

**SB 576**



NEIL AMBERCROMBIE  
GOVERNOR

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LT. GOVERNOR

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PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2011

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

**TESTIMONY ON SENATE BILL NO. 576, RELATING TO FORECLOSURE.**

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. 576, Relating to Foreclosure. My name is Stephen Levins, and I am the Executive Director of the Office of Consumer Protection ("OCP"), representing the Department.

Senate Bill No. 576 seeks to require mediation as a means to avoid foreclosures in Hawaii and proposes to create and fund the position of mortgage mediation administrator in the center for alternative dispute resolution as the facilitator.

Jurisdictions throughout the United States have implemented various forms of mediation in response to the foreclosure crisis. These include programs operating

Testimony on Senate Bill No. 576  
Wednesday, February 2, 2011  
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under the auspices of the judiciary in New Jersey, Ohio, Florida, Connecticut, Indiana, Maine, New York, and Vermont, as well as programs established independent of the judiciary in the non judicial foreclosure states of California, Oregon, Maryland, Michigan, and Nevada. Despite some procedural differences, all of these programs have several features in common. They are designed to bridge the communication gap between loan servicers and homeowners, a gap that has often been cited as the major obstacle to effective loss mitigation. They do this by requiring active participation by a representative of the servicer with full authority to consider all loss mitigation options.

While the Department believes that mediation can be an extremely helpful procedure to prevent unnecessary foreclosures it is uncertain whether Senate Bill No. 576 would adequately serve this purpose. Consequently, before making a recommendation, it believes that it requires additional time to consult with affected parties, and to review the efficacy of programs in other jurisdictions.

Thank you for providing me with the opportunity to testify on Senate Bill No. 576. I will be happy to answer any questions that the committee members may have.



*The Judiciary, State of Hawaii*

**Testimony to the Senate Committee on Consumer Protection**

Senator Rosalyn H. Baker, Chair  
Senator Brian T. Taniguchi, Vice Chair  
(Wednesday, February 2, 2011, 8:30 a.m.)  
State Capitol, Conference Room 229

by  
Elizabeth Kent  
Director  
Center for Alternative Dispute Resolution

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**Bill No. and Title:** Senate Bill No. 576, Relating to Foreclosure.

**Purpose:** Requires mediation for the purpose of attempting to avoid foreclosure before foreclosure by action or by power of sale may take place; makes conforming amendments; creates and funds the position of mortgage mediation administrator in the center for alternative dispute resolution.

**Judiciary's Position:**

The Judiciary recognizes the benefits of using mediation and other forms of alternative dispute resolution (ADR) to resolve appropriate foreclosure actions and agrees that mediation and other alternatives to court assists homeowners and lenders to find solutions. However, the Judiciary has numerous concerns with Senate Bill No. 576 in its current form. Some of these concerns follow.

The Judiciary currently has a pilot mediation program in the Third Circuit (Hawaii Island) for judicial foreclosure cases. Statewide, judges have the discretion to order mediation of appropriate foreclosure cases. Also, the Mediation Center of the Pacific, a provider under the Judiciary's Purchase of Services contract for mediation services, has trained mediators on Oahu to assist with judicial and non-judicial foreclosure cases.

Senate Bill No.576 would create a new position called the mortgage mediation administration at the Judiciary's Center for Alternative Dispute Resolution, and presumably funds would be allocated for



Senate Bill No. 576, Relating to Foreclosure  
Senate Committee on Consumer Protection  
Wednesday, February 2, 2011  
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this new position. However, the Judiciary notes that one professional position is probably insufficient to provide services for both judicial and nonjudicial foreclosure cases; a clerical or support position would also be required to meet the objectives.

Senate Bill No. 576 provides all borrowers of owner-occupied primary residences with the opportunity to participate in mediation. If they take that opportunity, the mortgagee must participate in mediation. This provision extends too far in its present form. The mortgage mediation administrator should have authority to use a screening process to ensure that only appropriate cases are mediated. Without such a process, cases may be delayed and costs may be prohibitive, and these costs will likely be borne by consumers and increase costs, which ultimately might be turned over to consumers.

Senate Bill No. 576 explains in detail issues that relate to the processes and requirements for the program. Respectfully, the Judiciary notes that it would allow for more flexibility if the program rules could be set through the rule-making procedures already in place in the Supreme Court rather than by the Legislature. Likely, a new program would require changes, and it would provide more options to make changes to rules as opposed to a statute, and rule changes can often be accomplished more quickly.

There are other issues that should be worked out if the Committee votes to support this Senate Bill No. 576. Staff from the Center for Alternative Dispute Resolution would welcome the opportunity to work with legislative staff on those issues.

Thank you for the opportunity to testify on this measure.

