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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION
TO THE HOUSE COMMITTEE ON JUDICIARY
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014

FRIDAY, MARCH 21, 2014
2:00 P.M.

TESTIMONY IN SUPPORT OF SENATE BILL NO. 2482
RELATING TO ASSOCIATION ALTERNATIVE POWER OF SALE
FORECLOSURE PROCESS.

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, Office of Consumer Protection ("OCP") appreciates the opportunity to appear today and testify in support of S.B. 2482, Relating to Association Alternative Power of Sale Foreclosure Process. My name is Bruce B. Kim and I am the Executive Director of OCP.

S.B. 2482 clarifies the service requirements of HRS § 667-92 to permit service by publication for parties other than unit owners.

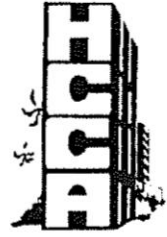
As a member of the Mortgage Foreclosure Task Force (“MFTF”) and as evidenced by the MFTF’s 2012 report, it was and is clear that the intent of Part VI of HRS Chap. 667 (as enacted by Act 182, SLH 2012) was to provide associations with a means to foreclose nonjudicially. While the possibility of a “missing or defunct lender” was never raised in the MFTF, it was the intent of the MFTF to provide associations with a separate alternate power of sale foreclosure process enabling associations to remedy assessment delinquencies without having to resort to an HRS § 667-1.5 judicial foreclosure. If the judiciary has interpreted the lack of enabling language for other parties eligibility for service by publication, that may conflict with the MFTF’s recommendations.

The House companion bill, H.B. 2485, did not cross over.

Thank you for the opportunity to testify on S.B. 2482. I would be 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



March 18, 2014

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

Re: SB2482 RELATING TO ASSOCIATION ALTERNATIVE
POWER OF SALE FORECLOSURE PROCESS
Hearing: Friday, March 21, 2014, 2 p.m., Conf. Rm. #325

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

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

HCAAO agrees with the intent and purpose of SB2482 and agrees with the clarifications that are being sought by the bill. Accordingly, we ask that you pass out this bill.

Thank you for the opportunity to testify on this matter.

Jane Sugimura
President



Collection Law Section

Chair:
Steven Guttman

Vice Chair:
William J. Plum

Secretary:
Thomas J. Wong

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March 20, 2014

Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair
Committee on Judiciary

**RE: Senate Bill 2482, Hearing Relating to Association
Alternative Power of Sale Foreclosure Process on
Friday, March 21, 2014 at 2:00 PM in Conference
Room 325**

My name is Arlette Harada and I am testifying in favor of Senate Bill 2482 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 SB 2482 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 to 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

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or power of 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 Senate Bill 2482. If you have any questions, I would be happy to answer them or 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, Executive Director, Hawaii State Bar Association