

Honolulu, Hawaii

March 22, 2013

RE: S.B. No. 1370
S.D. 2
H.D. 1

Honorable Joseph M. Souki
Speaker, House of Representatives
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Sir:

Your Committees on Consumer Protection & Commerce and
Judiciary, to which was referred S.B. No. 1370, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO MEDIATION AFFECTING JUDICIAL
FORECLOSURE,"

beg leave to report as follows:

The purpose of this measure is to assist homeowners at risk
of foreclosure by expanding the applicability of mandatory
mortgage foreclosure dispute resolution.

Specifically, this measure:

- (1) Requires mortgagees to engage in early intervention
measures to attempt to mitigate loss to the homeowner,
including through written notice no later than 45 days
after the mortgage becomes delinquent;
- (2) Extends the existing Mortgage Foreclosure Dispute
Resolution to require mortgagees, at the mortgagor's
election, to participate in mediation to avoid
foreclosure or to mitigate damages from foreclosure
prior to filing a judicial foreclosure action for
property that has been the mortgagor's primary residence
for a specified period and institutes necessary notice
requirements;



- (3) Creates new accountability requirements for attorneys in foreclosure actions, through requiring the submission by plaintiffs' counsel of written affirmations attesting to the attorney's personal knowledge and verification of the accuracy of documents submitted to the court and of the validity of the claim for foreclosure;
- (4) Applies the dispute resolution requirement to judicial foreclosure actions filed prior to the effective date of this measure and pending an initial court hearing as of that date; and
- (5) Exempts mortgagees engaged in loss mitigation procedures with the mortgagor in compliance with statutory requirements from mediation requirements.

The Hawaii Financial Services Association, Mortgage Bankers Association of Hawaii, Hawaii Bankers Association, and Hawaii Credit Union League testified in opposition to this measure. The Office of Consumer Protection provided comments on this measure.

The Office of Consumer Protection testified that it prefers H.B. No. 1417, H.D.1, which is the companion bill to this measure, because the current measure does not adequately fulfill the Legislature's original intent of providing dispute resolution coupled with the assistance of a HUD-certified housing counselor to homeowners facing foreclosure. Therefore, your Committees have amended this measure by:

- (1) Deleting the language that requires mortgagees to attempt to engage in early intervention measures prior to filing a judicial foreclosure action and exempts mortgagees who do engage in early intervention from dispute resolution requirements;
- (2) Deleting requirements for attorneys' written affirmations in foreclosure filings;
- (3) Changing the effective date to July 1, 2112, to encourage further discussion; and
- (4) Making technical, nonsubstantive amendments for the purpose of clarity, consistency, and style.



As affirmed by the records of votes of the members of your Committees on Consumer Protection & Commerce and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 1370, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 1370, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Respectfully submitted on
behalf of the members of the
Committees on Consumer
Protection & Commerce and
Judiciary,



KARL RHOADS, Chair



ANGUS L.K. MCKELVEY, Chair