# UNITE HERE!

## LOCAL 5 HAWAII

*Eric Gill, Financial Secretary-Treasurer*

*Hernando Ramos Tan, President*

*Godfrey Maoshiro, Senior Vice-President*

Tuesday, February 1, 2011

The Honorable Roslayn Baker, Chair  
and Members  
Hawaii State Legislature  
Committee on Commerce and Consumer Protection  
State Capitol  
415 S. Beretania Street

Chair Baker, Vice-Chair Taniguchi, and members of the Senate Committee on Commerce & Consumer Protection:

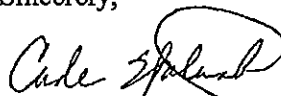
On behalf of UNITE HERE Local 5, a local labor organization representing nearly 11,000 hotel, health care and food service workers employed throughout our State, I hereby register our organizations support of SB 576 relating to foreclosures.

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. We would add that mandatory mediation is the best way to prevent foreclosures in Hawaii. Through our work with FACE and their partners nationwide, we have learned that it is already working in Nevada and that as a State we should support similar initiatives here.

Thank you again for providing us with this opportunity to participate in these discussions, and we ask for your support of SB 576.

Sincerely,



Cade Watanabe  
Community/Political Organizer



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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 576 Relating to Mortgage

### **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 576. HBA is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii.

It is our understanding that SB 576 requires mediation for the purpose of attempting to avoid foreclosure before foreclosure by action or by power of sale may take place; makes conforming amendments; creates and funds the position of mortgage mediation administrator in the center for alternative dispute resolution.

Lenders do not want to foreclose on homeowners. Therefore, lenders will work with willing borrowers 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 medication 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.

If mediation cannot solve the major underlying problem of non-payment due to loss of income, then the added time will only add to the cost of foreclosure. Clearly added costs do not benefit the homeowner.

It will be interesting to see the report on the results of the Hawaii Island mediation pilot program that started over a year ago. We have not seen the report and just heard anecdotal from participants that the program results were less than stellar.

Additionally, due to the State's budgetary constraints is it the appropriate use of limited funds for a program that does not solve the underlying cause of foreclosure, further taxing the resources of an already burdened judiciary and opening up the possibility of mediation being used as a delaying tactic by borrowers that do not have the means to make mortgage payments are a few of some other issues to also consider.

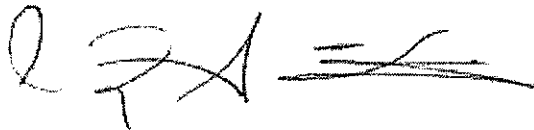
It is suggested that the Committee consider other alternatives to mediation as follows:

**1. Pass the Recommended Legislation of the Mortgage Loan Foreclosure Task Force:** The legislature should adopt the recommendations of the task force outlined in SB 652 or similar measures, with a very minor modification to the proposed legislation (page 18 line 9) Section 667-5 subsection (e) by eliminating the word "residential".

**2. Implement Mortgage Loan Modification Fairs:** The appropriate State agency should work with the major servicers/lenders that have the bulk of the foreclosures to set up mortgage loan modification fairs to enable homeowners to meet face to face with servicer/lender representatives with the authority to negotiate a modification.

**3. Direct Assistance of Limited of Resources to Assist Troubled Borrowers:** Where the resources to support a mediation program might instead be better used is a question. Based on my experience of attorneys dealing with borrowers and their attorneys, there appears to be a need for educational and housing transition counseling programs and independent modification assistance providers. This use of precious resources that directly helps troubled borrowers would be a more effective use of funds instead of wasting funds on a mediation program, which has not proven to be very effective.

Thank you for the opportunity to provide our testimony and respectfully asked that this bill be held.



Gary Y. Fujitani  
Executive Director





*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 576 Relating to Foreclosure

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 576 Relating to Foreclosure. 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.

# 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 576 (Foreclosure)**  
**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.

The purpose of this Bill is to: (1) require mediation for the purpose of attempting to avoid foreclosure before foreclosure by action or foreclosure by power of sale may take place; (2) make conforming amendments; and (3) create and fund the position of mortgage mediation administrator in the center for alternative dispute resolution.

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 Task Force's recommendations are contained in other bills, such as Senate Bill 652. 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.

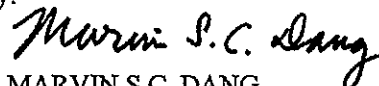
The provisions in this Bill (Senate Bill 576) are not part of the Task Force's recommendations.

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.

Additionally, as an attorney I have been handling foreclosures which have been subject to the Judiciary's Foreclosure Mediation Pilot Project for the Third Circuit (Big Island) which began in November 1, 2009. It is my experience, and it is the experience of other foreclosure attorneys who have been involved with mediation as part of the Pilot Project, that few cases are appropriate for mediation, and the success rate for mediated cases is minimal. There are untenable delays in the foreclosure process when mediation is inappropriate or unsuccessful.

We incorporate by reference the testimony separately submitted by the Hawaii Bankers Association opposing this Bill.

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

(MSCD/hfsa)



P.O. Box 976  
Honolulu, Hawaii 96808

January 31, 2011

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

Re: SB 576/OPPOSE

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

I chair the CAI Legislative Action Committee. CAI opposes SB 576 for multiple reasons.

First, the bill could be construed to apply to condominiums because condominiums foreclose "in like manner" as a mortgagee. Condominiums should not suffer for the sins of the mortgage industry.

