



NEIL ABERCROMBIE  
GOVERNOR

SHAN S. TSUTSUI  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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DEPUTY DIRECTOR

**TO THE  
HOUSE COMMITTEE ON  
JUDICIARY**

**THE TWENTY-SEVENTH STATE LEGISLATURE  
REGULAR SESSION OF 2013**

Friday, February 22, 2013  
2:00 p.m.

**TESTIMONY ON H.B. NO. 21, H.D.1  
RELATING TO CONDOMINIUMS**

THE HONORABLE KARL RHOADS, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions ("Commissioner"), offering comments on H.B. No. 21, H.D.1, Relating to Condominiums, on behalf of the Department of Commerce and Consumer Affairs ("DCCA" or the "Department").

The amendments contemplated for Section 514B-146(a), (b), deleted (g), (h), and (i) of the bill may have the unintended consequence of making it more difficult for consumers to find a mortgage loan for a condominium unit. Effective July 1, 2012 Fannie Mae and effective January 1, 2013 HUD requires servicers to protect the priority of the mortgage lien and to clear all liens for delinquent homeowners' association (HOA) dues

and condo assessments on properties acquired through foreclosure or deed-in-lieu of foreclosure. Fannie Mae requires servicers to advance funds when the servicer is notified by an HOA for a PUD or condo project that the borrower is 60 days delinquent in the payment of assessments or charges levied by the HOA if necessary to protect the priority of Fannie Mae's mortgage lien. Fannie Mae provides for reimbursement to the servicer for up to six months of such advances in Hawaii. Fannie Mae will reimburse the servicer for the advances made up to the lowest of:

- the actual advances paid,
- the maximum limit provided in the project declaration, or
- the state statutory maximums.

All other costs would be borne by the acquirer or the lender, making the condo mortgages less attractive for sale on the secondary market.

New subsection (g) is acceptable to clarify that both the HOA and the lenders will receive payment on foreclosed properties.

Thank you for the opportunity to provide comments on this measure. I would be pleased to respond to any questions you may have.

# 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

Fax No.: (808) 521-8522

February 22, 2013

Rep. Karl Rhoads, Chair  
and members of the House Committee on Judiciary  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **House Bill 21, HD 1 (Condominiums)**  
**Hearing Date/Time: Friday, February 22, 2013, 2:00 p.m.**

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is a trade association for Hawaii's consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA **opposes this Bill as drafted.**

The purposes of this Bill are to: (1) repeal the prioritization of liens for unpaid mortgages over subsequently recorded liens for unpaid condominium association fees, and (2) clarify the obligations of the acquirer of a foreclosed unit under the lien for unpaid association fees.


During the past 2 years, the law regarding lien priority of condominium association fees has been changing annually. Just last year, the lien priority was 6 months and there was no dollar cap under Act 182. Before that, under Act 48 in 2011, the lien priority was 12 months and the cap was \$7,200.00. Prior to that, the lien priority was 6 months with a cap of \$3,600.00.

If this Bill passes, this would be the third year of change. These changes do not provide needed predictability for mortgage lenders considering making loans on condominium units.

For these reasons, we oppose the deletion of the 6 month limited lien priority for condominium associations (HRS Sec. 514B-146(g), (h), and (i) beginning on page 8 and continuing to page 10). Those provisions should remain intact.

However, we do support the additions on page 10, beginning on line 21 through page 11, line 21, regarding how excess rental income received by a condominium association from a foreclosed condominium apartment would be applied.

Thank you for considering our testimony.



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

Presentation to  
Committee on Judiciary  
February 22, 2013, at 2:00pm  
State Capitol Conference Room 325

**Testimony in Opposition to H.B. 21, HD1**

TO: The Honorable Karl Rhoads, Chair  
The Honorable Sharon E. Har, Vice Chair  
Members of the Committee

My name is Neal Okabayashi and I represent the Hawaii Bankers Association, a trade association of local FDIC insured banks.

We oppose HB 21, HD 1 because it hurts the Hawaii mortgage market to the detriment of local lenders, condominium owners, and condo buyers, especially first time home buyers, as well as the construction industry, since condominium development depends to a large extent on credit availability. While it might be tempting for association of apartment owners to support this bill on the theory that they will be paid in full, there are other alternatives to reaching that goal without endangering the condominium market, which ultimately will be to the detriment of condominium owners.

Hawaii law provides that association of apartment owners enjoy a “super lien” on mortgaged property second only to the lien of the county for real property taxes and before the lien of the first mortgage, subject only to capping the super lien’s amount to a statutory amount. Hawaii’s law has evolved over a short period of time where the amount of the super lien has grown from \$1,800, to \$3,600, to \$7,200 and now to an unlimited amount capped only by the statutory requirement that the amount is six months of monthly assessments.

Given that lenders are now required to potentially undertake a time-consuming foreclosure process, the amount of the super lien could be rather high since a foreclosure can take as long as 18 months or even longer. On the other hand, associations have no major impediment to an expedient foreclosure as associations are exempt from the nonjudicial foreclosure dispute resolution process. Thus, associations are able to complete a foreclosure process quickly, possibly within six months, and if associations follow their general practice, they will buy the unit for \$1.00 subject to the first mortgage and then rent the unit. In fact, if this bill were to become law, there is little incentive for an association to act prudently knowing that eventually the entirety of the delinquent assessments will be paid.



If this bill were to become law, then lenders would have to be extremely careful on condominium loans to avoid being junior to a large lien. Thus it will be more difficult to qualify for a condo loan. Lenders may also reduce the amount of the condo loan which means the borrower will need to have a larger down payment. This impacts the young first time home buyer, whose first purchase is likely to be a condominium, and the greatest hurdle for the first time home buyer's purchase is the down payment. Thus, adoption of this bill will lead to tighter credit availability which means a decrease in the market price of condominiums and tighter credit availability which does not help a current owner who wishes to sell his or her unit and also hurt a person attempting to buy a condo unit.

More importantly, we have spoken to Fannie Mae and they have informed us that condo loans from Hawaii will not be eligible for purchase. A condo advocate pointed out that the Fannie Mae position appeared to be at odds with the Fannie Mae Seller Guideline, and thus, we called Fannie Mae again for clarification. Fannie Mae has referred the question to their legal department, and to date, we have not heard from them. What is clear from the guidelines is that lenders will not want to make loans to sell to Fannie Mae because the servicer of the loan will bear the brunt of the loss from the super lien of this bill because Fannie Mae will only bear the cost of six months of delinquent maintenance fees with the remainder being borne by the servicer. Thus not only will this bill hurt consumers who will to sell or buy one, it will also hurt the construction industry because take out financing will be more difficult to obtain.

We have discussed with a condominium advocate to clarify state law on distribution of rental proceeds. The discussion centered on language contained in SB 1454, SD 1, 2011 session, which did not pass. The essence of that bill provided that when the association took title and rented the unit, only after payment in full to the association, would the excess rental proceeds be paid to the other lienors, such as the first mortgagee. That language is included in HD 1, as new section 514B-146(g), on page 10, starting at line 21.

We recommend that the existing sections 514B-146(g) through (j) be reinstated and the new section 514B-146(g) that is HD 1 be included in a HD 2 as section 514B-146(k).

This is a reasonable compromise which offers the association to be paid in full. Too often, lenders are blamed for not foreclosing quickly but changes in state and federal law make it impossible for lenders to quickly foreclose. It should also be remembered that there are often situations where the first mortgage is current but the maintenance fees are delinquent and in that situation, the condo association must act prudently because the lender cannot foreclose on a current loan.

I would be happy to answer any questions you or the committee may have.

Neal Okabayashi  
(808) 525-5785



February 22, 2013

**The Honorable Karl Rhoads, Chair**

House Committee on Judiciary  
State Capitol, Room 325  
Honolulu, Hawaii 96813

**RE: H.B. 21, HD1, Relating to Condominiums**

**HEARING: Friday, February 22, 2013 at 2:00 p.m.**

Aloha Chair Rhoads, Vice Chair Har, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,000 members. HAR **submits concerns** on H.B. 21, which: (1) repeals the prioritization of liens for unpaid mortgages over subsequently recorded liens for unpaid condominium association fees; and (2) clarifies the obligations of the acquirer of a foreclosed unit under the lien for unpaid association fees.

HAR believes that the Government Sponsored Enterprises (GSEs) are critical to ensuring mortgage liquidity. The GSE's, or secondary market, such as Fannie Mae and Freddie Mac are of great importance to Hawai'i and the country. According to estimates, GSE loan volume ranges as high as two-thirds of all mortgage loans.

H.B. 21 may make it more difficult to qualify for a condominium loan and exacerbate downward pressure on home prices, ultimately reducing the home values for existing and neighboring homeowners. Also, for first-time homebuyers starting a family, usually condominiums are the most affordable option. The removal of any barriers to the first-time home buyer trying to obtain a loan should be encouraged as this will help families in Hawai'i who are in dire need of housing.

HAR further believes that the association lien of six months in monthly assessments with no monetary cap is consistent with Freddie Mac's servicing guideline.

For these reasons, we respectfully request that the Committee hold this measure.

Mahalo for the opportunity to testify.

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## FREDDIE MAC SERVICING GUIDELINE

71.18: Reimbursement of condominium, HOA and PUD fees, assessments and ground rent (01/14/11)

The Servicer must pay post-foreclosure condominium, homeowners association (HOA) and Planned Unit Development (PUD) regular assessments (dues) and special assessments from the foreclosure sale date up to the Real Estate Owned (REO) settlement date.

