanding liens.

**Companion:**

**Package:** None

**Current Referral:** CPN, JDL



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Presentation of the Committee on Commerce and Consumer Protection  
Wednesday, February 9, 2011 at 8:30 a.m.  
Testimony on SB 1454 Relating to Mortgage Foreclosures

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

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying on SB 1454. HBA is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii.

This bill authorizes a planned community association or a condominium association to pursue nonjudicial foreclosure on units within the association for outstanding liens.

HBA supports the intent of the bill and we would consider supporting an amended version of this bill that clarifies the application of rental income from a foreclosed unit.

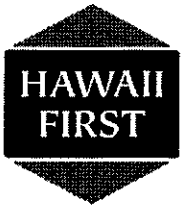
**Application of Rental Income:** The bill should be amended to insure that any excess rental income received by the Associations from foreclosed units will be used first towards the \$3,600 amount that may be owed from unpaid regular monthly common assessments assessed during the six-month period immediately preceding the completion of foreclosure. Additionally, where the rental income received covers the unpaid common assessments, Association cost for renting the unit and any other reasonable costs, the remaining amount should be paid to the existing lienors based on priority.

Based on pending foreclosure legislation, the foreclosure time period will be lengthened even longer, which will increase the cost for all parties. So applying any excess rental income will help to reduce any cost that may eventually be owed by the borrower.

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 underneath.

Gary Y. Fujitani  
Executive Director



COMMUNITY ASSOCIATION MANAGEMENT

Queen's Court « 800 Bethel Street, Suite 501 « Honolulu, Hawaii 96813

February 4, 2011

## TESTIMONY SB 1454

### SUPPORT

Hawaii First is the third largest association management company in Hawaii and regularly conducts association meetings.

Associations prepare an annual budget to collect just enough money to pay its operating costs and fund its reserves. There is no profit. It is a zero based budget.

If an owner fails to pay their maintenance fees, in all case there is a shortage at the Association that will ultimately be paid by the other owners through higher maintenance fees. These higher fees could result in more foreclosures in our tight economy.

Banks make the choice to extend credit to a purchaser. Associations do not and inherit the problems when owners fail to make payments. By allowing associations to foreclose, the association protects the other owners from higher fees by tasking possession and renting the unit to cover the fees. Banks typically delay foreclosure in a work out as they do not want title as then the bank would have to pay the maintenance fees. Some foreclosures take years while the Association suffers, or maybe better said the other owners who have to make up the difference.

Association non judicial foreclosures are an important process to protect the financial viability of the association, prevent higher maintenance fees, and probably prevent higher foreclosures.

I SUPPORT SB 1454.

Warmest aloha,

A handwritten signature in black ink, appearing to read "Richard B. Emery".

Richard Emery  
President



# 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 9, 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 1454 (Foreclosures)**  
**Hearing Date/Time: Wednesday, February 9, 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 supports the intent of this Bill and offers amendments.**

The purpose of this Bill is to authorize a planned community association or a condominium association to pursue nonjudicial foreclosure on units within the association for outstanding liens.

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 HFSA has previously testified during this Legislative Session that we believe that only the recommendations of the Task Force should be adopted by the Legislature, and that 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.

Although the concept in this Bill is not part of the Task Force's recommendations, we do support its intent. The Task Force recognized that non-judicial foreclosures by condominium associations are different from non-judicial foreclosures by mortgage lenders when it recommended that condominium associations should not be subject to the Task Force's proposal to allow an owner-occupant borrower to convert from a non-judicial foreclosure proceeding to a judicial foreclosure proceeding.

We propose the following amendments to this Bill:

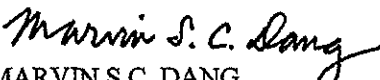
1. On page 4, lines 6-7, and on page 25, lines 8-9, the association is to give notice of its intent to foreclose by mailing the notice by both first class and certified mail to the unit owner, mortgage creditors, and others. The Task Force has recommended that mortgage lenders give notice by serving in the same manner as service of a complaint under Chapter 634, Hawaii Revised Statutes, and under the Hawaii Rules of Civil Procedure. These service methods should similarly apply to the associations for their non-judicial foreclosures.

2. On page 4, lines 19-20 and on page 25, lines 21-22, those clauses should be deleted. It doesn't seem necessary for an association's attorney to serve the association itself with the foreclosure notice.