As is noted in separate testimony related to SB 1191, money is the lifeblood of condominium associations. It is, has been and should remain the law in Hawaii that condominium owners must pay first and dispute later.

Existing law provides for mediation and/or arbitration subsequent to payment in full. That has been the law from the time before the legislature re-codified the entire condominium law, and it remains the law now. CAI respectfully requests that the legislature preserve this aspect of existing law with respect to condominium mediation.

Hawaii Revised Statutes Section 514B-161(b)(2) exempts "Actions to collect assessments" from mandatory mediation. H.R.S. Section 514B-162(b)(5) exempts "Actions to collect assessments which are liens or subject to foreclosure; provided that a unit owner who pays the full amount of an assessment and fulfills the requirements of section 514B-146 shall have the right to demand arbitration of the owner's dispute, including a dispute about the amount and validity of the assessment[.]"

Honorable Rosalyn H. Baker  
Honorable Brian Taniguchi  
January 31, 2011  
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The failures and/or abuses of mortgagees in relation to their for-profit industry present entirely distinct and separate issues from issues present in condominiums. Condominiums are a collective.

Consumers divide common expenses among the owners, who benefit from the common services. There is no profit motive. There is only the overriding need to pay the bills.

The legislature wisely passed legislation mandating that condominiums fund reserve accounts to assure their long-term viability. H.R.S. Section 514B-148 reflects an important legislative achievement. SB 576 would, if applied to condominiums, have an adverse effect on the financial viability of condominiums.

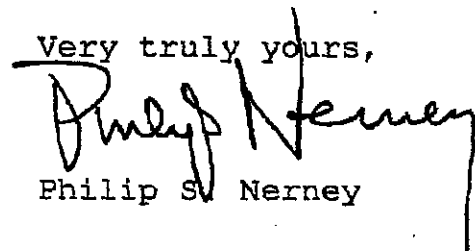
Thus, CAI respectfully requests that SB 576 at least be amended to clearly exclude condominiums from the effects of that bill.

Separately and apart from the harm to conscientious consumers who fund condominium operations, by meeting their lawful obligations, SB 576 appears to describe a process more like a court-appointed master than a mediator. See, for example, the proposed Section 667-H (2) and (3).

It is also notable that the proposal is more than a little coercive. See, for example, the proposed Section 667-E(a) (mortgagee must bring someone authorized to modify the loan/must bring loan documents) and 667-E(c) (mediator to inform on mortgagee if mediator dissatisfied with mortgagee's participation). There are no corresponding impositions on the defaulting borrower.

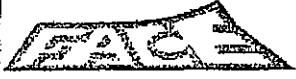
It would be preferable to identify the proposed process as something other than mediation. The proposed process appears to bear very little relationship to mediation.

Very truly yours,



Philip S. Nerney

Faith Action for



Community Equity

Oahu and Maui Chapters

Gamaliel Foundation Affiliate

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The Rev. Alan Mark  
Statewide President

The Rev. Sam Domingo  
Oahu President

The Rt. Rev. Monsignor  
Terrence Watanabe  
Maui President

Mr. Rosario Baniaga  
Statewide Treasurer

Ms. Judy Ott  
Statewide Secretary

Mr. Drew Astolfi  
Executive Director

Mr. Patrick Zukemura  
Oahu Lead Organizer

Ms. Terri Erwin, PhD  
Maui Lead Organizer

CPN

8:30am February 2, 2011

Attn: Senator Roz Baker

I am writing in support of SB 576 & SB 651 related to foreclosure, but I am also asking for a few additions to these two bills. I am Rev. Sam Domingo, President of FACE Oahu.

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 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.

These two bills 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 our early draft bills don't. 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 good. Take a closer look, and you will see that the programs without teeth are the ones that have not worked so good. 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 you might consider a short moratorium on foreclosures while the new program is set up.

Thank you for your attention to this important issue.

# FACE MAUI

Faith Action for Community Equity

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## **Consumer Protection Committee Testimony related to SB 651 on Mediation and SB 576 on Mediation Wednesday, February 2, 2011 8:30 am - ?**

I am Rev. Monsignor Terrance Watanabe, current Pastor of St Theresa Roman Catholic Church in Kihei and the President of FACE Maui – I am testifying in support of both SB 651 and SB 576 – but I would like them to be stronger in two important ways. Foreclosures damage and sometimes destroy families. I have seen this all too often over the last few years. According to the newspaper Maui County has one of the worst foreclosure rates in the United States. That feels true to me...sadly it matches my experience.

While there are a large number of important ideas addressing this problem in several of these bills I want to focus on these two bills which introduce the concept of mandatory mediation. This is the best route to saving homes for local families, and preserving the character of our islands.

Mandatory mediation (especially when combined with a temporary moratorium which gives it time to get set up) is the most proven way that states and counties have used to correct this issue. According to ABC News two weeks ago, Nevada cut its rate of foreclosures by 47% after implementing mandatory mediation two years previously. Local banks are not foreclosing on families in part because face to face contact tends to lead to loan modifications. Both these bills provide that kind of contact. But according to Nevada leaders, face to face contact is not enough to fix the problem – the mediation must have teeth – there must be a stick to give the mortgage servicer a reason to enter into the mediation. While I support both mediation bills in the Senate, SB 651 is weaker than SB 576 because it does not require loan servicers to prove that they own the mortgage to foreclose and this has been a problem all over the country.

In closing I want to say that banks need to be compelled to participate in the mediation. The legislature should not hesitate to use its powers to make the parties at least seek out a way to keep families in their homes. I know that the banks never support regulation that governs their activity, and I know that they will not support this now. This time the legislature should put the families first. Neither bill currently requires the mortgage servicer to send a person to the mediation who is expressly authorized to modify the loan in order to keep people in their home. This was a key feature in the Nevada law, and it should be a part of whichever of these two bills makes it through the committee.

Mahalo for allowing me to testify.



## CATHOLIC CHARITIES HAWAII

211 Kaulawahine St, Kahului, Hawaii 96732

### Consumer Protection Committee

Testimony related to SB 651 on Mediation and SB 576 on Mediation

Wednesday, February 2, 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 both SB 651 and SB 576 but 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 it's a new representative) 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 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

# FACE MAUI

Faith Action for Community Equity

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**Consumer Protection Committee  
Testimony related to SB 651 on Mediation and SB 576 on Mediation  
Wednesday, February 2, 2011  
8:30 am - ?**

My name is Tina Draper, I am the Outreach Worker at St. Theresa Catholic Church in Kihei (Maui). I have also worked for the Hale Kau Kau feeding ministry for years. I am a member of FACE MAUI.

In my work, I have heard a lot of very sad stories, but lately they have changed. It used to be that it was rather straightforward to identify the source of someone's misfortune. Maybe they were homeless or transient because of an addiction or mental illness; we recognized the need to help those who could not help themselves. But now, I am seeing families – often working families with kids, who line up for food every evening. Job instability has forced many able-bodied, hard-working people into situations they never imagined.

Foreclosure is a crisis on the island of Maui. We lead the islands in the number of families in danger of losing their homes – or having lost them already. Nationwide, states are passing laws to help families reach mediated agreements with lenders. Mandatory mediation laws, like the Nevada one, are doing for families what banks have proven unwilling to do voluntarily so far – come to the table in good faith to negotiate a solution for loan modification.

There is no benefit to Maui having streets of homes sitting vacant while their former owners are forced into the social safety net (which is stretched pretty thin already). And neighbors' homes lose value as the homes around them deteriorate, and the weeds take over the properties. It's dangerous for kids and teens, also.

Please pursue the strongest version of mandatory mediation legislation that you can. Simple requirements, like compelling the banks to prove ownership of the loan, and sending an authorized representative to negotiate in a live mediation session, are the least we can do to help the residents of our communities hold on to their most important asset.

Thank you for your work on this important issue. I urge you to put teeth into any bills you move forward—mandatory measures. You are the only line of protection we have at this point. We are losing ground daily to the corporate interests of financial institutions – over the interests of real Hawaii families. Do not leave it to the discretion of these institutions to come to the table and to pursue reasonable loan modifications.

Our families are in free fall. Your legislation must catch as many as it can. We can't wait.



# FACE MAUI

Faith Action for Community Equity

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**Consumer Protection Committee  
Testimony related to SB 651 on Mediation and SB 576 on Mediation  
Wednesday, February 2, 2011  
8:30 am - ?**

My name is Tina (Sunshine) Kaikaka, I live in Kula on Maui. I am a member of FACE MAUI. I am testifying in support of both SB 651 and SB 576 but would like to see them even stronger to protect families more effectively.

I am waiting for the knock on my door that tells me and my family to vacate our home. For a year and a half, each month I have received a letter from Bank of America telling me that our sale has been postponed to the next month. We live in constant fear and anxiety that this month may be our last. My son is an A/B student at Kamehameha School. He is an excellent student and the first in our family to attend. My hope has been that we could stay in our home until he graduates at least. But who knows?

I have had a nightmare experience with Bank of America. I have sent paperwork in so many times my head spins to think about it. I have spent at least a hundred dollars paying for the faxes they supposedly needed of information to process a loan modification. They said we were good candidates for it, so we were hopeful. We really thought we could work out an arrangement – we wanted to pay, but they denied us with no justification. The stress over this has made me literally sick. Everything I have ever worked for in my life was invested in this home. I planned to pass it on to my children and keep it in our family.

Bank of America just wouldn't talk to us! I did everything humanly possible to get a modification for payments I could make. But when you can't get a returned call – or the same person on the line twice – it's just impossible. I even asked for papers showing they owned my loan but got nothing.

I asked Sen. Roz Baker for help and even Sens. Inouye and Akaka's offices called Bank of America on my behalf. But it was no help. They got the runaround, too. I tried to short sell my house at one point, but no one would touch it with a ten foot pole once they learned that Bank of America was involved.