Freddie Mac will reimburse the Servicer for post-foreclosure condominium, HOA and PUD regular assessments (dues) and special assessments incurred from the foreclosure sale date through the REO settlement date. Freddie Mac will not reimburse the Servicer for late fees, interest, collection expenses or attorney fees.

In addition, **if applicable State law creates a lien priority for condominium, HOA or PUD assessments, or for leasehold estates, ground rent payments, over the Mortgage lien for fees assessed before the foreclosure sale date, then Freddie Mac will reimburse up to a total of six months over the life of the Mortgage for regular condominium, HOA or PUD assessments** and/or ground rent payments incurred prior to the foreclosure sale date. Freddie Mac will not reimburse the Servicer for late fees, interest, collections expenses or attorney fees.



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Testimony to the House Committee on Judiciary  
February 22, 2013

**LATE**

Testimony in Opposition to HB 21 HD1, Relating to Condominiums

To: The Honorable Karl Rhoads, Chair  
The Honorable Sharon Har, Vice-Chair  
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 78 Hawaii credit unions, representing approximately 804,000 credit union members across the state. We are opposed in part to HB 21 HD1, Relating to Condominiums.

This bill would repeal the prioritization of liens for unpaid mortgages over subsequently recorded liens for unpaid condominium association fees. Currently, the lien priority is 6 months, and there is no dollar cap. We are opposed for the simple reason that we feel the current law is more than sufficient. Further changes to the condominium law could result in greater difficulty in obtaining a mortgage loan for a condominium purchase, which is not in the best interest of consumers.

We have no objection to the section that was added in the HD1, numbered 514B-146(g).

Thank you for the opportunity to provide comments.



**HB21**

Submitted on: 2/20/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Andrew Bisnar       | Individual          | Support                   | No                        |

Comments: I support this bill. If this is not passed I believe financial institutions will continue to forestall the foreclosure process in an effort to avoid such costs. This type of action has a negative effect on property values and I believe definitely harms the homeowners paying association dues.

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| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| August Enderlin     | Banyan Harbor HOA   | Support                   | No                        |

Comments: I am asking for support of HB21. As a HOA Board Member it is imperative that we receive some relief. We are holding several thousand dollars on our books because of the existing law. This means we have had to adjust what repair work get done today. With fewer dollars to work with we must delay needed repairs. Existing law potentially puts more pressure on homeowners who pay on time to pay for current expenses to keep our reputation in tack. Thank you for considering these adjustments to current law.

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|---------------------|---------------------|---------------------------|---------------------------|
| BK Walker           | Individual          | Support                   | No                        |

Comments: HB 21 must be passed as homeowners can no longer bear the burden of paying homeowners fees for other people's properties as they go through foreclosures and bankruptcies. Currently, it is not feasible for people to continue to own property in Hawaii and pay taxes while carrying this unfair load.

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| <b>Submitted By</b>    | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|------------------------|---------------------|---------------------------|---------------------------|
| Carol and Dan Dierickx | Individual          | Support                   | No                        |

Comments: Please pass this bill and give some much needed relief to the people who managed to hang on to their condo and can not afford to pick up the bill because the banks waited 2-5 years to foreclose!!!

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| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Charlotte Stokes    | Individual          | Support                   | No                        |

Comments: Please pass HD21. As a condo owner on the Big Island I see no reason for my subsidizing the banking industry. Currently the banks need not pay any, let alone all, condo fees on foreclosed properties. This is true even if the banks have rented out the units! Since my fees include water, sewage and garbage pick up, this lack of payment comes directly out of my pocket. Improper banking practices got us into this mess and banks, in general, are doing very little to get us out by lending money for to those highly qualified for mortgages. If the banks have to kick in for the condo fees it might push them along just a little bit.

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|---------------------|---------------------|---------------------------|---------------------------|
| Debi Willis         | Individual          | Support                   | No                        |

Comments: I am encourage that the Hawaii Legislature is taking proper action on this bill. Mahalo!

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| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Derry Morris        | Individual          | Support                   | No                        |

Comments: Please support this bill on behalf of all the condominium owners of Hawaii. It is an unfair and financially burdensome load for individual home owners to bear. Each condo owner, even if a bank, should pay a fair share of the maintenance fees.

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| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Diane Pavao         | AOAO Kaha Lani      | Support                   | No                        |

Comments: Please pass this bill. Mahalo,

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| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Gary A. Zipkin      | Individual          | Support                   | No                        |

Comments: Putting the AOAO ahead of the banks will mean that the banks would either have to move fast on delinquencies or add the maintenance fees to the mortgage (like they do with lease rent and property tax). This could really help condos with regard to foreclosures. There may even be less condo foreclosures, since the banks would now need to watch delinquencies more closely. Gary A. Zipkin

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|---------------------|---------------------|---------------------------|---------------------------|
| Gina Harris         | Individual          | Support                   | No                        |

Comments:

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| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| harry roffelsen     | Individual          | Support                   | No                        |

Comments: I am a condo owner on Kauai and support this.

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**HB21**

Submitted on: 2/21/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Henry Magee         | Individual          | Support                   | No                        |

Comments: I am Vice President of the AOA of Country Club Village Phase 2, 469 units in two hi-rise towers in Salt Lake. I urge passage of HB21. It provides fair and equitable relief to CONDO Associations in their efforts to protect their investment, homes and personal finances from those who choose to go delinquent and leave their mortgages and other liabilities to the remaining owners. To say nothing of the tremendous expense associations can incur just trying, often taking several years, to recoup at least a part of their owners losses only to wind up with little or nothing. Again, please pass HB21

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| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Ikaika Pestana      | Individual          | Support                   | No                        |

Comments: House Bill 21 is very important to me because it helps our community associations to turn blighted and abandoned homes in our community into affordable rental housing for Hawaii's working families. It allows these abandoned homes and apartments to be foreclosed on by the community associations they're in rather than allowing the mainland banks who made bad loans, drag their feet for years and allow the homes to go into disrepair and allow squatters and drug users to ruin them. Once the Associations foreclose on the units, the most common practice is for the units to then be rented out at a discounted rate to a local working class family. If HB 21 became law it would prosper Hawaii community associations and allow them to create better, more healthy community's for our Hawaii people. As a resident, owner of a unit within a community association, and a professional manager of community associations, I have benefited from them and appreciate what they do for our Hawaii communities. They are run by Hawaii residents, for the betterment of Hawaii residents, unlike mainland banks who just want to pull money out of our islands.

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| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| J Richard Carlson   | Individual          | Support                   | No                        |

Comments: Thank you for your positive consideration related to this very important house bill. Regards J Richard Carlson

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**HB21**

Submitted on: 2/21/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Jayne Dator-Freeman | Individual          | Support                   | No                        |

Comments: I support the passage of HB21 HD1

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Submitted on: 2/20/2013

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| Submitted By | Organization      | Testifier Position | Present at Hearing |
|--------------|-------------------|--------------------|--------------------|
| Jill Briley  | Banyan Harbor AOA | Support            | No                 |

Comments: Comments: As a board member of the Banyan Harbor Condominium Association on Kauai, I am deeply concerned about HRS 514B-146, which contains a very serious flaw in the Hawaiian law causing undue hardship and unfairness to condominium owners state wide. Therefore, please consider this testimony in support of amending HRS 514B-146 to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of the property's status. A property in foreclosure is afforded the same rewards as a property in good standing and each should be liable for equally sharing in the expense of maintaining the common areas of which they are a part. As a board member, I find it extremely difficult to justify asking owners to pay higher fees because the bank foreclosing the mortgage next door to them is exempt from paying for the same services. Our maintenance staff performs the same duties for each unit, thereby maintaining the value of the property on which the bank forecloses, yet the expense is passed on to owners who have paid their mortgages as well as their maintenance fees. It is time to stop the unfair burden placed on owners because of special treatment given to banks. Please force the banks to take responsibility for their financial actions by allowing Representative Evans bill HB-21 to come before the legislature. Thank you for including my testimony on this very important issue affecting all condomium owners.

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**HB21**

Submitted on: 2/20/2013

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|--------------|--------------|--------------------|--------------------|
| Jill Briley  | Individual   | Support            | No                 |

Comments: I am writing to add my support to amend HRS 514B-146 which contains a

serious flaw in Hawaii law that is causing unfairness and hardship to condominium owners throughout the State of Hawaii. HRS 514B-146 should be amended to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of whether the property is subject to a mortgage in foreclosure. I am being forced, as a condominium owner, to make up the insufficiencies caused by the banks failure to pay maintenance fees on those properties on which they are foreclosing even though those very properties are reaping the same benefits that I am. Maintenance of a condominium project does not cease due to a foreclosure. It is time banks take responsibility for their financial actions, including paying the fees that everyone else has to pay, and stop giving them special treatment. Please allow Representative Evans bill HB-21 to come before the legislature. Thank you for allowing my input into this very important issue which affects all condominium owners.

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**HB21**

Submitted on: 2/21/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Joan Van Duzer      | Individual          | Support                   | No                        |

Comments: Please support this bill. Currently banks that repossess their secured property from delinquent owners are not sharing the obligation of maintaining common areas with responsible owners who are meeting their financial responsibilities.

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**HB21**

Submitted on: 2/20/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| John Arvesen        | Individual          | Support                   | No                        |

Comments: It is grossly unfair that condominium owner's associations have to cover the bill for delinquent, foreclosed properties. This should be a cost of purchase or assumption of the property, either by the buyer or the bank.

