

HB
1557

A BILL FOR AN ACT

RELATING TO UNOCCUPIED RESIDENTIAL PROPERTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Hawaii has the longest foreclosure process in
2 the country. As of the second quarter of 2018, Hawaii's
3 foreclosure timeline from the first public notice to the end of
4 the process can take as long as 1,553 days. This period of the
5 foreclosure process sometimes results in a situation known as a
6 zombie foreclosure, where a homeowner moves out after
7 foreclosure has been initiated but before the foreclosure is
8 completed or the title to the property is transferred to the new
9 owner after sale.

10 In zombie foreclosure situations, because the homeowner is
11 not occupying the property and the foreclosing party or
12 prevailing purchaser cannot occupy the home due to not having
13 title to the property, the property often falls into disrepair.
14 Squatters may start to illegally occupy the home and the
15 property may become a center of criminal activity. As a result,
16 zombie foreclosure properties decrease the value of the home and
17 the surrounding properties.



1 The legislature finds that the use of unoccupied foreclosed
2 residential properties as rental properties during the period
3 between when a homeowner receives notice of a foreclosure action
4 and the transfer of title to the prevailing purchaser after a
5 foreclosure auction will mitigate the property depreciation and
6 hazards that are associated with unoccupied homes.

7 The purpose of this Act is to prevent residential property
8 subject to judicial foreclosure actions from becoming unoccupied
9 by:

- 10 (1) Making the homeowner liable for a fine if the
11 homeowner fails to occupy or rent the foreclosed
12 property thirty days after the notice of foreclosure
13 has been served;
- 14 (2) Transferring liability to pay a fine from a homeowner
15 to the foreclosing party if the sale of a foreclosed
16 property is postponed or cancelled;
- 17 (3) Making a prevailing purchaser liable for a fine if the
18 prevailing purchaser fails to transfer title of the
19 foreclosed property within a specified time after the
20 foreclosure sale; and



1 (4) Establishing the minimum conditions under which a
 2 renting party may rent a foreclosed property to a
 3 tenant.

4 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended
 5 by adding a new section to be appropriately designated and to
 6 read as follows:

7 "§46- Regulation, enforcement, and use of fines for
 8 unoccupied residential properties subject to judicial
 9 foreclosure. (a) Notwithstanding any law to the contrary, the
 10 county council of each county shall adopt and provide for the
 11 enforcement of ordinances regulating the fines imposed on the
 12 homeowner, foreclosing party, or prevailing purchaser of an
 13 unoccupied foreclosed property and the regulation of rentals of
 14 foreclosed properties pursuant to part of chapter 667.

15 (b) All proceeds of the fine collected pursuant to this
 16 section and part of chapter 667 shall be used by the county
 17 in the following priority:

18 (1) To reimburse the county for all administrative costs
 19 of regulating and enforcing the collection of the
 20 fines; and



1 "Renting party" means the homeowner, foreclosing party, or
2 prevailing purchaser who rents the foreclosed property to a
3 tenant pursuant to this part.

4 "Residential property" means a one- or two-family
5 unattached building designed or used exclusively for residential
6 occupancy and located on a parcel zoned for residential use, and
7 subject to judicial foreclosure.

8 "Security deposit" means money deposited by or for the
9 tenant with the renting party to be held by the renting party
10 to:

11 (1) Remedy tenant defaults for accidental or intentional
12 damages resulting from failure to maintain the
13 foreclosed property, pay rent due, or return all keys
14 furnished by the renting party at the termination of
15 the rental agreement;

16 (2) Clean the foreclosed property or have it cleaned at
17 the termination of the rental agreement so as to place
18 the condition of the foreclosed property in as fit a
19 condition as that which the tenant entered into
20 possession of the foreclosed property;



- 1 (3) Compensate for damages caused by a tenant who
- 2 wrongfully quits the foreclosed property;
- 3 (4) Compensate for damages caused by any pet animal
- 4 allowed to reside in foreclosed property pursuant to
- 5 the rental agreement; and
- 6 (5) Compensate the renting party for moneys owed by the
- 7 tenant under the rental agreement for utility service
- 8 provided by the renting party but not included in the
- 9 rent.

10 "Tenant" means any person who occupies a foreclosed
 11 property under a rental agreement.

12 §667- Imposition of fine. (a) A fine of \$1,000 per day
 13 shall be imposed on a foreclosed property homeowner that does
 14 not occupy or rent the foreclosed property; provided that:

- 15 (1) The fine shall not start to accrue until days
- 16 after the homeowner is served with a notice of
- 17 judicial foreclosure on the foreclosed property
- 18 pursuant to section 667-5.5, and not including the day
- 19 that the notice was served; and
- 20 (2) The fine shall cease to accrue against the foreclosed
- 21 property homeowner:



1 (A) If the foreclosing party postpones or cancels the
2 foreclosure sale; or

3 (B) Upon the date of the public sale

4 (b) A fine of \$1,000 per day shall be imposed on the
5 foreclosing party if the public sale is postponed or cancelled
6 and the foreclosed property is unoccupied; provided that:

7 (1) The fine shall not start to accrue until days
8 after the date of the postponed or cancelled public
9 sale, and not including the day of the public sale;
10 and

11 (2) The fine shall cease to accrue against the foreclosing
12 party:

13 (A) Upon the date a tenant is determined to have
14 wrongfully quit the foreclosed property pursuant
15 to section 667- (d); provided that the fine
16 shall begin to accrue days after the
17 determination if the foreclosed property is not
18 occupied by that date; or

19 (B) Upon the date of the public sale.