I am out of options. But no one should go through what I am. Please pass the strongest mandatory mediation legislation possible. We need something like the Nevada model, which is proven to work for families. Banks need to be required to do what is right, since they are not doing it voluntarily already! Any legislation must require lenders to come to the table with an authorized representative who can make an agreement with a family. Obviously, even before that, they should be required to prove that they own the mortgage to foreclose – that's just common sense. SB 576 requires this; SB 651 does not currently but should be changed to.

Mahalo for all you are doing to protect the families of Hawaii. Thank you for your attention to my testimony.

LAW OFFICE OF GEORGE J. ZWEIBEL  
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Honoka'a, Hawaii 96727  
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(808) 775-1089 (facsimile)

**Senate Committee on Commerce and Consumer Protection**

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

**IN SUPPORT OF SB 576**

**Chair Baker, Vice Chair Taniguchi, and Committee Members:**

My name is George Zweibel. I am an attorney in private practice on the Island of Hawaii, and have been actively involved in consumer protection for about 35 years. For the last ten years, I have represented mortgage borrowers living on Oahu, Hawaii, Kauai and Maui. Earlier, I enforced federal consumer credit laws for 20 years at the Federal Trade Commission in Washington, DC and Seattle and before that represented low-income borrowers as a legal aid lawyer. I am also a member of the Legislature's Mortgage Foreclosure Task Force, although the views I express here are my own and not necessarily those of the Task Force.

SB 576 would require mediation for the purpose of attempting to avoid foreclosure before foreclosure by action (judicial foreclosure) or by power of sale (non-judicial foreclosure) takes place. It would also fund and assign responsibility for administering mandatory foreclosure mediation to the center for alternative dispute resolution. **I strongly support SB 576.**

Hawaii's foreclosure rate has become one of the highest in the U.S. In January 2007, the *Honolulu Advertiser* reported that one of every 10,710 Hawai'i households entered some stage of foreclosure in the prior month, representing the 43<sup>rd</sup> lowest foreclosure rate in the country. In December 2008, the *Advertiser* reported that Hawaii's November 2008 foreclosure rate – one filing per 1,272 households – was worse than 22 other states. In October 2010, it was reported that one home in 317

States. The foreclosure crisis arrived late in Hawaii, but it is here now and the need to enact legislation to avoid the unnecessary loss of homes has never been greater.

Foreclosure mediation has been highly successful in various states and localities, helping homeowners and loan holders or servicers reach agreements involving loan modification or other “loss mitigation,” thereby avoiding foreclosure as well as unnecessary expense and delay. For example, **as of October 31, 2010, based on 8,266 completed foreclosure mediations, the Connecticut Judiciary reported a settlement rate of 78%, with 63% (of the total) staying in their homes.**

Some are incorrectly suggesting that the limited initial success of the pilot foreclosure mediation program in Hawaii’s Third Circuit Court shows that foreclosure mediation does not work. In fact, the pilot project substantially modified the process recommended by the Hawaii Access to Justice Commission, which proposed creation of a judicial foreclosure mediation program. Unfortunately, those changes reduced borrower participation as well as the number of favorable outcomes. To make matters worse, in nearly 50% of the tracked cases lenders’ attorneys failed to provide homeowners with the required foreclosure mediation notice and request form. There were other problems as well, which I can describe if the Committee wishes.

If anything, the Hawaii pilot project shows the importance of establishing a foreclosure mediation process that will work: it must be widely available and user friendly, mediators must be well trained, and meaningful participation by loan holders and servicers must be required. Properly implemented, there is no reason foreclosure mediation in Hawaii should be any less successful than it is in Connecticut and in other states and localities.

Legislation requiring foreclosure mediation must apply to both judicial and non-judicial foreclosures. This will give all homeowners facing foreclosure an equal opportunity to have a trained mediator help the parties determine whether they can agree on a better outcome. Indeed, by definition, the absence of oversight by a judge makes involving a neutral mediator most important in non-judicial foreclosures, which now account for 90-95% of all foreclosures in Hawaii. Enacting legislation that ensures the availability of foreclosure mediation in all foreclosures – whether judicial or non-

the availability of foreclosure mediation in all foreclosures – whether judicial or non-judicial – and subject to the same rules, is essential.

I respectfully request that the Committee consider amending SB 576 as follows:

(1) **Amend §667-5(b) to require that non-judicial foreclosure notices are posted earlier so mortgagors have 30 days in which to elect foreclosure mediation.** Proposed §667-D(a) gives the mortgagor 30 days after receipt of the notice of mediation under §667-C to contact the mortgage mediation administrator to indicate whether he or she elects to pursue mediation. The latter section requires, among other things, that notice of a power of sale foreclosure posted pursuant to current §667-5(b) include notice of the right to mediate. However, §667-5(b)(2) requires that the foreclosure notice be posted on the premises no later than 21 days before the foreclosure sale. To eliminate this inconsistency, §667-5(b) should be amended to require the posting of notices earlier so that the mortgagor has 30 days for electing to mediate as intended in §667-D.

(2) **Add language to §667-E requiring the mortgagee or its representative to also bring to the mediation the original or a certified copy of the promissory note.** Proposed §667-E(b) requires the mortgagee or its representative to bring to the mediation the original or a certified copy of the mortgage instrument and each assignment of the mortgage instrument. It is equally important to produce the original or a certified copy of the promissory note that the mortgage instrument secures, including all endorsements, to establish the identity of the current holder of the loan.

