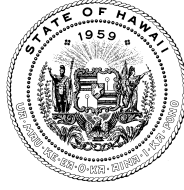


SB1192

Measure Title: RELATING TO FORECLOSURES.
Report Title: Foreclosures; Asset
Description: Prohibits a mortgage creditor from executing on any asset of the debtor beyond the asset that is secured by the mortgage.
Companion:
Package: None
Current Referral: CPN, JDL
Introducer(s): SHIMABUKURO

<u>Sort by Date</u>		Status Text
1/28/2015	S	Introduced.
1/28/2015	S	Passed First Reading.
1/28/2015	S	Referred to CPN, JDL.
1/30/2015	S	The committee(s) on CPN has scheduled a public hearing on 02-04-15 9:00AM in conference room 229.



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
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HONOLULU, HAWAII 96809
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CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE
SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION
THE TWENTY-EIGHTH STATE LEGISLATURE
REGULAR SESSION OF 2015

Wednesday, February 4, 2015
9:00 a.m.

TESTIMONY ON S.B. 1192
RELATING TO FORECLOSURES

THE HONORABLE ROSALYN BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda, Commissioner of Financial Institutions (“Commissioner”), offering comments on S.B. 1192, Relating to Foreclosures, on behalf of the Department of Commerce and Consumer Affairs (“DCCA” or the “Department”).

S.B. 1192 would prohibit a mortgage creditor from executing on any asset of the debtor beyond the asset that is secured by a mortgage.

The bill would prohibit a financial institution from collecting on the full amount of debt owed from its mortgage loan with a consumer. As the state regulator of financial institutions, the Division of Financial Institutions (“DFI”) reviews loan portfolios to determine

if the banks are in compliance with state and federal laws, rules and guidelines. One factor in reviewing loan files is validating that banks underwrite the loans in a safe and sound manner taking into account a consumer's income and debts and whether the consumer can afford to take on a mortgage debt. DFI also reviews the bank's books and records to check compliance with loss mitigation programs including the process used in foreclosure procedures.

The typical foreclosure process takes about three years from the time the borrower is in default to the sale of the house in foreclosure. In foreclosure status, if the bank cannot recoup their investment by selling the house, the balance is converted to an unsecured debt against the debtor. If the bank cannot collect on the full mortgage related debt, the bank will re-evaluate the underwriting process and mortgage program(s) it offers consumers. From the regulator's point of view, the bank will not be able to safely continue to make residential loans at its current level because the bank will have to reserve more capital to reserve for anticipated losses, i.e. not being able to collect on its debt. If this cycle continues, there will be a reduction in capital for residential loans that banks can safely make for consumers. The more capital reserved by the bank, the fewer loans they are able to make.

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



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

January 2, 2015

The Honorable Rosalyn H. Baker, Chair,
The Honorable Brian T. Taniguchi, Vice Chair, and
Members of the Senate Committee on Consumer Protection & Commerce
State Capitol, Room 229
Honolulu, Hawaii 96813

Re: Senate Bill 1192 Relating to Foreclosures

**Chair Baker, Vice Chair Taniguchi, and Members of the Senate Committee on
Consumer Protection & 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 opposes Senate Bill 1192 Relating to Foreclosures.

The MBAH opposes Senate Bill 1192 because mortgage lenders will be stripped of any deficiency judgment if a mortgage lender completes a judicial foreclosure and the mortgage property is sold for less than the mortgage lender is owed on the note.

Mortgage lenders are in the business of making mortgage loans to provide housing and real estate investments to consumers. Mortgage lenders are not in the business of making mortgage loans to foreclose on a consumer. When a consumer defaults on a mortgage, mortgage lenders work with the consumer to avoid foreclosure. Mortgage lenders will work with the consumer on a repayment plan, modification, short sale or a deed in lieu of foreclosure.

When a mortgage lender provides a mortgage loan to a consumer, an appraisal of the asset that is to secure the mortgage loan is completed. The appraisal is of a point in time and the mortgage lender relies on that appraisal to calculate loan to value. Loan to value by definition is the ratio of the percentage of the property's value that is mortgaged. Current industry standard for loan to value is 80%. The mortgage lender does not make

any assumptions with respect to the future valuation of the asset. It relies on the appraisal to calculate the loan to value to make a credit decision. Senate Bill 1192 may force mortgage lenders to require a lower loan to value ratio to mitigate the risk of not being able to collect on any potential deficiency judgment.

As stated above, mortgage lenders are in the business of making mortgage loans to consumers. During bad economic times, property values decline. Both owner occupied and investors will have the easy option of walking away from the properties with no recourse as there is no incentive to work with the mortgage lender to avoid foreclosure. Many real estate investors purchase condominium units in Hawaii. This bill may leave condominium projects with many empty units as real estate investors walk away from bad investments.

This Bill may harm the future of mortgage lending as well as the real estate market in Hawaii.

Thank you for the opportunity to present this testimony.

LINDA NAKAMURA
Mortgage Bankers Association of Hawaii

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

February 4, 2015

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
and members of the Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 1192 (Foreclosures)**
Hearing Date/Time: Wednesday, February 4, 2015, 9:00 a.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 purpose of this Bill is to prohibit a mortgage creditor from executing on any asset of the debtor beyond the asset that is secured by the mortgage.

Important considerations about foreclosures.

At the outset, we want to emphasize that a foreclosure action is the last resort for a lender when a borrower’s mortgage loan is delinquent. Before commencing a foreclosure action, a lender will consider many pre-foreclosure options such as a forbearance (temporarily suspending or reducing payments), a loan modification, a short sale, or a deed in lieu of foreclosure.

We also want to highlight that the number of foreclosure actions which were filed in Hawaii courts in 2014 decreased 39% from the number of filings in 2013. (See the news article “Isle foreclosures decreased 39% during 2014” in the Sunday, February 1, 2015 Honolulu Star-Advertiser on page D2.)

This Bill will allow borrowers to shield their assets from deficiency judgments.

Under this Bill, if a lender decides to foreclose judicially on a real property that is collateral for a mortgage loan that’s in default, and if that property is sold at a foreclosure auction for less than the amount to pay off the loan, the lender will be barred from obtaining a deficiency judgment against the borrower.

Without a deficiency judgment against the borrower, the lender cannot execute on or garnish any other assets of the borrower. That’s even though the borrower might own other real property, be flush with cash in savings accounts, or have a steady flow of money from salary, rents, dividends, and other sources.

This Bill is problematic.

Problematically, this Bill encompasses all mortgage loans that are already in existence. We understand that there could be constitutional issues involving the retroactive coverage of this Bill.

S.B. 1192 (Foreclosures)
February 4, 2015
Testimony of Hawaii Financial Services Association
Page 2

Under this Bill, a borrower (individual or entity), whose delinquent mortgage loan is secured by commercial or industrial properties, would be insulated from a deficiency judgment. We contend that such a borrower shouldn't be insulated.

As written, this Bill would shield from a deficiency judgment an investor whose residential property is collateral for a mortgage loan. We assert that an investor should not be so shielded.

With this Bill, an affluent homeowner of a residential property who owns other assets or has sources of income would be protected from a deficiency judgment. We believe that such a person should not be protected.

There could be negative unintended consequences if this Bill became law.

If this Bill becomes law, there could be the following negative unintended consequences:

● **Future borrowers, including potential homeowners, could be adversely impacted.** If lenders have to absorb monetary losses because they can't pursue deficiencies, loan underwriting standards might need to be tightened. Currently for residential mortgage loans, the lending industry standard for the loan-to-value ratio (i.e. the ratio of the dollar amount of the loan to the value of the property) is 80%.

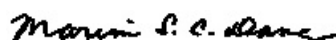
If, as a result of this Bill, the loan-to-value ratio is lowered below 80%, borrowers would be required to put more money down or to have more equity in their properties. First-time home buyers will not be able to get mortgage loans if they don't have enough cash for an even larger downpayment than is currently required. As a result, future borrowers and potential homeowners would be harmed by this Bill.

● **This Bill will encourage "strategic defaults".** A "strategic default" occurs when a borrower decides not to pay a mortgage loan even though the borrower has the ability to make the payments. The strategic defaulter will have an incentive to "walk away" from the contractual obligation to repay the loan knowing that the lender will be unable to get a deficiency judgment after a foreclosure sale. With this Bill, the other assets owned by the strategic defaulter would be unfairly protected.

● **There could be harm to Hawaii's real estate and lending industries.** If enacted into law, this Bill could cause unnecessary risk to and uncertainty in Hawaii's real estate industry and the mortgage industry. Hawaii's real estate recovery could be harmed if buyers can't get mortgage loans because they don't have the required downpayments. Property owners would be negatively affected if it's more difficult for them to sell their properties. If mortgage lenders cannot recover deficiencies by attaching or garnishing the other assets of the defaulted borrowers, there will be negative financial impacts for the lenders, especially the smaller ones which might not be able to absorb the losses.

This Bill does not seem to be sound public policy. Accordingly, we ask that your Committee "hold" this Bill and not pass it.

Thank you for considering our testimony.



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

Presentation To
Committee on Commerce and Consumer Protection
February 4, 2015 at 9:00 a.m.
State Capitol Conference Room 229

**Testimony in Opposition to S.B. No. 1192
Relating to Foreclosures**

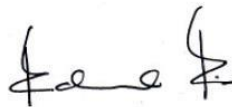
TO: The Honorable Rosalyn H. Baker, Chair
The Honorable Brian T. Taniguchi, Vice Chair
Members of the Committee

My name is Edward Pei and I am the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing eleven FDIC insured depository institutions with branch offices in the State of Hawaii.

HBA is opposed to this Bill that will prohibit mortgage lenders from pursuing the balance owed to the lender by homeowners after a judicial foreclosure action in which the sale of the home resulted in a remaining balance, or deficiency. Currently, lenders will seek to obtain a judgement for the balance owed to pursue recovery. Without this recourse, lenders will have to look critically at altering their credit policies and underwriting guidelines, likely resulting in requiring larger down payments (lower loan to value ratio), and/or tighter underwriting standards.