3. On page 9, line 9, the reference to "subsection (a)(2)" should instead be to "subsection (a)(1) and (a)(2)". Otherwise, the purchaser at a foreclosure sale under "subsection (a)(1)" on page 8, lines 8-16, would not have to pay the special assessment (of up to 6 months unpaid monthly assessments not exceeding \$3,600).

4. For other amendments, we incorporate by reference the testimony separately submitted by the Hawaii Bankers Association.

Thank you for considering our testimony.

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

(MSCD/hfsa)

# MAUNA LUAN

511 Hahaione Street • Honolulu, Hawaii 96825

February 8, 2011

Senator Rosalyn H. Baker, Chair  
Senator Brian Taniguchi, Vice-Chair  
Senate Committee on Commerce and Consumer Protection

Re: SB 1454 Foreclosures (Planned Community and Condominium Associations)  
Hearing: Wednesday, February 9, 2011, 8:30 a.m., Conf. Rm. #229

Chair Baker, Vice Chair Taniguchi and Members of the Committee:

My name is Randall Weikert, I am the General Manager of the AOA Mauna Luan, Inc., and we are a member of the Hawaii Council of Community Associations (HCCA).

Our association supports SB #1454 and the amendments proposed by the HCCA. Nonjudicial foreclosures are important to our association because it is one of the few methods we have to use as a stop-gap measure to prevent long, drawn out foreclosures which drain funds from our association that the other owners must then make up. We ask your support in implementing the recommended amendments provided by the HCCA.

Thank you for allowing us to testify in support of this very important bill.

Sincerely,



Randall R. Weikert  
General Manager

# Ekimoto & Morris

A Limited Liability Law Company

**DATE:** Monday, February 7, 2011; 6:00 p.m., Hawaii Standard Time

**TO:** Senate Sergeant-At-Arms Office

**FAX NO.:** 586-6659

**FROM:** John A. Morris, Esq.

**RE:** Testimony re: SENATE BILL 1454

**NO. OF PAGES:** 4 + transmittal

**REMARKS:**

**Transmitting testimony regarding:**

**SB 1454**

**Hearing Date/Time: Wednesday, February 9, 2011 at 8:30 a.m.**

**Place: Conference Room 229, State Capitol**

**Mahalo!**

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1001 Bishop Street, Suite 780  
Honolulu, Hawaii 96813-3410  
February 7, 2011

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
REGARDING SENATE BILL 1454

Hearing Date: WEDNESDAY, February 9, 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 on SB 1454. 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 am testifying in support of this bill because it helps clarify foreclosure and collection procedures for: (i) condominiums and (ii) homeowner associations established under chapter 421J (the latter being commonly referred to as "planned community associations"). In particular, SB 1454 clearly establishes that foreclosures by both types of associations are distinguishable from lender foreclosures.

Section 1 of the bill establishes a specific foreclosure procedure for homeowner associations established under chapter 421J. Section 1 specifically permits nonjudicial as well as judicial foreclosures, which is good because many such homeowner associations only have dues of \$30-\$50 per month -- approximately \$360-\$600 a year. Since nonjudicial foreclosures are about a third the cost and take about a third the time of judicial foreclosures, specifically permitting nonjudicial foreclosures for this type of homeowner association helps make collection more effective for them. (A judicial foreclosure can cost up to \$10,000 (\$3,000-\$3,500 for legal fees and \$6,000-\$6,500 for foreclosure commissioner's fees and costs) and take a year or more to complete.) SB 1454 also provides a benefit for delinquent owners by standardizing procedures for all such nonjudicial foreclosures.

Since, however, SB 1454 is establishing a specific foreclosure procedure for homeowner associations established under chapter 421J -- thereby distinguishing them from mortgage foreclosures -- a suggested change is to delete the reference to chapter

## TESTIMONY REGARDING SENATE BILL 1454

February 7, 2011

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667 of the mortgage foreclosure law on page 1, lines 15 and 16, as follows:

*The lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in ~~chapter 667~~ this section and the law, by the managing agent or board, acting on*

Similarly, the reference to chapter 514B on page 2, lines 13 and 14, of the bill should probably be clarified as follows:

*association shall not be allowed as a defense to the action ~~but shall be subject to the remedies provided in section 514B-B.~~*

On page 3, lines 19 and 20, the section requiring notice to the other parties with an interest in the property being foreclosed, the reference to a planned community association should be changed to condominium association. As noted above, "planned community association" generally refers to an association established under section 421J. Since under this section of the bill, the planned community association will be the entity conducting the foreclosure, the reference should actually be to a condominium association, in case the property being foreclosed upon is part of a planned community association and a condominium association -- which is often the case.

*(v) The ~~planned community~~ condominium association in which the unit is located, if any;*

Finally, section 1 includes two important provisions on page 7 requiring the foreclosing association to allow anyone with an interest in the property, including the owner, to request the delinquent balance owed, thereby allowing the balance to be paid off prior to the foreclosure sale. On the same page is a requirement that the association must disclose the sales price after foreclosure, as well as a requirement that if the association resells the unit, it must disclose any prior liens on the property. Frequently, in an association foreclosure, there is still a large, pre-existing mortgage on the property, so that requirement ensures that any prospective purchaser is aware of the balance of prior liens.

Section 2 of the bill restates the existing requirements of the condominium law



## TESTIMONY REGARDING SENATE BILL 1454

February 7, 2011

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for liens and post-foreclosure procedures for foreclosures conducted by lenders, including the association's right to six (6) months in maintenance fees or \$3,600, whichever is less.

Several clarifications seem necessary:

On page 9, lines 18-19 should be amended to read as follows:

*(1) In a nonjudicial power of sale foreclosure, when the affidavit required under ~~clause 514B-146(e)(iii)~~ the law is filed; and*

Since lenders may still be conducting nonjudicial foreclosures, this section should not be restricted solely to completion of nonjudicial foreclosures by associations, which is the effect of the language as presently written. A related change for the same reason should be made to page 11, lines 9 and 10, as follows:

*(3) Thirty days after the public sale in a nonjudicial or power of sale foreclosure ~~pursuant to subsection 514B-146(a)~~; or*

In that way, the language will cover both lender and association nonjudicial foreclosures.

Section 3 of the bill establishes a separate condominium association foreclosure procedure, thereby distinguishing condominium foreclosures from foreclosures by lenders under chapter 667. Since foreclosures by lenders and condominium associations have significant differences, establishing a separate foreclosure procedure for condominiums in the condominium law avoids confusion and emphasizes those differences.

The provisions created for condominium association foreclosures are very similar to the procedures created for non-condominium, planned community associations under chapter 421J, as outlined in the discussion of section 1 of the bill, above. In particular, page 28 of SB 1454 includes two important provisions requiring the foreclosing association to allow anyone with an interest in the property, including the owner, to request the delinquent balance owed, thereby allowing the balance to be paid off prior to the foreclosure sale. On the same page, SB 1454 requires the association to disclose the sales price after foreclosure, as well as a requirement that if

TESTIMONY REGARDING SENATE BILL 1454

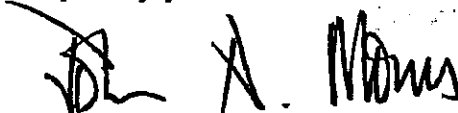
February 7, 2011

Page 4

the association resells the unit, it must disclose any prior liens on the property. Frequently, in an association foreclosure, there is still a pre-existing mortgage on the property, so that requirement ensures any prospective purchaser is aware of the prior mortgage(s) and that he will be taking the property subject to that mortgage.

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

Very truly yours,



John A. Morris

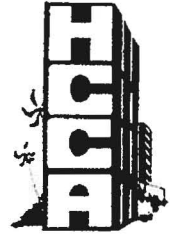
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G:\C\2011 Testimony SB 1454 (02,07,11)



**Hawaii Council of Associations  
of Apartment Owners**  
**DBA: Hawaii Council of Community Associations**

P.O. Box 726, Aiea, HI, 96701  
Tel: 485-8282 Fax: 485-8288 HCAAO@hawaii.rr.com



February 5, 2011

Sen. Rosalyn H. Baker, Chair  
Sen. Brian Taniguchi, Vice-Chair  
Senate Committee on Commerce and Consumer Protection

Re: SB 1454 Foreclosures (Planned Community and Condo Associations)  
Hearing: Wednesday, Feb. 2, 2011, 8:30 a.m., Conf. Rm. #229

Chair Baker, Vice-Chair Taniguchi and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Community Association (HCCA) and I am a member of the mortgage foreclosure task force.