(3) **Reduce the mediation fee.** Proposed §667-F would allow the center for alternative dispute resolution to charge up to \$1,000 (split between mortgagor and mortgagee) for foreclosure mediation services. Experience in other states has shown that charging no fee, or only a minimal fee, encourages and maximizes utilization of foreclosure mediation. One way to keep costs down would be to utilize volunteer mediators, particularly including attorneys wishing to fulfill their professional *pro bono* obligation.

Thank you for considering my testimony on this timely and important bill.

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

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
REGARDING SENATE BILL 576

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 with reservations about SB 576. 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.

Encouraging a borrower and lender to mediate may help resolve disputes, certainly in those cases where there is lack of communication and borrowers have problems receiving a firm response from someone in a position of authority.

Nevertheless, unless the borrower is required to pay his maintenance fees during the mediation, every month of delay can increase the borrower's delinquency to his or her association. Moreover, for more than 20 years Hawaii has had a "pay first, dispute later" provision in the condominium law for any monetary disputes between homeowners and their associations. (That procedure is presently found in sections 514B-146 (c) and (d) of the condominium law.) The purpose of that procedure is to protect both the association and the homeowner in the event of a dispute. The association is not held hostage to unfounded claims that maintenance fees are not due; the homeowner avoids running up legal fees and other costs in an expensive dispute with the association. Instead, once a homeowner pays the disputed amount, he can investigate the validity of the association's claim and, if necessary, resolve the dispute through mediation with the association.

This bill should be amended to reflect that practice and require that, regardless of the disputes that a homeowner/borrower may have with his lender, while the mediation process provided by this bill is continuing, the homeowner must keep his

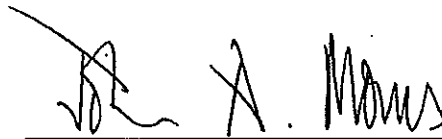
TESTIMONY REGARDING SENATE BILL 576  
February 1, 2011  
Page 2

association fees current. In that way, everyone's interest will be protected.

These same issues should also be addressed in SB 651.

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". The signature is written in a cursive style with a long horizontal stroke at the end.

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John A. Morris

JAM:alt  
G:\C\2011 Testimony SB 576 (02.01.11)

**CPN Hearing**  
**February 2, 2011**  
**8:30am**  
**Room 229**

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 SB 576 and SB 651 – but I am also requesting that you make amendments to these bills.

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.

Both bills SB 576 and 651 call for mandatory mediation but only SB 576 requires lenders to prove they own the loan before they start the foreclosure. Neither yet require that the lender's representative be authorized to negotiate during the mediation. These provision 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 lender.

Please work to make these two bills stronger, and move a strong version to the House.

Mahalo for reading my testimony

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



TESTIMONY FOR:

**SB576 & SB651**

RELATING TO MORTGAGE FORECLOSURES

**(Requires mediation for the purpose of attempting to avoid foreclosure)**

AMENDED NOTICE OF HEARING:

DATE: Wednesday, February 2, 2011

TIME: 8:30 a.m.

PLACE: Conference Room 229

State Capitol

415 South Beretania Street

TO:

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair

Senator Brian T. Taniguchi, Vice Chair

And Colleagues

FROM:

ANNE W. JENNY

Representing (former) Homeowners of Hawaii

1465 Baldwin Ave

Makawao, HI 96768

808 579-9456

My name is Anne W. Jenny

Although it is too late for me we desperately need this legislature to pass **SB576 & SB651** 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.

January 30, 2011

TESTIMONY FOR SB576 SB651  
RELATING TO MORTGAGE FORECLOSURES  
(Requires mediation for the purpose of attempting to avoid foreclosure)

AMENDED NOTICE OF HEARING

DATE: Wednesday, February 2, 2011  
TIME: 8:30 a.m.  
PLACE: Conference Room 229  
State Capitol  
415 South Beretania Street

TO:

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
Senator Rosalyn H. Baker, Chair  
Senator Brian T. Taniguchi, Vice Chair  
And Colleagues

FROM:

JADE L. BROWN  
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 need this legislature to pass (SB576 & SB651) so that my family will have the chance to save our home.** I am honored to be able to have my voice heard regarding foreclosures in the State of Hawaii. Thank you for the opportunity to represent homeowners across our state who are facing and/or trying to prevent foreclosure.

Shortly after moving to Maui in 2003, I purchased my home along with my husband Patrick, a long-time Maui resident. Prior to moving in, I had a dream. The land "came" to me and said that I was the right one to live on and care for the Land. I had never had such a powerful dream. I had much to learn at the time about the Aina and the special relationship between humankind and the Land. I am still learning. I love my home, the grass, dirt, bugs, and animals. Patrick and I have worked hard every day to pay the mortgage, maintain our home, and be good stewards of the precious Land. I know that scores of others in our state are honored to participate with their home and Land in the same way.