The testimony submitted by the Hawaii Financial Services Association and the Mortgage Bankers Association articulates very well the problems with this Bill as well as the unintended consequences if this Bill becomes law. We agree completely with their testimony and the reasons this Bill should not pass out of your Committee.

Thank you very much for the opportunity to submit this testimony and we would welcome an opportunity to respond to any questions.



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Testimony to the Senate Committee on Commerce and Consumer Protection
February 4, 2015

In opposition to SB 1192, Relating to Foreclosures

To: Senator Rosalyn Baker, Chair
Senator Brian Taniguchi, 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 70 Hawaii credit unions, representing approximately 804,000 credit union members across the state.

This bill would prohibit a mortgage creditor from executing on any asset of the debtor beyond the asset that is secured by the mortgage.

Approximately 50 credit unions in Hawaii currently offer mortgages.

Because credit unions are not-for-profit financial cooperatives owned by their members, the inability of a credit union to seek a deficiency judgment would have to be borne by the other members of the credit union. This could adversely affect the future lending ability of the credit union, or the financial soundness of the credit union.

We also agree with the testimony submitted by the Hawaii Financial Services Association, and the Mortgage Bankers Association of Hawaii.

Thank you for the opportunity to comment.

SB1192

Submitted on: 2/2/2015

Testimony for CPN on Feb 4, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Tamara Brown	Individual	Support	No

Comments: Please prevent mortgage creditors from executing on any asset of the debtor beyond the asset that is secured by the mortgage. Losing one's home shouldn't be followed by further financial hardship.

SB1192

Submitted on: 2/3/2015

Testimony for CPN on Feb 4, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Jeanne Ohta	Individual	Support	No

Comments: It just doesn't seem fair that individuals are at risk for losing assets that are not part of the collateral. Banks accept the collateral for the loan, they should not then be allowed to go after other assets not part of that loan. In this case it seems individuals are not as protected as corporations, who are able to shield assets.

SB1192

Submitted on: 2/2/2015

Testimony for CPN on Feb 4, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara L Franklin	Barbara L Franklin, Esq., Attorney at Law	Support	No

Comments: A mortgage has two components: a promissory note and a mortgage to secure the payment of the promissory note. This proposed bill would prohibit collection of a deficiency judgment that resulted from a judicial foreclosure of real property where the total amount owed on the promissory note is greater than the auction sale price of the real property. In other words, this bill, should it become law, would allow the mortgage holder to only collect from the collateral voluntarily given to secure the promise to pay. It would also prohibit further collection actions where a first mortgage is greater than the mortgage for which the judgment was issued. In the case of a second or third mortgage where the creditor gets a judgment on the mortgage without initiating a foreclosure action, a judgment creditor would be prevented from pursuing a judgment debtor by garnishing wages, executing on other personal and real property, and garnishing bank accounts. It would also prevent further collection from the judgment debtor's business interests. In my experience, a judicial foreclosure will send a debtor to see a bankruptcy attorney faster than you can say "fresh start." I expect that many second and third mortgages whose collateral was foreclosed on by the first mortgage holder, have yet to file actions based on the promissory note; yet within the statute of limitations we will see a flood of lawsuits trying to collect the balance of the amounts due under the promissory note. Creditors are allowed to obtain voluntarily the collateral needed to secure a loan and only provide loans to worthy borrowers, but, as we have seen in the last Recession, when values drop, they should not be allowed to decimate the middle class by pushing them into bankruptcy.

My name is Frances K. Stapleton and I am a registered voter living at 14-803 Crystal Circle in Pahoia, HI 96778. I support the passage of SB1192.

In Hawaii, anti-deficiency judgments are not allowed for NONjudicial foreclosures if the property is residential and owner-occupied. But Hawaii is primarily a judicial foreclosure state and Hawaii currently allows anti-deficiency judgments in judicial foreclosures.

The law should not allow lenders to go after assets of the foreclosed that were not included in the collateral used to secure the mortgage. This loophole needs to be closed as it is a factor in the movement of the middle class to the working poor class or even on to welfare, especially in single-parent households, as the foreclosed not only lose their primary residences but then have deeper financial holes to dig themselves out of.

Thank you for consideration of my comments. Please pass SB1192.

SB1192

Submitted on: 2/2/2015

Testimony for CPN on Feb 4, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Patricia Summers	Individual	Comments Only	No

Comments: Prohibit a mortgage creditor from executing on any asset of the debtor beyond the asset that is secured by the mortgage.

SB1192

Submitted on: 2/3/2015

Testimony for CPN on Feb 4, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Esther Kottke	Individual	Comments Only	No

Comments: Having friends who have experienced the humiliation of foreclosure during the recession, I believe a measure to assure that further insult to the injury is prohibited in all future situations seems like a logical and affirmative action to show fairness as well as compassion for fellow citizens.