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**HB21**

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| <b>Submitted By</b> | <b>Organization</b>    | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|------------------------|---------------------------|---------------------------|
| John Douponce       | Plantation Hale Suites | Support                   | No                        |

Comments: Please pass this bill and to the house.

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**HB21**

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| <b>Submitted By</b>    | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|------------------------|---------------------|---------------------------|---------------------------|
| Letitia Ann Desjardins | Individual          | Support                   | No                        |

Comments: Please support HB 21.

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**HB21**

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| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Linda Tanguay       | Individual          | Support                   | No                        |

Comments: I strongly support this measure HB21

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**HB21**

Submitted on: 2/20/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b>  | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|----------------------|---------------------------|---------------------------|
| Lyle M. Otsuka      | OLS Hotels & Resorts | Oppose                    | No                        |

Comments: Banks must take responsibility for foreclosures quicker and homeowner associations cannot continue to absorb huge writeoffs for uncollectible maintenance fees. Homeowner associations must in first position! Mahalo! Lyle Otsuka

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TESTIMONY OF Nancy Slater  
IN SUPPORT OF HB 21

Hearing Date: February 22, 2013 @ 2:00 p.m.

I submit this testimony as the owner of a condo and as a member of the board of directors of the Kaha Lani AOA, 4460 Nehe Road, Lihue, Kauai, HI 96766.

Since the downturn of our national economy about 5 years ago the AOA has experienced substantial losses due to unpaid monthly assessments. Condo owners who have been unable to continue to honor their mortgage payments have also discontinued making the monthly payments that support our AOA and the maintenance of our complex. As these units travel through the foreclosure process, the banks have no responsibility for these fees and although we have placed liens on these properties, the banks' liens have legal priority over AOA.

Due to these circumstances we, as the owners who have been able to hold on, have had to take responsibility for making up the difference to our association. We have had to increase maintenance fees and to levee yearly assessments on all owners.

This situation has caused hardships to all owners and many have elected to sell their condos rather than suffer further financial penalties. HB 21 could help to change the manner in which these delinquencies are handled and decrease the burden on those of us who have chosen to own property in the most beautiful area of our country.

I support the passage of HB 21 to make this process more fair to all parties.

**TESTIMONY OF NICHOLAS BLONDER  
IN SUPPORT OF HOUSE BILL 21,  
RELATING TO CONDOMINIUMS**

**TO: House Committee on Judiciary**

Chair: Hon. Karl Rhoads

Vice-Chair: Hon. Sharon E. Har

Hearing Date: February 22, 2013 @ 2:00 p.m.

**Introduction**

Hawaii's condominium associations (HOAs) are caught in a legal limbo that prevents them from collecting delinquent maintenance fees when a unit becomes "underwater" and is foreclosed by a mortgage holder. HB 21 will level the playing field by amending HRS §514B-146<sup>1</sup> to eliminate the mortgage holders' unwarranted priority over HOA liens.

This testimony is intended to reflect my views as an individual condominium owner and as a member of the board of directors of the Kaha Lani AOA, 4460 Nehe Road, Lihue, Kauai, HI 96766.

This testimony will explain why (1) HOAs should have priority over mortgage holders and (2) the mortgage industry's claims about a purported adverse effect of HB 21 on the secondary mortgage market are unfounded.

**Background**

HB 21 is intended to address a direct consequence of the "Great Recession," which began in 2008. Before the recent economic downturn, foreclosures of condominium loans were rare. A default was usually due to temporary adverse circumstances intrinsic to an individual owner (e.g., loss of employment or divorce). Existing law has always given HOAs a basic

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the Hawaii Revised Statutes.



lien right to secure payment of assessments, but it was seldom necessary to actually foreclose a lien.

In most cases the property had equity, so the owner had an incentive to cure the default. If the financial adversity was quickly remedied, the loan would be reinstated. If the problem was intractable, the property would be sold, enabling the owner to preserve most of his or her equity.

When the real estate bubble burst in 2008 there was a steep drop—often as much as 50%—in residential property values. A property owner is said to be “underwater” when the fair market value of his or her property falls below its mortgage balance. In many cases, the underwater owners have simply abandoned their property and stopped making payments. As a result, Hawaii condominiums are caught in a wave of slow-moving foreclosures.<sup>2</sup> Before the mortgage crisis hit, nonjudicial foreclosures might only have taken a few months. But in the post-recession economic environment, foreclosures now can take years, during which time the HOAs are unable to collect assessment fees.<sup>3</sup>

### **Existing Law Unfairly Limits HOAs’ Ability to Recover Delinquent Maintenance Fees**

Existing law provides that HOAs may perfect a lien for unpaid assessment fees. The heart of the present controversy is the law’s provision that HOAs’ lien rights are subordinate to any mortgage that was recorded before the delinquent assessment lien. The HOA may foreclose on its lien; but when the owner has no equity, this remedy would accomplish no more than to place the HOA in the shoes of the underwater owner. Under these circumstances, the HOA’s lien rights usually are worthless.

The bank’s security interest, on the other hand, is subject only to liens for taxes. No matter how long it may take for the bank to complete the

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<sup>2</sup> The delay inherent in the foreclosure process has been increased by recent legislation limiting the availability of nonjudicial foreclosures. This legislation has dramatically increased the amount of time it takes to complete a foreclosure. Support of HB 21 is not inconsistent with the foreclosure relief legislation. It is mentioned here only to explain that the HOAs’ predicament has been exacerbated by the substantial additional delay in the foreclosure process caused by the remedial legislation.

<sup>3</sup> At Kaha Lani, two units have been delinquent since February, 2009, with no resolution in sight.

foreclosure process or consent to a short sale, the HOA is precluded, by the bank's priority, from recovering out of the security any of the costs attributable to the delinquent unit's share of the property's overall maintenance costs.

The HOA may record a "special assessment" lien that is enforceable only against the next owner of the property.<sup>4</sup> (§514B-146(g).) This would come into play if (1) a foreclosing bank takes title to the property and sells to a new owner, or (2) there is a short sale. In either case, the new owner is only responsible for up to six months of delinquent HOA fees. (§514B-146(h).) *Even if the HOA were to eventually receive the full six months of fees, this arbitrarily limited amount often will not come close to covering the HOA's aggregate loss, which likely will represent several years' worth of unpaid maintenance fees.*

Please note that the six-month maximum duration of the special assessment has been in the law since 2000. Before 2008, the time necessary to complete a foreclosure was normally measured in months. But since 2008, the average time to complete a Hawaii foreclosure has increased to *more than three years*. There is no valid reason why the HOAs' recovery of unpaid assessments—through a lien against the unit—should be limited to any arbitrary period of time.

The unfairness to the HOA is self-evident: the mortgage holder receives the full benefit of the HOA's continuing maintenance of the common elements, without having responsibility for the corresponding costs.<sup>5</sup> The condominium lien law must be amended to take into account the new landscape of the real estate market. HB 21 accomplishes a reasonable adjustment of the stakeholders' interests. Simply put, a defaulted unit should be fully available as security to make the HOA whole with respect to unpaid maintenance fees.

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<sup>4</sup> This is Hawaii's version of the so-called "super lien," which is discussed in greater detail below.

<sup>5</sup> Existing law states that the loss caused by a default in assessment fee payments shall be borne by the non-defaulting owners. (§514B-146(b).) This provision may have made sense when foreclosures were rare; but it likely was not intended to require the performing owners to absorb the substantial shortfall caused by the banks' ability to ignore these costs for years, while at the same time receiving the full benefit of the HOA maintenance of the banks' security.

**The Law Should Reflect the True Nature of the  
HOAs' and the Banks' Respective Interests**

***HOAs Perform Functions Similar to Those of Public Agencies***

The HOA maintains the property's common elements (building exteriors, landscaping, parking lots, recreational amenities, etc.). In this respect, the HOA's role is analogous to that of local government, which maintains public buildings, streets, parks, fields, schools and libraries, and public safety institutions such as fire protection and police.<sup>6</sup>

In order to preserve local governments' ability to fund its necessary functions, the law provides that liens for property taxes and related fees have priority over virtually all other encumbrances, including mortgages. The HOAs' maintenance fees are analogous to property taxes and therefore should similarly have priority over mortgages, regardless of when the mortgage was recorded.<sup>7</sup>

***Banks Are de facto Owners***

The modern mortgage is a virtual partnership between the lender-bank and the borrower-buyer. The bank usually provides the bulk of the funds necessary to close the buyer's purchase. The buyer is the equitable owner of the unit, and the bank receives a mortgage as security for repayment of the loan.

After a unit becomes underwater, the bank will have substantial control of the property. It can only be sold through a short sale, which requires the consent of the mortgagee bank. However, under existing law, the bank has no responsibility to pay the HOA fees accruing during the

---

<sup>6</sup> An appellate court recently observed: "Courts have recognized a homeowners association functions as a quasi-governmental entity, paralleling the powers and duties of a municipal government." (*Silk v. Feldman*, 208 Cal.App.4<sup>th</sup> 547, 553 (2012).)

<sup>7</sup> It is commonly known that virtually all condominium units are subject to a monthly assessment that enables the HOA to maintain the property's common elements. The condominium project's founding documents, which are in the public record, normally contain CCRs that include the unit owners' responsibility to pay the assessment fees. It is reasonable to assume that all institutional lenders are fully aware of their borrowers' ongoing liability *before* closing escrow on a new loan.

pendency of the foreclosure. Moreover, as explained above, the defaulting owner has little practical incentive to keep the HOA dues current.