What I am trying to say is that "home" has a very special meaning to us here in Hawaii. This is why so many of us have become shocked and sickened to learn what *our* home ownership has become to the players of the banking industry and Wall Street. We 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. We 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. And finally, we 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. Given the questionable nature of these practices, a national investigation appears in order.

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 that we had to be delinquent in order to qualify. We had never been late on a payment before, but we trusted the directions of our servicer because after all, this was a government program and surely they were conducting themselves with integrity and in good faith. 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 almost a year, and a final modification agreement that we signed and sent back on time, we still have no permanent modification. We are not deadbeats and have acted in good faith to modify our mortgage. Now, we may be facing foreclosure. 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.

Because Hawaii is a non-judicial state, many homeowners do not have protections to ensure that foreclosure occurs in a fair and just manner. In his first State of the Judiciary address, delivered last week, January 26th to a joint session of the State Senate and House, Hawaii Supreme Court Chief Justice Mark Recktenwald spoke of many challenges facing the Hawaii State Judiciary. He said “Many of Hawaii’s low and moderate income families are unable to obtain the legal services that they need in the best of times, and the unmet need has become greater in these difficult economic conditions.” He went on to say that there are increasing

numbers of families in Hawaii facing foreclosure and other economic crises, “yet, at the same time, state funding for legal service organizations has been sharply reduced.” Being a non-judicial state, it is clear that the financial burden of litigation is upon the struggling Hawaii family.

There are increasing reports around the country of wrongful foreclosure. 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. Our people, who love this Land so much, will cause Hawaii to thrive once again. Let us please ensure that the people of Hawaii are given a fair chance to fight for the Land. **One solution is meaningful, mandatory mediation. States that have passed similar legislation have seen dramatic reductions in foreclosures.** Another solution is a foreclosure moratorium until a national investigation on securitization is conducted. This will ensure that no families of Hawaii will lose their homes unjustly.

In closing, I want to express that this personal for me. Our home is a sacred meeting place for friends, family, and community – not game piece on a monopoly board. Why I’ve chosen to make Hawaii my Home is that I am joined with fellow stewards of the Land. **Our love of this Land is greater than the greed of Wall Street.** Thank you for hearing my voice.

2/1/2011 My Testimony for S.B. NO 576 Mortgage Foreclosure; Mandatory  
Mediation  
Room 229 2/2/2011 8:30:00 AM

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 .

I have read S.B. NO 576 dated 1/21/2011  
[http://www.capitol.hawaii.gov/session2011/bills/SB576 .pdf](http://www.capitol.hawaii.gov/session2011/bills/SB576.pdf)

and I urge this to be passed right away!

Not in a few months or 2012, by then, myself and many other families may lose their homes.

S.B. NO 576 has some provisions that are absolutely key to to keep the major mainland servicers from unfairly foreclosing on the families of Hawaii.

1) FAIR MANDATORY FORECLOSURE MEDIATION prior to any foreclosure

1667-E Mediation process; requirements. (a) Parties to a mediation process conducted pursuant to this part shall consist of the mortgagor or the mortgagor's representative and the mortgagee or the mortgagee's representative; provided that any representative of the mortgagee who participates in the mediation shall be authorized to negotiate a loan modification on behalf of the mortgagee or shall have direct access at all times during the mediation process to a person who is so authorized.

All parties may be represented by counsel at the mediation."

b) "The mortgagee or mortgagee's representative shall bring to the mediation the original or a certified copy of the mortgage instrument and each assignment of the mortgage instrument.  
"

(c) If the mortgagee fails to attend the mediation, fails to bring the documentation required by subsection (b), fails to participate in the mediation in good faith as determined by the assigned mediator, or participates through a representative that does not meet the requirements of subsection (a), the mediator shall notify the court, the bureau of conveyances, or the land court, as appropriate. After receipt of notice pursuant to this subsection, the court shall not issue a judgment of foreclosure and neither the land court nor the bureau of conveyances shall record a notice of sale or other conveyance document for the subject property.

1667-H Rules. The chief justice of the supreme court or chief justice's designee, in the capacity of administrative manager of the center for alternative dispute

resolution pursuant to section 613-2, shall adopt rules pursuant to chapter 91 for the administration of this part including rules to: Ensure that mediations occur in an orderly and timely manner; Require each party to provide any information that the mediator deems necessary; and Protect the mediation process from abuse and ensure that each party to the mediation acts in good faith."

This process will not be fair for the home owner UNLESS there is COMPLETE TRANSPARENCY and no loop holes for the servicer to abuse.

The bank representative has to have the full authority to negotiate and approve a fair loan modification during the mediation.

If they say they can not do a loan modification because of a negative NPV or because their investors will not allow it, they must DOCUMENT this to be true.

I will explain in a moment why this is so crucial.

Our original Mortgage taken out in 2003 was with Country Wide Home Loans which was taken over by Bank of America who then sold our loan to Bank Of New York Mellon and 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. once when it arrived. This seemed fair and affordable to us.

I was also told I had to want to keep my home, stay and live in my house 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 trial 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 a trial 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 the 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 NVP data on request is a direct requirement of HAMP.

