

HB-1954

Submitted on: 2/13/2018 1:51:44 PM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities Committee of the Democratic Party of Hawaii	Support	No

Comments:



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Presentation To The
Committee on Consumer Protection & Commerce
February 14, 2018 at 2:00 PM
State Capitol Conference Room 329

Testimony in Opposition to House Bill 1954

TO: The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair
Members of the Committee

My name is Neal K. Okabayashi, the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing banks with branches in Hawaii.

The Hawaii Bankers Association opposes House Bill on the grounds that it is unnecessary and provides no additional protection for a defendant in a judicial foreclosure action. As pointed out in the testimony of Hawaii Financial Services Association, which is incorporated by this reference, adequate procedures are set forth in the Hawaii Rules of Civil Procedure and the governing laws. If the defendant seeks to defend against the claim, there is ample time for the defendant to raise these issues at the time for summary judgment.

Thank you for the opportunity to submit this testimony and please let us know if we can provide further information.

Neal K. Okabayashi
(808) 524-5161

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February 14, 2018

Rep. Roy M. Takumi, Chair
Rep. Linda Ichiyama, Vice Chair
and members of the House Committee on Consumer Protection & Commerce
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **H.B. 1954 (Foreclosure)**
Hearing Date/Time: Wednesday, February 14, 2018, 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 **opposes** this Bill.

This Bill would require complaints for mortgage foreclosure cases to include various supporting documents demonstrating the authority of the mortgagee to foreclose.

This Bill is unnecessary. The Hawaii Rules of Civil Procedure and the existing foreclosure statute already ensure that there is a legal basis for a foreclosure complaint to be filed by the Plaintiff.

Rule 11 of the Hawaii Rules of Civil Procedure states in part:

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. ...

(b) Representations to court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(Emphasis added.)

Additionally, Hawaii Revised Statutes §667-17 governs the attorney affirmation used in judicial foreclosures. It provides:

§667-17 Attorney affirmation in judicial foreclosure. Any attorney who files on behalf of a mortgagee seeking to foreclose on a residential property under this part shall sign and submit an affirmation that the attorney has verified the accuracy of the documents submitted, under penalty of perjury and subject to applicable rules of professional conduct. The affirmation shall be filed with the court at the time that the action is commenced and shall be in substantially the following form:

1. I am an attorney at law duly licensed to practice in the State of Hawaii and am affiliated with the Law Firm of _____, the attorneys of record for Plaintiff in the above-captioned mortgage foreclosure action. As such, I am fully aware of the underlying action, as well as the proceedings had herein.

2. On [date], I communicated with the following representative or representatives of Plaintiff, who informed me that he/she/they (a) personally reviewed plaintiff's documents and records relating to this case for factual accuracy; and (b) confirmed the factual accuracy of the allegations set forth in the Complaint and any supporting affidavits or affirmations filed with the Court, as well as the accuracy of the notarizations contained in the supporting documents filed therewith.

Name

Title

3. Based upon my communication with [persons specified in item 2], as well as upon my own inspection and other reasonable inquiry under the circumstances, I affirm that, to the best of my knowledge, information, and belief, the Summons, Complaint, and other papers filed or submitted to the Court in this matter contain no false statements of fact or law and that plaintiff has legal standing to bring this foreclosure action. I understand my continuing obligation to amend this Affirmation in light of newly discovered material facts following its filing.

4. I am aware of my obligations under Hawaii Rules of Professional Conduct.

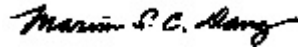
(Emphasis added.)

**Testimony of Hawaii Financial Services Association
H.B. 1954 (Foreclosure)
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The above quoted provisions of the Rule 11 and the foreclosure statute more than sufficiently provide the needed assurance to demonstrate that the Plaintiff in a foreclosure complaint has the authority to foreclose.

Because this Bill is unnecessary, 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

(MSCD/hfsa)

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Submitted on: 2/13/2018 2:16:00 PM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Desiree Watson	Individual	Support	No

Comments:

I support this bill in conjunction with bill HB1957. Homeowners need to be protected from fraudulent practices.

Thank you!

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Submitted on: 2/13/2018 1:45:33 PM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mark Watson	Individual	Support	No

Comments:

I support this bill in conjunction with HB 1957

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Submitted on: 2/13/2018 4:03:29 PM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sharon K Torbert	Individual	Support	No

Comments:

I am in support of bills HB1954 and HB1957 as they will provide much needed consumer protections currently missing from Hawaii real property law. Due to personal experience of very dear friends, they have been adversely affected in ways that could have been prevented had these laws been in effect. Please approve these bills.



Testimony to the House Committee on Consumer Protection & Commerce
Wednesday, February 14, 2018, 2:00 pm
State Capitol, Room 329

In Opposition to HB 1954 – Relating to Foreclosure

To: The Honorable Roy Takumi, Chair
The Honorable Linda Ichiyama, 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 57 Hawaii credit unions, representing over 800,000 credit union members across the state.

We are in opposition to HB 1954, Relating to Foreclosure. This bill would require complaints for mortgage foreclosure cases to include various supporting documents demonstrating the authority of the mortgagee to foreclose.

Approximately 40 Hawaii credit unions currently offer mortgage loans. This bill is unnecessary because in order to file for foreclosure in the State of Hawaii, supporting documents are already required by law.

Thank you for the opportunity to provide comments.

LATE

HB-1954

Submitted on: 2/13/2018 9:43:02 PM
Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Yee	Individual	Support	No

Comments:

I am in support of bills HB1954 and HB1957 as they will provide much needed consumer protections currently missing from Hawaii real property law. Due to my own personal experience I have been adversely affected in ways that could have been prevented had these laws been in effect. Please approve these bills.

LATE

HB-1954

Submitted on: 2/13/2018 9:29:05 PM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Wendi O'Neill Wasson	Individual	Support	No

Comments:

I am in support of bills HB1954 and HB1957 as they will provide much needed consumer protections currently missing from Hawaii real property law. Due to my own personal experience, I have been adversely affected in ways that could have been prevented had these laws been in effect. Please approve these bills.

appreciated!

LATE

HB-1954

Submitted on: 2/13/2018 6:15:02 PM
Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jean-Francois Benoist	Individual	Support	No

Comments:

I am in support of bills HB1954 as this will provide much needed consumer protections currently missing from Hawaii real property law. Due to my own personal experience I have been adversely affected in ways that could have been prevented had these laws been in effect. Please approve these bills. Jean-Francois Benoist