Currently, condominium associations are authorized to do nonjudicial foreclosures to recover their delinquent maintenance fee liens by express language in HRS 514A-90(a) and HRS 514B-146(a) providing that " [t]he lien of the association . . . may be foreclosed by auction or **by nonjudicial or power of sale foreclosure procedures set forth in chapter 667.** . . . (emphasis added). Nonjudicial foreclosures by condominium associations have been subject to legal challenges because chapter 667 appears to deal exclusively with mortgage foreclosure. Therefore, this bill moves the existing language of chapter 667 to the condominium statutes to clarify that the associations have express authority to continue to do nonjudicial foreclosures.

Planned community associations currently do not have the authority to do nonjudicial foreclosures, but they have the same need to be able to collect their association fees and this bill gives them the means to do it.

This bill also adds new language to clarify and emphasize that when an association is the successful bidder at auction, that they take title subject to any prior mortgage on the unit and that if an association wishes to sell that unit after they acquire it at auction, they must disclose in writing to any prospective buyer that the unit is subject to prior mortgages and liens.

Finally this bill amends the non-jury trial statute to include foreclosures by condominium and planned community associations.

HCCA supports this bill with the following change:

1. At page 1, line 16, replace “chapter 667” with “this section” and at line 17 delete “, in like manner as a mortgage of real property”. Rationale: since the entire procedure is set forth in that section, there is no need to refer to chapter 667 or to include the language referring to a mortgage.
2. At page 6, line 16 insert a new subparagraph (f) that provides that “an association may purchase the unit at auction and it can satisfy the bid price requirement by credit bidding up to the amount of its lien.” and then re-number the remaining subparagraphs in that section. The rationale for this change is to address any challenges to credit bids made by the association. There have been challenges in nonjudicial sales over the lender's credit bid not being expressly authorized in chapter 667.
3. At page 15, line 20 replace “chapter 667” with “this section” and at line 21 delete “, in like manner as a mortgage of real property”. Rationale: same as in #1 above.
4. At page 27, line 16 insert a new subparagraph (f) that provides that “an association may purchase the unit at auction and it can satisfy the bid price requirement by credit bidding up to the amount of its lien” and then re-number the remaining subparagraphs in that section. The rationale is the same as in #2 above.
5. At page 9, line 18 change “514B-146(c)(iii)” to “514B-146(c)(3)”.
6. Add a new section 5 to this bill that would replace HRS 514A-90 with the amended language proposed for Sections 2 and 3 of this bill. Rationale: This would allow condo associations that have not opted in to HRS 514B to continue to do nonjudicial foreclosures.

For the reasons stated above, HCCA respectfully requests that you pass this bill out with the suggested amendments.

Thank you for allowing me to testify on this very important issue.

Jane Sugimura,  
President

JAN 26 2011

S.B. NO. 1454

## A BILL FOR AN ACT

RELATING TO FORECLOSURES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 421J, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§421J- Foreclosure by action. (a) All sums assessed  
5 by the association but unpaid for the share of the common  
6 expenses chargeable to any unit shall constitute a lien on the  
7 unit with priority over all other liens, except:

8 (1) Liens for taxes and assessments lawfully imposed by  
9 governmental authority against the unit; and

10 (2) All sums unpaid on any mortgage of record that was  
11 recorded prior to the recordation of a notice of a  
12 lien by the association, and costs and expenses  
13 including attorneys' fees provided in such mortgages.

14 The lien of the association may be foreclosed by action or by  
15 nonjudicial or power of sale foreclosure procedures set forth in  
16 chapter 667, by the managing agent or board, acting on behalf of  
17 the association, in like manner as a mortgage of real property.

18 In any such foreclosure, the unit owner shall be required to pay



*this section*

1 written policy providing for such actions and have the policy  
2 approved by a majority vote of the unit owners at an annual or  
3 special meeting of the association or by the written consent of  
4 a majority of the unit owners."