If a bank were to complete a foreclosure and become fee owner of a unit, HOA fees likely would be its largest recurring expense of ownership. It has been suggested by some observers that, under these circumstances, banks are “slow-walking” the foreclosure process to avoid responsibility for HOA fees while waiting for market conditions to improve.

From the HOA’s viewpoint, however, this is not a two-way street. The bank can ignore the fees which are legally chargeable only against the departed owner-mortgagor.<sup>8</sup> But the HOA remains obligated to continue to maintain *all* of the common elements.<sup>9</sup>

It is acknowledged that a mortgage holder is not the fee owner and, therefore, should not have *personal liability* for fees that accrue during the foreclosure period. For this reason, HB 21 only treats the property as security for HOA fees. This equitable result is achieved by deleting the banks’ priority over HOA liens for delinquent fees.

### **Moral Hazard**

At some point the HOA likely will have to either (1) increase its monthly fees or (2) impose multiple special assessments on the non-delinquent owners to restore the lost revenue. These financial burdens invoke the spectre of “moral hazard.” The owners who have been honoring their payment obligations also end up subsidizing the banks’ losses. As now written and applied, §514B-146 *compels* this result. A fee increase or special assessment under these circumstances amounts to a partial bailout of the banks. The HOA and the other owners are innocent bystanders; they are not parties to the bad loans made by the banks. They should not have to share or absorb *any* portion of the banks’ mortgage losses. If HB 21 is not passed, the non-delinquent owners will be forced to continue bailing out the negligent banks.

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<sup>8</sup> The HOA could seek a civil judgment against the delinquent homeowner. However, this remedy entails substantial legal expenses to obtain a judgment which, in most cases, will not be collectible.

<sup>9</sup> If a homeowner has not paid his or her property taxes, the municipal government could not withhold maintenance of the public road in front of the delinquent owner’s property. The road must be maintained for the benefit of the entire community. HOAs operate under the same principle, but without the municipalities’ secure source of funding.

## **Fannie Mae Guidelines Are Not Inconsistent With HB 21**

The Hawaii Bankers Association (HBA) and the Mortgage Bankers Association of Hawaii (MBAH) submitted written testimony before the CPC Committee. The principal basis for their opposition to HB 21 was their claim that it would harm the local market for condominium loans. The bankers asserted that Fannie Mae and Freddie Mac's underwriting criteria may make it more difficult for originating lenders to sell their loans to the secondary mortgage market.<sup>10</sup> HBA and MBAH both identified Fannie Mae as a prominent secondary market for Hawaiian mortgages.

There are serious problems with the bank lobby's argument.

### ***The Six-Month Limit Is Only a Guideline***

The keystone of the banks' argument is the purported six-month limit on HOAs' priority liens, which are sometimes called super liens. For example, Fannie Mae's documentation has, for many years, referred to a six-month limit. However, this limitation is found within an extensive, diverse list of guidelines that lenders are instructed to use when evaluating a condominium as security for a mortgage. Fannie Mae's "Selling Guide," a compendium of lender guidelines, is 1,200+ pages long. The six-month limit is just one among many factors that lenders are advised to consider. Moreover, as explained below, *Fannie Mae recently amended this guideline to accommodate HOA priority liens with a longer duration.*

### ***The Six-Month Limit Is Obsolete in Hawaii***

Please note that the six-month standard originated in 2000, long before the Great Recession and the ongoing foreclosure crisis. When this guideline was adopted, the time necessary to complete a foreclosure was usually measured in months, not years. In that context, it was reasonable for the super lien to be limited to six months. But while the Hawaiian real estate market has changed radically, the original durational limit for the lien has

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<sup>10</sup> Fannie Mae and Freddie Mac are also known as Government Sponsored Enterprises, or GSEs.

never been adjusted to be reasonably consistent with the amount of time normally required to complete a contemporary foreclosure.

Bank foreclosures at Kaha Lani are averaging more than three years from start to finish. As noted above, Kaha Lani has two units that have been, and remain, in foreclosure since February, 2009. Consequently, no maintenance fees have been paid to the AOA on either of these units for 48 months. Our corporate property manager, which handles several condominium properties, has confirmed that Kaha Lani's experience is representative of conditions found in the other properties it manages. The special assessment lien (§514B-146(h)) offsets only a small fraction of the actual loss suffered by the AOA due to nonpayment of maintenance fees. At Kaha Lani, for example, the recovery rate on the completed foreclosures is *less than 12%*. In our case, the super lien is not very "super"; it delivers too little, too late.

A significant cause of the delay is the recent foreclosure reform (Acts 48 [2011] and 182 [2012]).<sup>11</sup> However, the delay is not attributable only to the reform laws and the sheer quantity of foreclosures. As noted above, it is generally accepted that the banks are manipulating the pace of foreclosures for their own financial advantage. Under existing law, after six months of delinquencies have accrued, the secured-party banks have *no incentive* (as far as maintenance fees are concerned) to expedite a foreclosure.

The out-of-date six-month limit has become fully detached from today's marketplace reality. The Hawaiian version of the super lien, with its six-month limit, does not come close to offsetting the substantial losses being suffered by associations in the current economic environment. In this era of volatile financial markets, there is no credible reason why the HOAs' lien for unpaid maintenance fees should be limited to any arbitrary duration. The proper standard is one that enables an HOA to be made whole, that is, to recover all of its unpaid fees.

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<sup>11</sup> This testimony should *not* be interpreted as criticism of the reform legislation, which was intended to address multiple issues and represented a good-faith effort to aid homeowners confronting flawed foreclosure procedures. HB 21 only addresses the relationship between the HOAs and the mortgage holders. It will have no adverse effects on the rights of the homeowners who were the intended beneficiaries of the reforms. Moreover, HB 21 would encourage the banks and servicers to act more efficiently and responsibly, thus reducing the potential liabilities of owners of underwater units.



***Florida Unilaterally Increased  
the Duration of Its Super Lien***

In 2010, Florida broke ranks and increased the duration of its super lien from six to 12 months (Florida Statutes, §718.116(b) 1 a). This unilateral increase of the limit apparently has had no material adverse effect on the closing of new Florida condominium loans or their transfer to the secondary mortgage market.

***Fannie Mae Has Changed Its Guidelines  
to Accommodate Longer Duration  
for HOA-Priority Liens***

The GSEs likely are aware of the extreme delays that have become epidemic in Hawaii's foreclosure process and should be reluctant to punish consumers for the state's efforts (such as HB 21) to improve the associations' solvency. As apparently occurred in Florida, it seems reasonably likely the GSEs would relax their lien guidelines to accommodate much-needed relief for Hawaiian associations. After all, financially secure HOAs are vital to the health of the local condominium market.

The foregoing view is confirmed by Fannie Mae's recent amendment of its Selling Guide to allow HOA-priority liens to be

*“the greater of six months of regular common expense assessments, or the maximum amount permitted under applicable state law, to have limited priority over Fannie Mae's mortgage lien if the condo . . . project is located in a jurisdiction that has enacted*

- the Uniform Condo Act
- the Uniform Common Interest Ownership Act; or
- other similar statutes that provide for regular common expense assessments, as reflected by the project's operating budget, to have such priority over mortgage liens.”

(Selling Guide, Section B4-2.1-06, January 17, 2013, at page 607; emphasis added.) This amendment of the guideline was originally released on August 21, 2012, in Selling Guide Announcement SEL-2012-07 (at page 5). According to John S. Forlines, Fannie Mae's Chief Credit Officer:

“The change was driven by the fact that some states had requirements that more than 6 months of assessments were priority to our first lien. Prior to the Selling Guide change our guidelines were in conflict with these state laws. Obviously, we prefer a shorter period of time but we could *not require our lender customers to be in conflict with the state laws.*”

(Email dated 2/20/13); emphasis added.) As a practical matter, this revised Fannie Mae guideline invites state governments to amend their condominium laws and thus tailor HOA-priority lien statutes to more reasonably address local financial realities. The Hawaii Condominium Law (§514B-1 et. seq.) is based on concepts from both of the above-referenced sets of uniform laws. HB 21 falls within the scope of the revised guideline.

The Hawaii condominium market is a lucrative source of business for the mortgage industry. Even if Fannie Mae’s guideline had not been revised, it is likely that banks would have been able to continue making condominium loans. The Committee should be skeptical of the industry’s speculative negative predictions. Moreover, the recent modification of Fannie Mae’s guidelines suggests that the banking lobby’s argument may have inadvertently misstated current underwriting standards.

The foregoing discussion has focused on the inadequate fixed six-month duration of the super lien. HB 21, on the other hand, does not provide for a durational limitation on the association’s basic lien for unpaid assessments because none is necessary. Please bear in mind that HB 21 would do no more than restore to the associations funds they previously expended in good faith to *maintain the banks’ security.*

### **Foreclose and Rent**

In testimony before the CPC Committee, the HBA recommended that associations achieve relief by foreclosing their liens on delinquent units (which are already subject to a pending mortgage foreclosure) and renting them out to earn revenue to offset the uncollected maintenance fees. The HBA offered the following analysis: “[I]f this bill [HB 21] were to become law, there is little incentive for an association to act prudently knowing that eventually the entirety of the delinquent assessments will be paid.” The HBA seems to be saying that the prudent course for the associations is to ignore the most obvious benefit of HB 21 (i.e., full payment of delinquencies) and, instead, begin investing in underwater units.

HB 25, pending in the current session, would amend the foreclosure law to facilitate nonjudicial foreclosures by an association on account of unpaid fees. There may be some circumstances in which the possible benefits of foreclose-and-rent may outweigh the risks. And the choices available to an HOA should not be limited. On February 13<sup>th</sup>, the CPC Committee recommended that HB 21 be “Passed, with amendments.” The amendment incorporates some details of a foreclose-and-rent remedy into HB 21. The amendment clarifies how to determine an HOA’s net income from renting a foreclosed unit and provides that excess rent, as defined, shall be distributed to the other lienholders. Since HB 21 HD1 retains the concept of basic lien priority for HOAs, I supported the amendment.

### **Conclusion**

Under existing law, foreclosing banks receive the full benefit of the HOAs’ maintenance of the banks’ security, but have no responsibility for the unit’s proportionate share of the corresponding costs. The status quo is a classic case of unjust enrichment. The HOA’s statutory lien rights should enable them to be made whole. HB 21 accomplishes this by updating §514B-146 to (1) reflect the post-recession realities of the condominium market and (2) rescind the banks’ unfair priority over HOA liens for delinquent maintenance fees.

The mortgage industry is using speculative and inaccurate scare tactics to discourage support for HB 21. However, nothing in the mortgage industry’s submissions eclipses the fair result that would be implemented by HB 21. Moreover, Fannie Mae’s suitability guidelines have recently been amended to accommodate legislation such as HB 21. Contrary to the industry’s prediction of dire consequences to the local mortgage market, HB 21 has much to offer:

1. It would remedy the HOAs’ long-standing problem with uncollectible maintenance fees for foreclosed underwater units.
2. It would fairly compensate the HOAs for maintaining the defaulting units’ shares the properties’ common elements.
3. It would cause the banks to become significantly more forthcoming and cooperative in agreeing to and performing on short sales.
4. It would add inventory to the condominium market.
5. Banks and loan servicers would stop slow-walking their foreclosures because the units would become full security for payment of their accrued unpaid maintenance fees.

HOUSE COMMITTEE ON JUDICIARY (HB 21)

6. It would address the banks' moral-hazard problem by relieving the nondefaulting unit owners from the burden of partially bailing out of the banks' losses from bad loans.

7. As amended, it prevents an HOA, that forecloses in its own right and rents out the acquired unit, from deriving a windfall profit by protecting the interests of other lien holders.

I urge the enactment of HB 21 HD1. Please call me at (808) 823-9695 if the Committee has any questions about this submission.

Dated: February 20, 2013.

Respectfully submitted,

/s/ Nicholas Blonder  
Nicholas Blonder  
4460 Nehe Road, #324  
Lihue, Hawaii  
ngblonder@yahoo.com

**HB21**

Submitted on: 2/21/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Orville Paschke     | Individual          | Support                   | No                        |

Comments: I am owner of Kaha Lani 121 at Kaha Lani Resort and I support HB21 for without it, it is an undue financial hardship to pay maintenance fees on foreclosed units. These should be paid by new buyers who are getting these foreclosed units at bargain prices anyway so should pay back maintenance fees when they purchase these foreclosed units. Thank You. I am retired and on Social Security and it is a financial hardship to pay these additional fees.

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**HB21**

Submitted on: 2/20/2013

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| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Paul Reim           | Elima Lani AOA      | Support                   | No                        |

Comments: I represent a 216 unit association that has suffered substantial financial hardship, because of losses from unpaid association dues that were eliminated through a foreclosure. HB21 would insure payment of dues and minimize financial stress to the AOA.

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| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Peter Sit           | Pono Kai Resort     | Support                   | No                        |

Comments: Aloha, We at Pono Kai Resort, Apartment Owners Association strongly support HB21. Mahalo. Peter Sit General Manager Pono Kai Resort

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**HB21**

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|---------------------|---------------------|---------------------------|---------------------------|
| Ray Smith           | Individual          | Support                   | No                        |

Comments: I am writing to add my support to amend HRS 514B-146 which contains a serious flaw in Hawaii law that is causing unfairness and hardship to condominium owners throughout the State of Hawaii. HRS 514B-146 should be amended to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of whether the property is subject to a mortgage in foreclosure. I am being forced, as a condominium owner, to make up the insufficiencies caused by the banks failure to pay maintenance fees on those properties on which they are foreclosing even though those very properties are reaping the same benefits that I am. Maintenance of a condominium project does not cease due to a foreclosure. It is time banks take responsibility for their financial actions, including paying the fees that everyone else has to pay, and stop giving them special treatment. Please allow Representative Evans bill HB-21 to come before the legislature. Thank you for allowing my input into this very important issue which affects all condomium owners.

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**HB21**

Submitted on: 2/20/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Raymond Desjardins  | Individual          | Support                   | No                        |

Comments: Please support HB 21.

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**HB21**

Submitted on: 2/20/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Reiko Marino        | Individual          | Comments Only             | No                        |

Comments: Comments: I am writing to bring to your attention to a serious flaw in Hawaii law that is causing unfairness and hardship to condominium owners throughout the state. HRS 514B-146 should be amended to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of whether the property is subject to a mortgage in foreclosure. Please make banks take responsibility for their financial actions, including paying the fees that ALL other Homeowners has to pay. It's not fair that ALL other Homeowners have to suffer paying for another's delinquencies while the Banks drag their feet because they don't want to be stuck paying the monthly maintenance fee and stop giving them special treatment. I support HB-21.

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**HB21**

Submitted on: 2/21/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| richard henriksen   | Individual          | Support                   | No                        |

Comments: Please support this bill. It finally puts HOA interests where they need to be. This bill will protect all of the other condo owners in the hoa and allow them to afford their condo. Banks have control on how they handle hoa fees and their foreclosures. The delay to foreclose and then the lack of ability of the hoa to collect its fees it not just. This is hurting hoa and this bill needs to be passed. thanks

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**HB21**

Submitted on: 2/21/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Richard Tanguay     | Individual          | Support                   | No                        |

Comments: This makes things right!

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**HB21**

Submitted on: 2/21/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Robert Grebe        | Individual          | Support                   | No                        |

Comments: I support HB21 and ask for your support as well. This is a very important bill to condo owners on all Hawaiian Islands. Thank you.

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**HB21**

Submitted on: 2/20/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| Submitted By | Organization                  | Testifier Position | Present at Hearing |
|--------------|-------------------------------|--------------------|--------------------|
| Roger Exline | Golf Villas at Mauna Lani AOA | Support            | No                 |

Comments: Thank you for the opportunity to comment and I sincerely appreciate your willingness to rectify a situation that has been a nightmare for most all AOA's in the State of Hawaii. In our situation we have 5 of 87 units that have built up a debt of over \$150,000, 3 of which were fully abandoned units. As an AOA our only recourse is to foreclose, paying significant legal fees that there is little chance of recovering. In all 5 cases the banks were making no efforts to foreclose. While I am thankful that Hawaii raised the amount from \$3600 to \$7200 that an AOA can recover when the bank forecloses, it is not much incentive for the bank to do anything except for keep an eye on their bottom line. In our case we decided to foreclose and try and rent the units to at least keep the existing dues paid. The result, in one case the bank followed up with a foreclosure and demanded the rent and security deposit our AOA had collected. We went to court and the ultimate result is that the tenants pay their rent to the bank and then the bank pays our AOA only a partial monthly AOA fee. The bottom line is that the bank's unwillingness to deal with non-paying owners of abandoned units places a major financial burden on AOA's and there is little chance of recovery. This adversely affects sales and property values and ultimately the amount of property tax revenue collected by the State. In some cases lenders will refuse to write loans in communities that have high delinquency rates which only exacerbates the situation. As the Chairman of our Delinquency Committee I represent all of the dues paying owners who are fulfilling the obligations they agreed to. Many are having a very difficult time, but they are making every effort. With water, electricity and labor costs rising quickly many AOA's are having to raise fees to cover for the delinquent owners. All we want is the ability to as quickly as possible get a dues paying owner to replace the non-paying one. I believe this bill will provide the banks more incentive to deal with delinquent owners in a timely manner. Many MAHALO's for your consideration!!! Roger Exline Delinquency Committee Chairman Golf Villas at Mauna Lani

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**HB21**

Submitted on: 2/20/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Ron Klopfenstein    | Individual          | Support                   | No                        |

Comments: Please support this important bill.

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**HB21**

Submitted on: 2/21/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Ronald Koczaja      | Individual          | Support                   | No                        |

Comments: for a number of reasons I urge you to SUPPORT this bill (HB21)

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**HB21**

Submitted on: 2/20/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| S Walker            | Individual          | Support                   | No                        |

Comments: HB 21 must be passed as homeowners can no longer bear the burden of paying homeowners fees for other people's properties as they go through foreclosures and bankruptcies. Currently, it is not feasible for people to continue to own property in Hawaii and pay taxes while carrying this unfair load.

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Steve Glanstein  
P. O. Box 29213  
Honolulu, HI 96820-1613

February 20, 2013

Honorable Rep. Karl Rhoads, Chair  
House Judiciary Committee  
Hawaii State Capitol, Room 302  
415 South Beretania Street  
Honolulu, HI 96813

Honorable Rep. Sharon E. Har, Vice Chair  
House Judiciary Committee  
Hawaii State Capitol, Room 438  
415 South Beretania Street  
Honolulu, HI 96813

**RE: Testimony in SUPPORT of HB 21 H.D.1; SUGGESTED AMENDMENTS;  
Hearing Date February 22, 2013 2:00 p.m.; sent via Internet only.**

Aloha Chair Rhoads, Vice-Chair Har, and Committee members,

Thank you for the opportunity to present testimony and suggested amendments to HB 21 H.D.1.

I am an experienced Professional Registered Parliamentarian with about 27 years' experience with condominium and community associations. It has been my custom to provide the community with the benefit of this experience with numerous condominium, cooperative, and planned community associations (over 1,400 meetings).

This information is presented strictly in that capacity and in support of the proposed changes to HRS Chapters 514A and 514B, the state law affecting Hawaii's condominium associations.

HB 21 H.D.1 proposes to

1. repeal the prioritization of liens for unpaid mortgages over subsequently recorded liens for unpaid condominium association fees; and
2. clarify the obligations of the acquirer of a foreclosed unit under the lien for unpaid association fees.
3. Provide that after any judicial or non-judicial foreclosure proceeding in which the association acquires title to the unit, any excess rental income received by the association from the unit shall be paid to existing lien holders based on the priority of lien, and not on a pro rata basis.

**This bill is good for the condominium association community and will positively affect the majority of condominium homeowners. It also provides an added benefit to the lenders of any excess rental income paid to the association (which they currently don't receive).**

The current delinquency situation creates a vicious cycle that damages the condominium and community associations as well as prospective home buyers.



1. Association costs are increased due to unpaid delinquent condominium association fees that become partially or fully uncollectible.
2. These costs are passed on to the non-delinquent condominium or community association owners in the form of higher maintenance fees.
3. These higher maintenance fees make it more difficult for future buyers to qualify for loans to purchase a home.
4. Higher delinquency rates and maintenance fees are disclosed to lenders who increase the interest rate or qualification requirements to mitigate risk.
5. This added burden reduces the number of qualified buyers and this affects housing values.

Mortgage servicing institutions are currently set up for advance collection of mandatory items such as lease rent and property tax. It is common for them to have a lease rent or property tax reserve.

Mortgage servicing institutions may be concerned about their lower priority. However, advance collection of maintenance fees as an add-on to the mortgage will safeguard their interest. It also would ensure that the owner remains current with association obligations.

**I suggest that the committee amend HB21 H.D. 1 to provide a parallel amendment to HRS §514A-90 in order to make the two condominium chapters consistent.<sup>1</sup> The proposed amendment is attached.**

This should make a challenge to the bill more difficult based upon non-application to older condominium associations or associations that have not opted in to Chapter 514B.

I urge the committee to pass this bill with an amendment to include HRS §514A-90 out of Committee, thus supporting Hawaii's condominium community of approximately 159,501 condominium owners in 1,715 condominium associations.

Should you wish to discuss further, your call is most welcome. My phone number is 423-6766. Thank you for the opportunity to present information on this subject.

Sincerely,

**Steve Glanstein**

Digitally signed by Steve Glanstein  
DN: cn=Steve Glanstein, o, ou, email=Steveghi@gmail.com, c=US  
Location: Honolulu, HI  
Date: 2013.02.21 08:41:30 -10'00'

Steve Glanstein  
Professional Registered Parliamentarian

SG:tbs/ATTACHMENT  
D:\\$P\Legislative2013\HB21\Letter2.wpd

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<sup>1</sup>Parallel amendments have traditionally been made to Chapters 514A and 514B since Chapter 514B's enactment by Act 164 in 2004. These provides operational consistency for condominiums regardless of whether they opt-in to various other parts of Chapter 514B.

**Proposed Collateral Amendment to HRS §514A-90**

SECTION \_\_. Section 514A-90, Hawaii Revised Statutes, is amended to read as follows

**“§514A-90 Priority of lien.** (a) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment constitute a lien on the apartment prior to all other liens, except [:

(1) ~~Liens]~~ liens for taxes and assessments lawfully imposed by governmental authority against the unit [; and

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

~~provided that a]~~ . A lien recorded by an association of apartment owners for unpaid assessments shall expire six years from the date of recordation unless proceedings to enforce the lien are instituted prior to the expiration of the lien; provided further that the expiration of a recorded lien shall in no way affect the association of apartment owners' automatic lien that arises pursuant to this subsection or the declaration or bylaws. Any proceedings to enforce an association of apartment owners' lien for any assessment shall be instituted within six years after the assessment became due; provided that if the owner of an apartment subject to a lien of the association of apartment owners files a petition for relief under the United States Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for instituting proceedings to enforce the association of apartment owners' lien shall be tolled until thirty days after the automatic stay of proceedings under section 362 of the United States Bankruptcy Code (11 U.S.C. §362) is lifted.

The lien of the association of apartment owners may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board of directors, acting on behalf of the association of apartment owners and in the name of the association of apartment owners; provided that no association of apartment owners may exercise the nonjudicial or power of sale remedies provided in chapter 667 to foreclose a lien against any apartment that arises solely from fines, penalties, legal fees, or late fees, and the foreclosure of any such lien shall be filed in court pursuant to part IA of chapter 667.

In any such foreclosure, the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws or the law, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed by the apartment owner or any tenant of the apartment. If the association of apartment owners is the plaintiff, it may request that its managing agent be appointed as receiver to collect the rent from the tenant. The managing agent or board of directors, acting on behalf of the association of apartment owners and in the name of the association of apartment owners, unless prohibited by the declaration, may bid on the apartment at foreclosure sale, and acquire and hold, lease, mortgage, and convey the apartment. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed.

(b) ~~[Except as provided in subsection (g), when]~~ When the mortgagee of a mortgage of record or other purchaser of an apartment obtains title to the apartment as a result of foreclosure of the mortgage, the acquirer of title and the acquirer's successors and assigns shall not be personally liable for the share of the common expenses or assessments by the association of apartment owners chargeable to the apartment that became due prior to the acquisition of title to the apartment by the acquirer ~~[-The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners, including the acquirer and the acquirer's successors and assigns.]~~ ; provided that the lien for the share of the common expenses or assessments by the association, chargeable to the unit that became due prior to the transfer of title to the acquirer, shall be and shall remain enforceable, and may be foreclosed by action or by the nonjudicial or power of sale foreclosure remedies set forth in chapter 667, against the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the apartment shall be deemed to acquire title and shall be required to pay the apartment's

share of common expenses and assessments beginning:

(1) Thirty-six days after the order confirming the sale to the purchaser has been filed with the court;

(2) Sixty days after the hearing at which the court grants the motion to confirm the sale to the purchaser;

(3) Thirty days after the public sale in a nonjudicial power of sale foreclosure conducted pursuant to chapter 667; or

(4) Upon the recording of the instrument of conveyance,

whichever occurs first; provided that the mortgagee of record or other purchaser of the apartment shall not be deemed to acquire title under paragraph (1), (2), or (3), if transfer of title is delayed past the thirty-six days specified in paragraph (1), the sixty days specified in paragraph (2), or the thirty days specified in paragraph (3), when a person who appears at the hearing on the motion or a party to the foreclosure action requests reconsideration of the motion or order to confirm sale, objects to the form of the proposed order to confirm sale, appeals the decision of the court to grant the motion to confirm sale, or the debtor or mortgagor declares bankruptcy or is involuntarily placed into bankruptcy. In any such case, the mortgagee of record or other purchaser of the apartment shall be deemed to acquire title upon recordation of the instrument of conveyance.

(c) No apartment owner shall withhold any assessment claimed by the association. An apartment owner who disputes the amount of an assessment may request a written statement clearly indicating:

(1) The amount of common expenses included in the assessment, including the due date of each amount claimed;

(2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;

(3) The amount of attorneys' fees and costs, if any, included in the assessment;

(4) That under Hawaii law, an apartment owner has no right to withhold assessments for any reason;

(5) That an apartment owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association's assessment; provided the apartment owner immediately pays the assessment in full and keeps assessments current; and

(6) That payment in full of the assessment shall not prevent the owner from contesting the assessment or receiving a refund of amounts not owed.

Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law.

(d) An apartment owner who pays an association the full amount claimed by the association may file in small claims court or require the association to mediate to resolve any disputes concerning the amount or validity of the association's claim. If the apartment owner and the association are unable to resolve the dispute through mediation, either party may file for arbitration under part VII; provided that an apartment owner may only file for arbitration if all amounts claimed by the association are paid in full on or before the date of filing. If the apartment owner fails to keep all association assessments current during the arbitration, the association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the apartment owner pays all association assessments within thirty days of the date of suspension, the apartment owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all association assessments by the end of the thirty-day period, the association may ask the arbitrator to dismiss the arbitration proceedings. The apartment owner shall be entitled to a refund of any amounts paid to the association which are not owed.



(e) As an alternative to foreclosure proceedings under subsection (a), where an apartment is owner-occupied, the association of apartment owners may authorize its managing agent or board of directors to, after sixty days' written notice to the apartment owner and to the apartment's first mortgagee of the nonpayment of the apartment's share of the common expenses, terminate the delinquent apartment's access to the common elements and cease supplying a delinquent apartment with any and all services normally supplied or paid for by the association of apartment owners. Any terminated services and privileges shall be restored upon payment of all delinquent assessments.

(f) Before the board of directors or managing agent may take the actions permitted under subsection (e), the board shall adopt a written policy providing for such actions and have the policy approved by a majority vote of the apartment owners at an annual or special meeting of the association or by the written consent of a majority of the apartment owners.

