



**NEIL ABERCROMBIE**  
GOVERNOR

**SHAN S. TSUTSUI**  
LT. GOVERNOR

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**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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**KEALI'S. LOPEZ**  
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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. 25, H.D.1**  
**RELATING TO SUSPENSION OF FORECLOSURE**  
**ACTIONS BY JUNIOR LIENHOLDERS**

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. 25, H.D.1, Relating to Suspension of Foreclosure Actions by Junior Lienholders, on behalf of the Department of Commerce and Consumer Affairs ("DCCA" or the "Department").

The amendments contemplated for Sections 667-57 and 667-83 may have an unintended consequence of unintentionally quickening the foreclosure of a condominium unit. If the condominium association gets title to the unit, the borrower is no longer an owner occupant. The borrower is not even an occupant of the unit, as it would "be owned"

by the condominium association. The borrower would have the status of an investor. The borrower would no longer be eligible for dispute resolution or any loan modification program offered by the lender. In addition, the borrower would not be eligible for the mandated dispute resolution program created for owner occupants.

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



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PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION

TO THE HOUSE COMMITTEE ON JUDICIARY

THE TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2013

FRIDAY, FEBRUARY 22, 2013  
2:00 P.M.

TESTIMONY ON HOUSE BILL NO. 25, H.D. 1  
RELATING TO SUSPENSION OF FORECLOSURE ACTIONS  
BY JUNIOR LIENHOLDERS.

TO THE HONORABLE KARL RHOADS, CHAIR,  
AND TO THE HONORABLE SHARON E. HAR, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("DCCA"), Office of Consumer Protection ("OCP") appreciates the opportunity to appear today and testify on H.B. 25, HD 1, Relating to Suspension of Foreclosure Actions by Junior Lienholders. My name is Bruce B. Kim and I am the Executive Director of OCP. OCP would like to offer **comments** regarding H.B. 25, HD 1.

This legislation would effectively give associations a super lien, allowing them to foreclose regardless of any other liens on the property, or any foreclosure proceedings

already in process (up until a foreclosure commissioner is appointed). Given the difficulties and obstacles that associations have encountered when trying to foreclose, this bill seeks to mitigate the damage and neglect, as well as the loss of revenue, resulting from the long period of time currently required for a mortgagee to foreclose, judicially. However, it may also have the unintended consequence of accelerating foreclosures by mortgagees, as the removal of an owner-occupant may make the nonjudicial foreclosure process under Part II of HRS Chapter 667 more attractive to mortgagees who are currently foreclosing by action via Part IA of HRS Chapter 667, exclusively, at this time. Because there would be no owner-occupant resident at the time the foreclosing mortgagee initiated a foreclosure pursuant to HRS § 667-22, the foreclosure would not be subject to the dispute resolution provisions contained in Part V of HRS Chapter 667.

OCP takes no position on the policy merits of this legislation, and is cognizant of the detrimental impact that unoccupied and/or delinquent units have on other members of the association and the association as a whole. However, H.B. 25, HD 1 should not inadvertently be a vehicle to circumvent an owner-occupant mortgagor's right to opt in to the MFDR program under Part V. OCP worked with John Morris to craft an amendment to S.B. 508 that was included in the SD 1 to address this issue, we request that this amendment be included in H.B. 25, HD 1, as well. The text for the requested amendment is attached to this testimony.

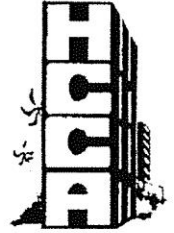
Thank you for the opportunity to submit testimony on H.B. 25, HD 1. I would be

Testimony on House Bill No. 25, H.D. 1  
February 22, 2013  
Page 3

happy to answer any questions members of the committee may have.



**Hawaii Council of Associations  
of Apartment Owners**  
**DBA: Hawaii Council of Community Associations**  
1050 Bishop Street, #366, Honolulu, Hawaii 96813



February 20, 2013

Rep. Karl Rhodes, Chair  
Rep. Sharon Har, Vice-Chair  
House Committee on Judiciary

Re: HB25, HD1 Suspension of Foreclosure Actions by Junior Lienholders  
Hearing: Friday, Feb. 22, 2013, 2 p.m., Conf. Rm. #325

Chair Rhodes, Vice-Chair Har and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO).

HCAAO agrees with the intent and purpose of this bill and urges you to pass it as amended.

Thank you for the opportunity to testify.

Jane Sugimura  
President

# HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

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February 22, 2013

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

Re: **House Bill 25, HD 1 (Suspension of Foreclosure Actions by Junior Lienholders)**  
**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 **supports the intent of this Bill as drafted.**

The purposes of this Bill are to: (1) allow a condominium association, as a junior lienholder, to commence or continue a nonjudicial foreclosure action on a property subject to a judicial foreclosure, and (2) remove requirement to stay power of sale foreclosure process pending a circuit court foreclosure action.

Because of the merits of this Bill as drafted, **this Bill should be passed, unamended.**

Thank you for considering our testimony.



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

(MSCD/hfsa)

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

**Testimony offering Comments to H.B. 25, 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 offer comments on HB 25, HD 1. We oppose any attempt to amend this bill to enable a foreclosed upon owner to be able to claim owner-occupant status for purposes of dispute resolution. By law, the former owner, after foreclosure, has lost the status of owner-occupant. In fact, such former owner would not be eligible for federal loan or other loan modification programs which are aimed at keeping the owner in the condo unit or achieve a “graceful exit”. Since the purposes of loan modification or dispute resolution are no longer possible, there are no winners because the consumer cannot be helped but there will be one loser which will be the local banks or local credit unions.

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

Neal Okabayashi  
(808) 525-5785



**LATE**



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

February 22, 2013

The Honorable Karl Rhoads, Chair,  
The Honorable Sharon E. Har, Vice Chair, and  
Members of the House Committee on Judiciary  
State Capitol, Room 325  
Honolulu, Hawaii 96813

Re: House Bill 25, HD1 Relating to Suspension of Foreclosure Actions by Junior Lienholders

Chair Rhoads, Vice Chair Har, and Members of the House Committee on Judiciary:

I am Linda Nakamura, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of real estate lenders in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, and other financial institutions. The members of the MBAH originate the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending.

MBAH opposes House Bill 25, HD1 Relating to Suspension of Foreclosure Actions by Junior Lienholders for the same reasons articulated by the Hawaii Bankers Association.

Thank you for the opportunity to present this testimony.

LINDA NAKAMURA  
President, Mortgage Bankers Association of Hawaii

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

HOUSE COMMITTEE ON JUDICIARY  
REGARDING HOUSE BILL 25, 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 in favor of HB 25, HD1. HB 25, HD1 serves an extremely worthwhile purpose, as the preamble to the bill clearly states: allowing condominium and homeowner associations to commence nonjudicial foreclosures to collect delinquencies even if the lender has filed foreclosure. In addition, as outlined in more detail below, one simple additional amendment to section 667-37 could make the bill even more effective.

Under the current law, as outlined in HB 25, HD1, even if an association has begun a nonjudicial foreclosure before the lender begins its foreclosure, that nonjudicial foreclosure may have to be converted to a judicial foreclosure or put on hold. Given the long periods of time that have been typical of lender foreclosures, this is a major problem for associations. Admittedly, section 667-57 does not prevent associations from conducting a judicial foreclosure, but the right to conduct a judicial foreclosure is often of limited value to an association because of the very high cost.

Specifically, in a typical situation facing an association, there is a large mortgage that has priority over the association's lien and exceeds the value of the unit. If a unit is worth less than the mortgage - for example a \$400,000 unit has a \$500,000 mortgage - the association's foreclosure has to be made subject to the prior mortgage, which basically means the association will have no bidders at the auction (i.e., for a property worth \$100,000 less than its mortgage) and will end up buying the property for a dollar because it has a minus \$100,000 value. While that is not an ideal situation, the association at least has the opportunity of renting the unit out until the lender finally forecloses.

The association will still have to spend \$5,000 - \$6,000 foreclosing nonjudicially. If, however, an association is forced by section 667-57 to conduct a judicial foreclosure,

TESTIMONY REGARDING HOUSE BILL 25, HD1

February 21, 2013

Page 2

it will end up spending \$12,000 - \$14,000 and take 12 to 14 months to complete its judicial foreclosure with the same result - buying the unit for a dollar and trying to rent it out.

Section 667-57 can also prevent associations from exercising the other remedies in a nonjudicial foreclosure. Specifically, in Act 182 the legislature gave associations three options if they are unable to personally serve the delinquent owner with the notice of intention to begin the nonjudicial foreclosure process:

- (1) File a special proceeding in the circuit court for permission to proceed with a nonjudicial foreclosure by serving the unit owner only by publication and posting;
- (2) Proceed with a nonjudicial foreclosure of the unit without making personal service, but then the association loses the right to obtain a deficiency judgment against the unit owner; or
- (3) Take control of the unit, if the unit is unoccupied, and rent out the unit to generate rental income to pay the unit owner's delinquency.

If an association is faced with an abandoned unit and wants to begin the process of nonjudicial foreclosure to take advantage of these options, it presently cannot do so under sections 667-37 and 667-57 if the lender has already started a foreclosure.

As a real-life example, a homeowner's association in west Oahu has two empty and abandoned homes that have been vacant for a year or more. About three months ago, the association wanted to start the process of nonjudicial foreclosure so they could take over those homes and rent them out to generate income. Unfortunately, when the association obtained a title report, it discovered that the lender had actually started a foreclosure in 2010, two years before, and had done nothing since. Nevertheless, since the lender foreclosure was still going on - at least theoretically - the association could do nothing because section 667-57 prohibited it from beginning a nonjudicial foreclosure (and there was no economic way to justify a judicial foreclosure of the units). Similarly, the association was unable to use any of the three remedies above because they required the association to first begin the nonjudicial foreclosure, which section 667-57 prohibited the association from doing. There is no real logic for such a situation.

TESTIMONY REGARDING HOUSE BILL 25, HD1  
February 21, 2013  
Page 3

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

JAM:alt  
G:\C\2013 Testimony HB 25, HD1 (02.21.13)