5 SECTION 3. Section 514B-146, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "§514B-146 Association fiscal matters; lien for  
8 assessments. (a) All sums assessed by the association but  
9 unpaid for the share of the common expenses chargeable to any  
10 unit shall constitute a lien on the unit with priority over all  
11 other liens, except:

- 12 (1) Liens for taxes and assessments lawfully imposed by  
13 governmental authority against the unit; and  
14 (2) All sums unpaid on any mortgage of record that was  
15 recorded prior to the recordation of a notice of a  
16 lien by the association, and costs and expenses  
17 including attorneys' fees provided in such mortgages.

18 The lien of the association may be foreclosed by action or by  
19 nonjudicial or power of sale foreclosure procedures set forth in  
20 chapter 667, by the managing agent or board, acting on behalf of  
21 the association, in like manner as a mortgage of real property.

*This Section*

22 In any such foreclosure, the unit owner shall be required to pay





P.O. Box 976  
Honolulu, Hawaii 96808

February 7, 2011

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

Re: SB 1454 SUPPORT

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

I chair the CAI Legislative Action Committee. CAI supports SB 1454. That said, certain amendments may be appropriate.

SB 1454 is an important initiative. Condominiums and planned community associations ("PCAs") are non-profit entities that collect money from members to pay bills. Those associations do not choose their members or underwrite risk.

One adverse consequence of the mortgage mess is that a high number of people bought units in condominiums and PCAs and have since been unable to meet their obligations. This is a direct result of irresponsible lending practices in the for-profit mortgage industry.

The default of one owner results in a direct financial burden on other consumers in the association setting. It is appropriate to protect hard-working consumers from the adverse effects of financial defaults by owners who should have never been given a mortgage loan. It is also appropriate to hold lenders accountable for damage done to associations.

SB 1454 enables associations to foreclose their junior liens without reference to the mortgage foreclosure statute. The procedure described for the foreclosure of association liens provides due process and is consistent with current practice and procedure. Thus, SB 1454 essentially replicates mostly existing law, but puts it directly into the condominium and PCA statutes.

Honorable Rosalyn H. Baker  
Honorable Brian Taniguchi  
February 7, 2011  
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SB 1454 makes clear that an association lien is junior to prior mortgage liens. SB 1454 also imposes an obligation on an association to disclose the existence of such prior liens if and when a foreclosed unit is sold by an association.

Another virtuous attribute of SB 1454 is that it expressly provides for PCAs to foreclose non-judicially. PCAs have the same need that condominiums have for an expeditious foreclosure process.

It is important to note that, although SB 1454 proposes new sections to H.R.S. Chapter 514B, those sections essentially re-package mostly existing law. SB 1454 will result in the addition of long verbiage to H.R.S. Section 514B-146, so other parts of the existing Section 514B-146 are being re-designated and broken into separate components.

For example, the proposed Section 514B-A is essentially the existing Section 514B-146(g) through (i); Section 514B-B is essentially the existing Section 514B-146(c) and (d); and 514B-C is essentially the existing Section 514B-146(e) and (f). No substantive change in law is intended as to these re-designated sections.

CAI notes that certain amendments may be necessary to clarify some points. For example:

1. The reference to "chapter 667" in Section 1 of SB 1454 should be changed to "this section".
2. The reference to "514B-146(c)(iii)" on page 9, line 18, in Section 514B-A(c)(1), should refer to "514B-146(c)(3)" instead.
3. The reference to "chapter 667" on page 15, line 20, should refer to "this section" instead, and the words "in like manner as a mortgage of real property" in line 21 should be omitted. This same change should be made on page 1 at line 17. The entire point of SB 1454 is to move away from the "in like manner" language.
4. There should be language to clarify that the association may credit bid up to the amount of its lien.



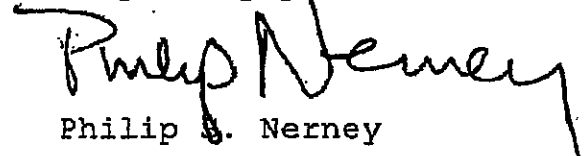
Honorable Rosalyn H. Baker  
Honorable Brian Taniguchi  
February 7, 2011  
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CAI would also ask the Committee to consider the merit of deleting the following sentence on page 9, lines 12 and 13: "In no event shall the amount of the special assessment exceed the sum of \$3,600." The loss accruing to many associations often exceeds both six months and \$3,600.

Finally, CAI notes that SB 652 provides (at section 6, concerning H.R.S. Section 667-8) that the foreclosed owner's interest in a unit "shall be deemed extinguished upon the recordation of the affidavit [of sale.]" The Committee may wish to consider amending SB 1454 at page 11, line 11, by omitting the words: "Upon the recording of the instrument of conveyance" and substituting therefor the words: "Upon the recording of the affidavit described in section 514B-146(c)(3)."

Such an amendment would be consistent with SB 652 and with other language in SB 1454 (at page 9, line 18) defining completion of the foreclosure as occurring when the affidavit of sale is "filed." Indeed, it might be prudent to change "filed" to "recorded" in all events.

Very truly yours,



Philip S. Nerney

February 4, 2011

Sen. Rosalyn H. Baker, Chair  
Sen. Brian Taniguchi, Vice-Chair  
Senate Committee on Commerce and Consumer Protection

Re: SB 1454 Foreclosures (Planned Comm. and Condo Associations]  
Hearing: Wednesday, Feb. 2, 2011, 8:30 a.m., Conf. Rm. #229

Chair Baker, Vice-Chair Taniguchi and Members of the Committee:

I am George Beavin, President of the One Waterfront Towers AOAO and we are a member of the Hawaii Council of Community Association (HCCA).

Our association supports SB #1454 and the amendments proposed by HCCA. Nonjudicial foreclosures are important to our association because we can substantially minimize our losses from defaulting owners who go into foreclosure with a large amount of Maintenance Fees owing. We can foreclose and take possession before the lender does and allowing us to mitigate our damages substantially.

Thank you for allowing us to testify in support of this very important bill.

George R. Beavin  
President One Waterfront Towers AOAO  
1188 Bishop St., Suite 1002  
Honolulu, HI 96813  
(808)521-9999  
[magicmn@aloha.net](mailto:magicmn@aloha.net)



**Ralph Shumway, ARM®**  
Residential Manager  
Ph: 955-5455 Fx: 955-3365  
waipunamanager@yahoo.com

**TO: Senator Rosalyn Baker**  
**Chair**  
**Senate Committee on Commerce and Consumer Protection**

**RE: SB 1454**  
**Hearing 2/09/11, Conference Room #229**

**DATE: 2/07/11**  
**PAGES: 1**

My name is Ralph Shumway and am currently the General Manager of the Waipuna Condominium. I have been in the property management industry for over 20 years and have been active in protecting the rights and interests of community associations and their members.

I support SB 1454 along with the amendments proposed by the Hawaii Council of Community Associations. In this current economic climate, where foreclosures not only adversely affect individual homeowners but whole homeowner associations, we need timely nonjudicial foreclosures. It is not fair that other members of a community have to suffer from association revenue shortfalls caused by those who default. This bill will, hopefully, help minimize delinquencies from foreclosed units.

Thank you.



*Villages of*  
**Kapolei**  
*Association*

Honorable Rosalyn H. Baker  
Chair: Commerce and Consumer Protection Committee

Honorable Brian T. Taniguchi  
Chair: Judiciary and Government Operations Committee

Re: SB 1454 Relating to Planned Communities  
February 9, 2010  
8:30 a.m.  
Conference Room 229, State Capitol

Chair Baker, Vice Chair Taniguchi and Committee Members:

Thank you for allowing me the opportunity to testify in support of SB1454. My name is Warren Wegesend. I am the General Manager of the Villages of Kapolei Association and am here on behalf of the Board of Directors and the members of our Association.

SB 1454 will provide the necessary legislative authority for planned communities, like ourselves, to be able to utilize the Non-judicial foreclosure process (also known as "Power of Sale foreclosures) in its efforts to collect delinquent assessments. Unlike Condominium Property Regimes, Time Share plans and agreements of sale, Planned Communities are not included in Hawaii Revised Statutes, Chapter 667. However, we face the same collection issues. Our governing documents provide for judicial foreclosures but as you know that can be a lengthy and costly venture.

The passage of SB 1454 will provide planned communities with yet another tool to effectively manage its limited resources.

Thank you for your consideration and allowing me the opportunity to testify.

Sincerely,

Warren F. Wegesend, Jr., CPM®  
General Manager

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: Tim Baier

Organization: Pearl Regency Home Owners Association

Address: 98-402 Koauka LP Aiea, HI

Phone:

E-mail: [timlid.baier@att.net](mailto:timlid.baier@att.net)

Submitted on: 2/7/2011

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, February 05, 2011 5:32 PM  
**To:** CPN Testimony  
**Cc:** naomi@certifiedhawaii.com  
**Subject:** Testimony for SB1454 on 2/9/2011 8:30:00 AM

**Categories:**

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Naomi Suzuki  
Organization: Certified Management  
Address: 3179 Koapaka Street Honolulu, HI  
Phone: 808-837-5223  
E-mail: [naomi@certifiedhawaii.com](mailto:naomi@certifiedhawaii.com)  
Submitted on: 2/5/2011

Comments:

## Peggy Mierzwa

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 04, 2011 9:11 PM  
**To:** CPN Testimony  
**Cc:** mmartin40@hawaii.rr.com  
**Subject:** Testimony for SB1454 on 2/9/2011 8:30:00 AM

**Categories:** Duplicate/Extraneous

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Mary Martin  
Organization: Wailuna AOA  
Address:  
Phone:  
E-mail: [mmartin40@hawaii.rr.com](mailto:mmartin40@hawaii.rr.com)  
Submitted on: 2/4/2011

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, February 05, 2011 1:27 AM  
**To:** CPN Testimony  
**Cc:** emmatsumoto@hotmail.com  
**Subject:** Testimony for SB1454 on 2/9/2011 8:30:00 AM

**Categories:**

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229  
Testifier position: support  
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](mailto:emmatsumoto@hotmail.com)  
Submitted on: 2/5/2011

**Comments:**

This bill provides for a separate foreclosure authority for PCAs and AOAOs. The issues facing mortgage foreclosures are different from associatn foreclosures. Request this bill be passed.



Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229

Testifier position: support

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](mailto:jdodson@ebgca.net)

Submitted on: 2/1/2011

Comments:

9 February 2011, 8:30 am, Conference Room 229

To: COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

or Rosalyn H. Baker, Chair

or Brian T. Taniguchi, Vice Chair

From: Individual

Linda B Harris

*Linda Bangert Harris*

519 C Keolu Drive, Kailua, HI 96734, 808-293-2981

Re: Bill #1454 RELATING TO FORECLOSURES

In Support

Chairs & Committee Members:

I Linda B Harris support Bill #1454 for the following reasons:

The majority of owners of property within Planned Communities and Condominiums have the potential to suffer undue financial and other stress from the delinquency of other owners to pay their CONTRACTED and fair share of building maintenance fees. Most such communities on Oahu have reached the point at which their buildings and systems suffer from the effects of aging, salt, moisture, low standard workmanship, etc., resulting in high maintenance expenses. Allowing the minority of delinquent payors is punitive against the majority of those complying with their contracted agreement to provide funds.

As well, due to the changing economy and mortgage realities, prospective buyers of such property now look very carefully at the economic reality of the Condo or PC communities. They look at the percentage of units in arrears to feed their decision making. Thus, those communities with rising percentages of delinquencies are becoming unattractive and sales/turnover is becoming endangered. In other words, the value of the homes of the majority of owners are at jeopardy because of the delinquencies of the minority.

In a culture and government in which majority rule reigns – there needs to be legal action, such as the foreclosure process allowed in this Bill, that allows some level of recovery and protection of value of the majority.

Thank you for the opportunity to submit testimony.

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: Beverly Wellman

Organization: Individual

Address: 94-825 Lumiauau St., E-104 Waipahu, HI

Phone: 808-678-3880

E-mail: [wellmanb001@hawaii.rr.com](mailto:wellmanb001@hawaii.rr.com)

Submitted on: 2/4/2011

Comments:

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: Roland Mina

Organization: Ke Noho Kai Community Assn

Address: Ewa Beach, HI

Phone:

E-mail: [andy.pearl@gmail.com](mailto:andy.pearl@gmail.com)

Submitted on: 2/4/2011

Comments:

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: Edward Lee

Organization: HKP AOA0

Address: 520 Lunalilo Home Road #100 Honolulu HI 96825

Phone: 808-348-7332

E-mail: [egklee@aol.com](mailto:egklee@aol.com)

Submitted on: 2/7/2011

Comments:

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: Jadean DeCastro

Organization: Individual

Address:

Phone:

E-mail: [jadean@touchstoneproperties-hawaii.com](mailto:jadean@touchstoneproperties-hawaii.com)

Submitted on: 2/7/2011

Comments:

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: David O'Neal

Organization: Individual

Address: 94-1038 Kaiamu Street Waipahu, HI

Phone: 6880018

E-mail: [oneald003@hawaii.rr.com](mailto:oneald003@hawaii.rr.com)

Submitted on: 2/5/2011

Comments:

This bill provides for a separate foreclosure authority for Planned Community Associations and AOAOs.

The issues facing mortgage foreclosures are different from association foreclosures. I urge you to pass this Bill. Thank you.

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: Forrest McDermott

Organization: Individual

Address:

Phone:

E-mail: [f.mcdermott@ymail.com](mailto:f.mcdermott@ymail.com)

Submitted on: 2/7/2011

Comments:



From: mailinglist@capitol.hawaii.gov  
Sent: Saturday, February 05, 2011 5:05 PM  
To: CPN Testimony  
Cc: phagan@hawaii.rr.com  
Subject: Testimony for SB1454 on 2/9/2011 8:30:00 AM

**Categories:**

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Paul Hagan  
Organization: Individual  
Address:  
Phone:  
E-mail: [phagan@hawaii.rr.com](mailto:phagan@hawaii.rr.com)  
Submitted on: 2/5/2011

Comments:

-  

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, February 05, 2011 1:03 AM  
**To:** CPN Testimony  
**Cc:** Keoki96701@hawaii.rr.com  
**Subject:** Testimony for SB1454 on 2/9/2011 8:30:00 AM

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Rick Edds  
Organization: Individual  
Address:  
Phone: 8084863327  
E-mail: [Keoki96701@hawaii.rr.com](mailto:Keoki96701@hawaii.rr.com)  
Submitted on: 2/5/2011

Comments:

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: Ruth Tschumy

Organization: Condo board president

Address:

Phone:

E-mail: [ruthdt@hawaiiantel.net](mailto:ruthdt@hawaiiantel.net)

Submitted on: 2/4/2011

Comments:

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: Marilyn Hampton

Organization: Individual

Address:

Phone:

E-mail: [marilyn.hampton@hawaiiantel.net](mailto:marilyn.hampton@hawaiiantel.net)

Submitted on: 2/4/2011

Comments:

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: Irma Pante

Organization: Individual

Address:

Phone:

E-mail: [irma@hmcmt.com](mailto:irma@hmcmt.com)

Submitted on: 2/4/2011

Comments:

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Charles Zahn  
Organization: Individual  
Address: 92-970 Puanihi St. Kapolei, HI  
Phone: 282-5784  
E-mail: [czahn@hawaii.rr.com](mailto:czahn@hawaii.rr.com)  
Submitted on: 2/2/2011

Comments:  
Chair Baker, Vice Chair Taniguchi and Senators of the committee.

I fully support SB1454.

Planned Community Associations have not had the authority in HRS421J to pursue nonjudicial foreclosure on units within the association for outstanding liens.

Passage of SB1454 will authorize the planned community association to use this ability, that is long overdue.

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: Tori Kinney

Organization: Individual

Address:

Phone:

E-mail: [tlk715@gmail.com](mailto:tlk715@gmail.com)

Submitted on: 2/4/2011

Comments:

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: Margaret Brevoort

Organization: Individual

Address: 56-2863 Akoni Pule Hiway Hawi, HI 96719

Phone: 808-889-6930

E-mail: [pegbre@earthlink.net](mailto:pegbre@earthlink.net)

Submitted on: 2/4/2011

Comments:



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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, February 05, 2011 5:10 AM  
**To:** CPN Testimony  
**Cc:** cater4349@msn.com  
**Subject:** Testimony for SB1454 on 2/9/2011 8:30:00 AM

**Categories:**

Testimony for CPN 2/9/2011 8:30:00 AM SB1454

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: curtis carter  
Organization: Individual  
Address:  
Phone:  
E-mail: [cater4349@msn.com](mailto:cater4349@msn.com)  
Submitted on: 2/5/2011

**Comments:**