~~[(g) Subject to this subsection, and subsections (h) and (i), the board of an association of apartment owners may specially assess the amount of the unpaid regular monthly common assessments for common area expenses against a person who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent apartment; provided that:~~

~~—(1) A purchaser who holds a mortgage on a delinquent apartment that was recorded prior to the filing of a notice of lien by the association of apartment owners and who acquires the delinquent apartment through a judicial or nonjudicial foreclosure proceeding, including purchasing the delinquent apartment at a foreclosure auction, shall not be obligated to make, nor be liable for, payment of the special assessment as provided for under this subsection; and~~

~~—(2) A person who subsequently purchases the delinquent apartment from the mortgagee referred to in paragraph (1) shall be obligated to make, and shall be liable for, payment of the special assessment provided for under this subsection; provided that the mortgagee or subsequent purchaser may require the association of apartment owners to provide at no charge a notice of the association's intent to claim a lien against the delinquent apartment for the amount of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent apartment. The notice shall state the amount of the special assessment, how that amount was calculated, and the legal description of the apartment.~~

~~—(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure.~~

~~—(i) For purposes of subsections (g) and (h), the following definitions shall apply:~~

~~—"Completion" means:~~

~~—(1) In a nonjudicial power of sale foreclosure, when the affidavit after public sale is recorded pursuant to section 667-33; and~~

~~—(2) In a judicial foreclosure, when a purchaser is deemed to acquire title pursuant to subsection (b).~~

~~—"Regular monthly common assessments" shall not include:~~

~~—(1) Any other special assessment, except for a special assessment imposed on all apartments as part of a budget adopted pursuant to section 514A-83.6;~~

~~—(2) Late charges, fines, or penalties;~~

~~—(3) Interest assessed by the association of apartment owners;~~

~~—(4) Any lien arising out of the assessment; or~~

~~—(5) Any fees or costs related to the collection or enforcement of the assessment, including attorneys' fees and court costs.]~~

(g) After any judicial or non-judicial foreclosure proceeding in which the association acquires title to the unit, any excess rental income received by the association from the unit shall be paid to existing lien holders based on the priority of lien, and not on a pro rata basis. For purposes of this subsection, excess rental income shall be any net income received by the association after paying, crediting, or reimbursing the association or a third party for:

(1) The special assessment for delinquency assessed pursuant to subsections (a) and (b);

(2) Any maintenance fee delinquency against the unit;

(3) Attorney's fees and other collection costs related to the association's foreclosure of the unit; or

(4) Any costs incurred by the association for the rental, repair, maintenance, or rehabilitation of the unit while the association is in possession of the unit including monthly association maintenance fees, managements fees, real estate commissions, cleaning and repair expenses for the unit, and general excise taxes paid on rental income;

provided that the special assessment for delinquent maintenance fees under subsection (g)(1) shall be paid, credited, or reimbursed first."

**HB21**

Submitted on: 2/21/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b>  | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|----------------------|---------------------|---------------------------|---------------------------|
| Sue and Dick Burriss | Individual          | Support                   | No                        |

Comments:

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**HB21**

Submitted on: 2/20/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Surita Steinfeld    | Individual          | Support                   | No                        |

Comments: This bill should be passed as it would help all owners who live in condominiums. When one member of a condo does not make his assessment all other owners have to step up to the plate and pay for the owner who is in foreclosure. The banks who take back the unit do not pay so it may be years of the other owners bearing the expense of the owners who are in foreclosure.

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**HB21**

Submitted on: 2/21/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Tanya Urcavich      | Individual          | Support                   | No                        |

Comments: Please support HB21. As a condo owner on Kauai it is very important that this bill pass. Mahalo.

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TESTIMONY OF WAYNE CASCIO  
IN SUPPORT OF HB 21  
RELATING TO CONDOMINIUMS

**TO: House Committee on Judiciary**

Chair: Hon. Karl Rhoads

Vice-Chair: Hon. Sharon E. Har

Hearing Date: February 22, 2013 @ 2:00 p.m.

I am testifying as an owner of two condominium units and as a member of the board of directors of the Kaha Lani AOA, 4460 Nehe Road, Lihue, Kauai, HI 96766.

As Treasurer of the Kaha Lani AOA, I am responsible for reviewing the financial statements of the AOA each month, along with the monthly statements of delinquent accounts. As of November 2012, for example, five units out of 74 were delinquent, in the aggregate amount of \$92,544. As those units emerge from the foreclosure process, or if they result in a change in ownership from a “short sale,” accounting rules require the AOA to recognize the delinquent amounts as uncollectible debts. The total amount of these uncollectible debts is then allocated proportionately to the remaining maintenance-fee-paying owners, either in the form of higher monthly maintenance fees, or in the form of special, one-time assessments (typically once a year). I speak for a single AOA, but these same processes are repeated over and over again, year after year, in every condominium association in the state of Hawaii.

Higher monthly maintenance fees or special assessments are two forms of direct economic consequences to existing owners. They are not the only stakeholders who are affected, however. There are also consequences to the local real estate industry and to prospective owners because higher monthly maintenance fees or repeated special assessments decrease the attractiveness of condominium properties, putting downward pressure on property values (with related effects on property taxes). The result is that

condominium properties are likely to remain unsold for longer periods of time. The result is a vicious cycle, because the longer that delinquent properties remain on the market, the higher the ultimate cost of unpaid maintenance fees to the remaining owners who are in good standing.


There are also potential consequences to the Hawaii construction industry. As the supply of unsold condominium properties remains high or continues to grow, new construction becomes less attractive, thereby reducing the demand for construction-related skill sets. As we saw during the Great Recession, many skilled-trades people left Hawaii for lack of jobs. That phenomenon is not reflected in statewide unemployment rates, but it does reduce the supply of skilled trades workers once demand rebounds.

Finally, as owners in good standing assume higher monthly maintenance fees or special assessments to cover the debts of delinquent owners, an unknown number of them have less money for renovations to their own condominium units. Fewer renovation projects reduce the demand for local construction labor and related services. This has negative economic consequences for Hawaiian residents who make their living by providing that labor and those services.

In summary, higher monthly maintenance fees or special assessments to cover the debts of delinquent owners have a number of direct and indirect economic consequences to existing owners, to prospective owners, and to the Hawaii real estate, construction, and services industries. For all of these reasons I urge you to pass HB 21 to restore basic fairness to the overall process.

**Submitted testimony for HB21 on Feb 22, 2013 14:00PM**

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

**Sent:** Wednesday, February 20, 2013  
**To:** [JUDtestimony@capitol.hawaii.gov](mailto:JUDtestimony@capitol.hawaii.gov)  
**Cc:** [Cascio, Wayne](#)  
**Attachments:**  [WC Testimony-HB21.docx](#)

**HB21**  
Submitted on: 2/20/2013  
Testimony for JUD on Feb 22, 2013  
14:00PM in Conference Room 325

|              |
|--------------|
| Submitted By |
| Wayne Cascio |

Comments:

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**HB21**

Submitted on: 2/21/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| Submitted By     | Organization       | Testifier Position | Present at Hearing |
|------------------|--------------------|--------------------|--------------------|
| Rachel Glanstein | Lakeview Sands AOA | Support            | No                 |

Comments: Many condominiums have maintenance fees in the \$500 to \$1000 range. Assuming a maintenance fee of \$600/month, the current limit on collection of \$3600 allows AOAOs only to collect 6 months of unpaid maintenance fees, when many owners are delinquent for far longer than that. AOAOs should be able to collect all of what's owed, or an unfair burden is placed on responsible owners (that pay their fees) because of then necessary increases in maintenance fees and special assessments in order for the AOAO to be properly managed. State law requires AOAOs to be properly funded (reserves requirements), and therefore State law should support the AOAOs in receiving this proper funding. Banks and mortgage companies don't care if the maintenance fees are current, since their liens take priority over AOAO liens. If banks cared about the AOAOs they would require mortgagees to pay maintenance fees into escrow (in the same manner as the collection of property tax) to ensure that the maintenance fees are paid. Banks could surely do this, or they can allow AOAOs to take top priority. I support this bill, and so does my AOAO. This would help us greatly with collection of delinquent maintenance fees. We are lucky that we don't have the delinquencies as some other AOAOs that I have served as parliamentarian or presiding officer. Many AOAOs have delinquencies in the hundreds of thousands, and some individual owners owe more than \$50,000 - how can you limit the collection to \$3600? Please support the passage of HB21. Mahalo, Rachel M. Glanstein AOAO Lakeview Sands, Secretary Professional Registered Parliamentarian

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**Feb 21, 2013**

These comments are in support of HB-21. We, George and Shirley Snead, are also owners of a condo unit at the Kaha Lani complex.

As part of the purchase of our condo, we made a commitment to the Kaha Lani Condo Association to pay the AOAO fees on a timely basis. We have lived up to that commitment 100%. Yet, we have recently received a "special assessment" because of condo units and their owners who have not lived up to this obligation.

We do not know these people, probably have never met these folks, and likely never will. Nevertheless I do know who has; the financial institutions that mortgaged the property. These organizations have extensive research capabilities that deemed the future condo owners to be a good risk. These same financial institutions also understand how important the condo operating assessments are to the condo associations, therefore there can be little doubt that the financial institutions are 'co-signers' to the condo association bylaws and fees each and everytime they approve a mortgage.

When I co-sign a financial instrument, I take on the obligation should the originating party default. Likewise the financial institutions should be considered liable for ongoing fees when the owner and mortgagee defaults. Hiding behind the law is reprehensible at best.

If the laws are changed so that the financial institutions have no place to hide, maybe, just maybe, their lending decisions will sounder and other owners will not be penalized.

George and Shirley Snead

**HB21**

Submitted on: 2/21/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Nancy Caputo        | Individual          | Support                   | No                        |

Comments: I had a conversation with my banker today, found myself confused but hopeful you could help me understand his response. I requested his bank give me \$1091.00 a month for my maintenance fees and upkeep here at the Kaha Lani until I decided to put my condo on the market. Additionally, occasional large assessments would come up for bigger capital expenses and I would appreciate having those funded too. Interestingly, he had questions regarding the specifics of the time line for selling, when I intended to repay the bank and he even had the audacity to ask for interest on the money. I informed him, I didn't intend to repay more than 6 months of the bank's money, certainly not any interest and would like him to please just send a check to Castle Management for my fees and assessments until I told them to stop. Realistically, I said, if I waited a few years before selling my unit, I would make more profit and I didn't see a problem with the bank footing the fees for my investment without being repaid. It would be nice too, if he didn't bother me with the details of maintenance, capital assessments and any decision making regarding my condo as well. He laughed. Confusing, right?

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**HB21**

Submitted on: 2/21/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Stephen Combs       | AOAO Kaha Lani      | Support                   | No                        |

Comments: Current law allows banks upon foreclosure oo condominium units to forego paying shared maintenance fees. This transfers the financial burden of maintaining the common areas to the remaining ownership. Banks receive the benefit of maintainence without the financial burden. Some units stay in foreclosure for many months and the banks have no financial incentive to move the property. Your vote for HB21 will correct this injustice. Steve Combs, Past President, AOAO Kaha Lani

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**HB21**

Submitted on: 2/21/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Donna Scott         | Individual          | Support                   | No                        |

Comments: I would like to urge adoption of HB21. Assistance to home owners associations in Hawaii is urgently needed. The current situation is grossly inequitable to those of us who diligently pay our dues and assessments, often at great sacrifice. Yet when other condo owners walk away from their units, the banks who hold the mortgages on these properties, do nothing to pay their share of the costs of the association. They most often fail to foreclose on their debt, and instead leave the property for years as a burden to the other members of the association. The HO associations facing this type of situation need an adequate legal mechanism to recover their unpaid homeowner's due and assessments. Giving them the priority relief that this bill provides is relief that is overdue and badly needed.

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888 Mililani Street, 2<sup>nd</sup> Floor  
Honolulu, Hawaii 96813-2918  
February 21, 2013

HOUSE COMMITTEE ON JUDICIARY  
REGARDING HOUSE BILL 21, HD1

Hearing Date: FRIDAY, February 22, 2013  
Time : 2:00 p.m.  
Place : Conference Room 325

Chair Rhoads, Vice Chair Har, and Members of the Committees,

My name is John Morris and I am testifying with comments on HB 21, HD 1. Although I represent many condominiums and other homeowner associations that would benefit from this bill, at least in the short term, I have concerns that the bill, in its present form, might have unintended consequences.

More specifically, the committee should investigate the potential impact of this bill on mortgage lending in Hawaii before making a decision. Certainly, the bill might solve many of the problems condominium and other homeowner associations experience with delinquencies. Nevertheless, it would probably have a negative impact on mortgage lending in Hawaii because it would eliminate the first priority position that most lenders require as a condition of making a loan to fund the purchase of a condominium or other type of home.

If the bill makes lenders require a large upfront payment from a purchaser to cover the anticipated expenses of the unlimited lien created by HB 21, HD1, that may be counter-productive for those owners who can barely afford to make the initial down payment to purchase a home anyway. Moreover, if those owners pay their maintenance fees following their purchase, in effect, those owners will be paying money to the lender to cover the possibility that their fellow owners may become delinquent and cause the lenders to have to pay a significant amount as a result of HB 21, HD1.

More than a decade ago, in 2000, the legislature passed "Act 39", which provided condominium associations with a six-month lien to guarantee recovery for an association in any foreclosure, even if: (i) there was no equity to pay the association from the foreclosure sales proceeds; and (ii) the lender did not get paid in full from the sales proceeds. Act 182 (SLH 2012) provided non-condominium associations with a similar right just last year.



TESTIMONY REGARDING HOUSE BILL 21, HD1

February 21, 2013

Page 2

Condominium associations lobbied for Act 39 on the basis that a six-month priority lien for associations was accepted and recognized by mortgage lenders and in many other states as a balance between the rights of the association and the rights of the lenders making loans for the purchase of condominium units.

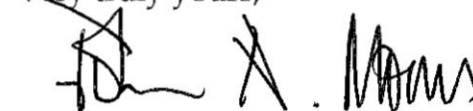
Even back then, condominium associations would have preferred a bill like HB 21, HD1, giving them full and complete priority over lenders. Nevertheless, associations also recognized the reality of the situation: they exist in the overall context of the housing industry. That context includes the requirements of Fannie Mae, Freddie Mac, VA, and FHA which state that they will accept no more than a six-month priority lien for associations as a condition of buying or guaranteeing mortgages. In addition, condominium associations recognized that more than two dozen states across the United States -- as well as the Uniform Condominium and Uniform Common Interest Ownership Acts -- provide for a six month lien for associations - but no more - for that very same reason.

It now appears from the Fannie Mae selling guide that Fannie Mae may accept an unlimited priority lien over homeowner associations. Nevertheless, there appears to be no information on whether Freddie Mac, FHA, and VA will accept the consequences of HB 21, HD1, and continue to purchase or insure mortgages if Hawaii law provides homeowner associations with an unlimited priority lien over mortgages.

Certainly, condominiums and other homeowner associations can argue (and have argued) that they are in a very similar position to county governments and should have the same priority as county real property tax liens because associations provide very similar services to their members. Unfortunately, if the mortgage lending industry does not agree, there may be adverse consequences because the mortgage lending industry drives the purchase and sale of condominium and other residential property by providing loans.

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

Very truly yours,

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

John A. Morris



**LATE**

Dante K. Carpenter  
3054 Ala Poha Place, #401  
Honolulu, HI 96818

HAWAI'I STATE HOUSE OF REPRESENTATIVES  
COMMITTEE ON JUDICIARY

Friday, February 22, 2013; 2:00 PM; Conf. Rm. 325

HB21, HD1 - RELATING TO CONDOMINIUMS

Chair Rep. Karl Rhodes, V. C. Rep. Sharon E. Har and Committee Members:

Aloha kakou. My name is Dante Keala Carpenter, President of Country Club Village, Phase 2 Association of Apartment Owners (CCVP2-AOAO). This condo consists of two 21-story apartment buildings with 469 units. This Association is in strong support of HB21, HD1 Relating to Condominiums.

The intent of HB 21, which relates to assessments and liens, repeals the prioritization of liens for unpaid mortgages over subsequently recorded liens for unpaid condominium association fees. Further, its intent is to clarify the obligations of the purchaser of a foreclosed unit under the lien for un

AOAO's are empowered to require unit owners to comport with and pay fair assessments on a timely basis established by their respective independent Boards of Directors in accordance with HRS Chapter 514B. The independent AOAO organization(s), whose sole purpose is to assure equal participation by all unit owners to live up to their obligations are left to "pick up the tab" for those individual apartment owners who renege on their obligations to pay their fair share of fees on a timely basis. This forces the AOAO's to increase assessments to other owners to pay all current bills to keep good credit standings

Present mortgage payment obligations are to a large degree "controlled by loan institutions" who may foreclose or unnecessarily delay foreclosure processes to suit their whim or "market conditions" for months or even years! HB21, HD1, attempts to address the relationship between the AOAO and the mortgage holders. It will have no adverse effects on the rights of homeowners who are the intended beneficiaries of the reforms. Most importantly, however, this bill would encourage banks and servicing agents to act more responsibly and effectively to reduce potential liabilities of owners of underwater units.

While there may be other aspects of this bill which need to be addressed, there is a continuing miscarriage of justice in this situation in which numerous Condo Associations are and will continue to be in serious financial trouble due to the above inequities.

We strongly recommend passage of HB21, HD1.

Mahalo a nui loa.

**LATE**

**HB21**

Submitted on: 2/21/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| pete sattig         | Individual          | Support                   | No                        |

Comments:

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**LATE**

**HB21**

Submitted on: 2/21/2013

Testimony for JUD on Feb 22, 2013 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Debbie Smee         | Individual          | Support                   | No                        |

Comments: This is the only fair way to handle the condominium foreclosure problem we face in our associations.

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**LATE**

P.O. Box 976  
Honolulu, Hawaii 96808

February 22, 2013

Honorable Karl Rhoads  
Honorable Sharon E. Har  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: HB 21 HD1/COMMENTS

Dear Chair Rhoads, Vice-Chair Har and Committee Members:

I chair the CAI Legislative Action Committee. CAI offers the following comments on HB21 HD1.

Specifically, if the Committee chooses to pass the bill, an amendment should be considered. The proposed new Section 514B-146(g) should be amended to condition an association's obligation to pay "existing lienholders based on the priority of lien, and not on a pro rata basis" on the requirement that a court first determine those priorities.

Only a court can determine priorities, so the the proposed subsection (g) should be amended along the following lines:

After any judicial or non-judicial foreclosure proceeding in which the association acquires title to the unit, any excess rental income received by the association from the unit shall be paid to existing lienholders based on the priority of lien, and not on a pro rata basis; provided that one of the existing lienholders shall first obtain a final judgment, from the circuit court where the unit is located, that determines the lien priorities. For purposes of this subsection, excess rental income shall be any net income received by the association after paying, crediting, or reimbursing the association or a third party for: \*\*\*

The association should not be placed in the position of contending with competing claims.

Very truly yours,

*Philip Nerney*

Philip Nerney