

kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Friday, January 31, 2014 3:02 PM
To: CPCtestimony
Cc: epei@hawaiiiba.org
Subject: Submitted testimony for HB2513 on Feb 3, 2014 14:10PM

HB2513

Submitted on: 1/31/2014

Testimony for CPC on Feb 3, 2014 14:10PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Edward Pei	Hawaii Bankers Association	Support	No

Comments: My name is Edward Pei and I am the Executive Director of the Hawaii Bankers Association, a trade association representing eleven FDIC insured depository institutions operating in the State of Hawaii. We support the intent of HB2513 and would be happy to answer any questions or provide further information.

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Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

Date January 31, 2014

The Honorable Angus L.K. McKelvey, Chair,
The Honorable Derek S.K. Kawakami, Vice Chair, and
Members of the House Committee on Consumer Protection and Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

Re: HB 2513 Relating to Mortgage Foreclosures

**Chair McKelvey, Vice Chair Kawakami, and Members of the House Committee on
Consumer Protection and Commerce:**

I am Linda Nakamura, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. The members of the MBAH originate or support the origination of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending.

The MBAH supports the intent of House Bill 2513 which will bring consistency in the time of the filing of the attorney affirmation in a judicial foreclosure proceeding.

Thank you for the opportunity to present this testimony.

LINDA NAKAMURA
Mortgage Bankers Association of Hawaii

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February 2, 2014

Submitted Electronically

Representative Angus L. K. McKelvey
Consumer Protection & Commerce Committee
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 328
Honolulu, Hawaii 96813

Re: H.B. 2513 Relating to Foreclosures

Dear Chairman McKelvey:

Please consider this letter my testimony in support of H.B. 2513. I am an attorney based out of Kailua-Kona on the Big Island and I practice in the courts throughout the State of Hawaii. My law practice primarily involves matters relating to real property, including the foreclosure of residential mortgages and liens. I primarily represent lenders and condominium associations in foreclosures but I also represent borrowers from time to time and I am often appointed commissioner to sell foreclosed properties.

As you may know, our courts are presently inundated with residential foreclosure actions due to the mortgage crisis and the recent statutory constraints and requirements that have been placed on non-judicial foreclosures. It is estimated that approximately eighty-five percent of the court's civil docket here in Kona involves foreclosure cases and I expect that the courts in the other judicial circuits are similarly saturated.

The volume of residential foreclosure actions have come with a number of problems, one of which is the failure of certain attorneys who represent lenders to timely prosecute their cases. The attorneys that I refer to are from a handful of law firms who represent the major lenders in foreclosure actions in this State. In my experience, a large part of the delay in prosecuting foreclosure cases by these attorneys is caused by their inability to obtain the information that is needed to submit the affirmation that is required by HRS § 667-17.

The statute unfortunately does not state when the affirmation must be submitted. As a result, it allows lenders' attorneys to file foreclosure actions and to pursue the actions up to a certain point without having to submit the affirmations. However, because foreclosure actions cannot be concluded without the affirmations, the lack of direction in the statute as to the time in which the affirmation must be submitted is causing an unnecessary and most often substantial delay in the process.

The affirmations do not impose an obligation or duty on attorneys which is not already required by court rules and rules of professional responsibility. For instance, attorneys are required by such rules to ensure that the facts, allegations, claims and arguments contained in documents filed with the court are not being presented for an improper purpose, are warranted by existing law and have evidentiary support. Thus there is simply no reason that the affirmation cannot or should not be submitted when the foreclosure action is commenced (i.e. when the foreclosure complaint is filed). I strongly believe that if an attorney does not have the necessary information to submit the affirmation when the foreclosure action is initiated, the attorney also does not have the information required by court rules and rules of professional responsibility to file the foreclosure complaint, and the complaint should not be filed.

I have discussed this problem with attorneys, judges and members of the Bench-Bar Committees of the West Hawaii Bar Association, the Hawaii County Bar Association and the Hawaii Bar Association and there appears to be a consensus that HRS § 667-17 needs to be amended to require the affirmation to be submitted when the foreclosure action is commenced. This could be accomplished by the simple proposed amendment set forth in H.B. 2513.

I am aware that HRS § 667-17 will be automatically repealed on July 1, 2017 and that it will be replaced with HRS § 667-18. The new statute provides for an "implied" affirmation which should afford some relief to the problem described above. However, because our courts need relief now from the situation created by HRS § 667-17, I strongly urge your Committee to support the passage of H.B. 2513.

Thank you for your consideration and attention to this matter. Please do not hesitate to contact me should you, your staff or other members of your Committee have any questions regarding the above.

Very truly yours,

/s/ Edmund W.K. Haituka

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LATE

February 3, 2014

Rep. Angus L.K. McKelvey, Chair
Rep. Derek S.K. Kawakami, Vice Chair
and members of the House Committee on Consumer Protection and Commerce
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 2513 (Mortgage Foreclosures)**
Hearing Date/Time: Monday, February 3, 2014, 2:10 P.M.

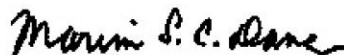
I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** (“HFSA”). The HFSA is a trade association for Hawaii’s consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii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

The HFSA **supports the intent of** this Bill as drafted.

The purpose of this Bill is to require that an affirmation be filed with the court at the time a mortgage foreclosure action is commenced.

The reason why we support the intent is because we understand that it will generally not be a problem for attorneys to file the attorney affirmation at the same time that they are filing the foreclosure complaint.

Thank you for considering our testimony.



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

(MSCD/hfsa)