If a borrower is not approved for a HAMP modification because the transaction failed the NPV calculations, then the servicer must, explain what the NPV means tell you the factors used to make the NPV decision and advise you that you may request the values used in making the calculations along with the date the process was completed within 30 days of the notice of denial. and dates. 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 in incorrect data into the NVP tool.

From the numbers quoted to me by some BAC reps, I am certain there were.

Numbers that changed my gross income , numbers that were not true.

As of today 2/01/11, I have not gotten the NPV. BAC has become notorious for this, as I found out.

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 one in the letter.

I was told many things, most BOA reps said they were "guessing" as to why I had a negative NVP.

I was told it could be 45 Business days or longer before I do get it.

One rep told me he knew for a fact that it 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 also told me they can not even make any decisions about loan modifications, the servicer makes all the decisions "on their behalf", however, they told me it WAS in their best interest to have loan mods done. ( I have documented the names, dates and numbers of these conversations )

Meanwhile, in April during the process, we had a change in circumstances. My husband was hurt during a fire call, is now on Workman's comp, and getting less than his salary.

After the HAMP denial but before getting out NVP data, BAC finally agreed to allow us" special forbearance" because my husband needed two surgeries.

The Forbearance ends this month and our income will will be better.

We am trying to re-apply for a loan mode but fear we will be foreclosed on first.

I can not get any answers I trust from BOA.

I can sometimes spent 3 hours in one day making 10 calls !

We now so behind on payments that it will be almost impossible to catch up without a modification, which they have already denied us, with no clear reason and after telling us we was approved!

Bottom line is they have CREATED a situation where we will either be forced into foreclosure , or owe them so much forbearance, interest, and fees, I we not be able to catch up.

Our credit is ruined, if we lose our home, renting will be difficult since our credit is now so poor, even though we have no other debt.

Even looking for additional work is now more difficult as employers also do credit checks.

Had I known that it would take me four months to even get an application, and another 4 months to get turned down, I would have sold my home when I still had some savings left and some time to sell it and when the value was more than it is now.

We may have even had some equity or at least broke even, kept our excellent credit and been able to rent and find additional work with less restrictions.

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.

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 others.

Make them Prove they have the original note. all the assignments and the 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://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing\\_ID=df8cb685-c1bf-4eea-941d-cf9d5173873a](http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=df8cb685-c1bf-4eea-941d-cf9d5173873a)

and

House Financial Services Committee Subcommittee on Housing and Community Opportunity "Robo-Singing, Chain of Title, Loss Mitigation, and Other Issues in Mortgage Servicing"

<http://financialservices.house.gov/Hearings/hearingDetails.aspx?NewsID=1376>  
November 18, 2010

<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 both 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!

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.

Please do NOT weaken S.B. NO 576, require transparency.

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

Thank You

Marcy and Larry Crilley

2962 Kauhale Street  
Kihei, HI 96753  
808-874-5644

Testimony for CPN 2/2/2011 8:30:00 AM SB576

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Al Denys

Organization: Individual

Address:

Phone: 306-9180

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

Submitted on: 1/31/2011

Comments:

I am against SB 576 as it will preclude community associations from trying collect delinquent fees from homeowners and will increase the maintenance fees from those homeowners who are in good standing because of the added expense in collecting those delinquent fees. Also the shortcoming in collected maintenance fees revenues, which are used to pay for the maintenance of the property will result in higher maintenance fees to pay for the day to day operations of the association. Please do not approve SB576. Mahalo.

Al Denys

Testimony for CPN 2/2/2011 8:30:00 AM SB576

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](mailto:emmatsumoto@hotmail.com)

Submitted on: 1/31/2011

Comments:

The bill does not differentiate between mortgage foreclosures and associaiton foreclosures and does nothing to improve the mediation process. Request this bil be withheld.

Testimony for CPN 2/2/2011 8:30:00 AM SB576

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](mailto:jdodson@ebgca.net)

Submitted on: 2/1/2011

Comments:

Amend act to require lender to notify owner, management company, & common interest development at time of notice and at time of implementation of foreclosure proceeding.

Testimony for CPN 2/2/2011 8:30:00 AM SB576

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Gordon Langston

Organization: Individual

Address:

Phone:

E-mail: [flashgordon10t@aol.com](mailto: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 SB576

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](mailto:timlid.baier@att.net)

Submitted on: 1/29/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB576

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](mailto:jpatton@uci.edu)

Submitted on: 1/30/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB576

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Glen Hilton

Organization: Individual

Address:

Phone:

E-mail: [glenhilton2@netscape.net](mailto:glenhilton2@netscape.net)

Submitted on: 1/31/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB576

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](mailto:pwardell@uplink.net)

Submitted on: 1/28/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB576

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](mailto:parkj052@hawaii.rr.com)

Submitted on: 1/29/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB576

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](mailto:timlid.baier@att.net)

Submitted on: 1/29/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB576

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](mailto:gmyak@hawaiiantel.net)

Submitted on: 1/31/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB576

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](mailto:J55547@AOL.COM)  
Submitted on: 1/31/2011

Comments: