

Honolulu, Hawaii

FEB 12 2013

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

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 1370 entitled:

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

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Expand the application of mandatory mortgage foreclosure dispute resolution by requiring mortgagees, at the mortgagor's election, to participate in mediation to avoid foreclosure or 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
- (2) Apply the dispute resolution requirement to judicial foreclosure actions filed prior to the effective date of this measure and pending an initial court hearing.

Your Committee received testimony in support of this measure from the Office of Consumer Protection of the Department of Commerce and Consumer Affairs, Hawaii Community Assets, and one individual. Your Committee received testimony in opposition to this measure from the Hawaii Bankers Association, Hawaii Financial Services Association, Mortgage Bankers Association of Hawaii, and Hawaii Credit Union League.



Your Committee finds that the Legislature has previously expressed a desire for dispute resolution combined with the assistance of a United States Department of Housing and Urban Development (HUD)-certified housing counselor to be available for homeowners facing foreclosure. Foreclosure mediation has been highly successful in Connecticut, Nevada, and other states and can assist homeowners and loan holders or servicers reach agreements involving loan modification or other loss mitigation. These agreements can therefore avoid foreclosure and unnecessary expense and delay.

Your Committee further finds that although mortgage foreclosure dispute resolution is available upon request in non-judicial foreclosures, mortgagees have instead chosen to pursue judicial foreclosure. Although mediation in a judicial foreclosure may be ordered in the discretion of the court, only the Third Circuit, on the Island of Hawaii, has a dedicated foreclosure mediation program. This foreclosure mediation program now reports a high rate of success in foreclosure actions, which has in turn helped alleviate the pressure on the Third Circuit's civil docket. Your Committee additionally finds although the Hawaii Access to Justice Commission has strongly recommended that the Hawaii Supreme Court retain, improve, and expand the Judiciary's foreclosure mediation program, it has not yet expanded beyond the Third Circuit.

Your Committee also finds that there is emerging evidence that the availability of HUD-certified counselors in foreclosure dispute resolution programs is one of the most, if not the most, important factors in the ability of homeowners to navigate mediation programs and achieve optimal results. The report, released by the Department of Justice Access to Justice Initiative, states there is ample evidence to suggest HUD-certified housing counselors are successful in the majority of cases in obtaining some form of loss mitigation help for distressed homeowners and thereby avoiding foreclosure.

Another recent outcome study from HUD found that nearly seventy percent of the homeowners who received counseling from a HUD-certified counselor obtained a mortgage remedy and fifty-six percent were able to become current on their mortgages. Giving homeowners the option of pre-foreclosure dispute resolution through the mortgage foreclosure dispute resolution program coupled with assistance from a HUD-certified counselor will help



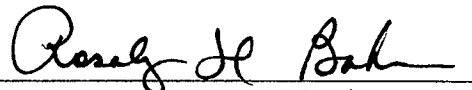
reduce the number of cases filed in the judicial system and conserve valuable judicial resources.

This measure will ensure mortgage foreclosure dispute resolution is equally available for nonjudicial and judicial foreclosures. This gives all mortgagors facing foreclosure in Hawaii an equal opportunity to have a specifically trained mediator who can offer assistance regarding the mortgagor's financial situation and any available options. Your Committee concludes that this measure will benefit mortgagors and mortgagees by shortening the overall foreclosure process and reducing strain on the judicial system.

Your Committee has amended this measure by making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1370, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1370, S.D. 1, and be referred to the Committee on Judiciary and Labor.

Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,



ROSALYN H. BAKER, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 1370	CPN, JDL	2/5/13		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	/			
GALUTERIA, Brickwood (VC)				/
NISHIHARA, Clarence K.	/			
SOLOMON, Malama				/
TANIGUCHI, Brian T.				/
WAKAI, Glenn	<i>W</i>	/		
SLOM, Sam		/		
TOTAL	2	2		3
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align:center; font-family: cursive; font-size: 1.2em;"> <i>Clarence K. Nishihara</i> </div>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes