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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE TWENTY-SEVENTH
REGULAR SESSION OF 2014

FEBRUARY 12, 2014
2:10 PM

TESTIMONY IN SUPPORT OF H. B. 2585, RELATING TO FORECLOSURES.

TO THE HONORABLE ANGUS L.K. McKELVEY, CHAIR,
AND TO THE HONORABLE DEREK S.K. KAWAKAMI, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs, Office of Consumer Protection ("OCP") appreciates the opportunity to appear today in support of H. B. 2585, Relating to Foreclosures. My name is Bruce B. Kim and I am the Executive Director of OCP.

H. B. 2585 clarifies the service requirements of HRS §667-92 to allow service by publication for parties other than unit owners.

As a member of the Mortgage Foreclosure Task Force ("MFTF"), and as evidenced by the 2012 report of the MFTF, it was and is clear that the intent of Part VI of HRS

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Chapter 667 (as enacted by Act 182, SLH 2012) was to provide associations with a means to foreclose nonjudicially. While the possibility of a “missing or defunct lender” was never raised in the MFTF, it was definitely the intent of the MFTF to provide associations with a separate alternate power of sale foreclosure process to enable them to remedy assessment delinquencies without having to resort to a HRS §667-1.5 judicial foreclosure. If the Judiciary has interpreted the lack of enabling language for other parties for eligibility for service by publication, that may conflict with the intent of the MFTF recommendations.

Thank you for the opportunity to support H. B. 2585. I would be happy to answer any questions members of the committee may have.



Collection Law Section

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February 11, 2014

Representative Angus L.K. McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair
Committee on Consumer Protection and Commerce

**RE: House Bill 2585, Hearing Relating to Foreclosures
on Wednesday, February 12, 2014 at 2:10 PM in
Conference Room 325**

My name is Arlette Harada and I am testifying in favor of House Bill 2585 on behalf of the Collection Section of the Hawaii State Bar Association. **The comments and recommendations submitted herein reflect the position of the Collection Section of the HSBA. The position has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.**

The Collection Section urges you and your colleagues to vote in favor of HB 2585 which seeks to allow condominium and homeowner associations that are foreclosing under power of sale to serve mortgagees and other parties through the same means allowed for service on owners. The 2012 amendments to the power of sale foreclosure law allowed associations several means for making service of the document initiating the foreclosure where a party could not be found. There are three options. Two of them, taking possession of a vacant unit to rent or proceeding with foreclosure without making service but foregoing the right to obtain a deficiency judgment, can only apply where the owners cannot be found.

The third option, to file a special proceeding and obtain court permission to serve by posting and publication, states that it applies to the owner "only." However, subsection (f) of the statute setting forth these alternate means of making service states that it is intended to apply service on owners and other parties. The reason the alternate service was sought was to allow associations to make service on parties in a non-judicial foreclosure rather than having to convert the matter to a judicial foreclosure in order to obtain court permission for service by publication. The savings of the non-judicial or power of

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sale foreclosure process over the judicial foreclosure process is lost if the matter must be converted due to inability to serve other parties.

One type of party that might need to be served but might not be found would be prior or current mortgagees which are now defunct. At least one judge has ruled that the provision for service by special proceeding for permission to post and publish does not apply to service on mortgagees. The anomalous result is that owners, who have an interest in the property and whose interest can be extinguished by the foreclosure, can be served in this manner but a mortgagee, whose interest remains on the property after an association foreclosure, cannot be served except through a judicial foreclosure. Typically, an association forecloses "subject to" the senior lien interests, including the prior mortgages of record. As such, the mortgagees retain their rights under the mortgage, including the ability to foreclose the mortgage.

The special proceeding process provides sufficient assurances that the party seeking to serve by posting and publication has made reasonable attempts to serve the unserved party. A judge will apply the same standard to decide whether service by posting and publication should be allowed either in the special proceeding or in a judicial foreclosure. This bill would allow associations to use the more cost efficient means of foreclosing their liens.

For the above reasons, the Collection Section urges the Committee to vote in favor of House Bill 2585. If you have any questions, I would be happy to answer them. I will not be able to attend the hearing due to a conflict but you may reach me at 523-0702.

Very truly yours,



Arlette S. Harada
Treasurer
Collection Law Section of the
Hawaii State Bar Association

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cc: Steven Guttman, Chair, Collection Law Section
Patricia Mau-Shimizu, Executive Director, Hawaii State Bar
Association

kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 11, 2014 10:04 AM
To: CPCtestimony
Cc: cporter@hawaiiilegal.com
Subject: Submitted testimony for HB2585 on Feb 12, 2014 14:10PM

HB2585

Submitted on: 2/11/2014

Testimony for CPC on Feb 12, 2014 14:10PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Christian Porter	Individual	Support	No

Comments: The amendment proposed by this Bill to Section 667-92, HRS, is needed to address a void in the current law regarding an association attempting to serve other parties, besides the owner, with a non-judicial foreclosure notice. The Community Association Institute, therefore, supports HB 2585.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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