20 (c) A fine of \$1,000 per day shall be imposed on the
21 prevailing purchaser in the public sale of a foreclosed property



1 if the conveyance document to transfer title to the prevailing
2 purchaser is not recorded within days of the public sale
3 and the foreclosed property is unoccupied; provided that

4 (1) The fine shall not start to accrue until days
5 after the date of the public sale; and

6 (2) The fine shall cease to accrue against the purchasing
7 party on the date that the conveyance document is
8 recorded.

9 (d) If a renting party fails to put a tenant into
10 possession of the foreclosed property on the day and in the
11 condition agreed upon in the rental agreement, fines shall start
12 to immediately accrue against the renting party. If a tenant
13 fails to take possession of the foreclosed property on the day
14 agreed upon in the rental agreement, the fine shall not start to
15 accrue against the renting party until days after the date
16 that the tenant agreed to take possession of the foreclosed
17 property.

18 (e) No fines shall accrue pursuant to this section when
19 the foreclosed property is occupied. If a foreclosed property
20 becomes unoccupied after a period of occupancy, the fines shall:



1 (1) Be reinstated and start to accrue days after the
2 foreclosed property becomes unoccupied after a period
3 of occupancy, except as provided in paragraph (2);

4 (2) Be reinstated and start to accrue days after the
5 foreclosed property becomes unoccupied due to a tenant
6 wrongfully quitting the residential property; and

7 (3) Accrue against the homeowner, foreclosing party, or
8 prevailing purchaser as provided in subsections (a),
9 (b), or (c), respectively.

10 (f) No fines shall accrue pursuant to this section when
11 the foreclosed property is uninhabitable or poses a threat to
12 health or safety, as determined by the county or an agency of
13 the State.

14 §667- County regulation, enforcement, and use of the
15 fine. The counties shall adopt legislation to:

16 (1) Regulate and enforce the imposition of the fine as
17 provided in section 667- ; and

18 (2) Require that the proceeds of the fine, after the
19 county has been reimbursed for all administrative
20 costs of regulating and enforcing the fine, be used
21 for the infrastructure development of the residential



1 subdivision within which the foreclosed property is
2 located.

3 §667- Exemption from the residential landlord-tenant
4 code. Chapter 521 shall not apply to any residential agreement
5 entered into between a renting party and tenant pursuant to this
6 part; provided that the renting party has not rented the
7 foreclosed property to the tenant for longer than days; and
8 provided further than the foreclosed property has not been
9 rented to any tenants for longer than cumulative days.

10 §667- Rent; security deposit. (a) The renting party
11 and tenant may agree to any consideration, not otherwise
12 prohibited by law, as rent. Rents shall be payable at the time
13 and place agreed to by the parties. Where the rental agreement
14 provides for a late charge payable to the renting party for rent
15 not paid when due, the late charge shall not exceed eight per
16 cent of the amount of rent due.

17 (b) The renting party may require, as a condition of a
18 rental agreement, a security deposit to be paid by or for the
19 tenant in an amount not in excess of a sum equal to one month's
20 rent. No part of the security deposit shall be construed as



1 payment of the last month's rent by the tenant, unless mutually
2 agreed upon, in writing, by the renting party and tenant.

3 (c) The renting party may require, as a condition of
4 rental agreement, a security deposit in an amount agreed upon by
5 the renting party and tenant to compensate the renting party for
6 any damages caused by any pet animal allowed to reside in the
7 foreclosed property pursuant to the rental agreement; provided
8 that the additional security deposit amount for a pet animal
9 under this subsection:

10 (1) Shall not be required:

11 (A) From any tenant who does not have a pet animal
12 that resides in the premises; or

13 (B) For an assistance animal that is a reasonable
14 accommodation for a tenant with a disability
15 pursuant to section 515-3; and

16 (2) Shall be in an amount not in excess of a sum equal to
17 one month's rent.

18 No part of the security deposit agreed upon by the renting party
19 and tenant to compensate the renting party for any damages
20 caused by any pet animal allowed to reside in the foreclosed
21 property shall be construed as payment of the last month's rent



1 by the tenant, unless mutually agreed upon, in writing, by the
2 renting party and tenant.

3 (d) For the purposes of this section, if a tenant is
4 absent from the foreclosed property for a continuous period of
5 twenty days or more without written notice to the renting party,
6 the tenant shall be deemed to have wrongfully quit the
7 foreclosed property; provided that the tenant shall not be
8 considered to be absent from the foreclosed property without
9 notice to the renting party during any period for which the
10 renting party has received payment of rent. With respect to
11 such a tenant, the renting party may retain the entire amount of
12 any security deposit the renting party has received from or on
13 behalf of such tenant.

14 §667- Prohibition on use of an unoccupied residential
15 property subject to judicial foreclosure as a vacation rental.

16 A foreclosed property shall not be considered to be occupied if
17 it is used as a vacation rental. Fines pursuant to section 667-
18 shall accrue against the homeowner, foreclosing party, or
19 prevailing purchaser if the foreclosed property is used as a
20 vacation rental.



1 §667- Tenant's remedies for failure by renting party to
2 supply possession. (a) If the renting party fails to put the
3 tenant into possession of the foreclosed property in the agreed
4 condition at the beginning of the agreed term:

5 (1) The tenant shall not be liable for the rent during any
6 period the tenant is unable to enter into possession;

7 (2) At any time during the period the tenant is so unable
8 to enter into possession the tenant may notify the
9 renting party that the tenant has terminated the
10 rental agreement; and

11 (3) The tenant shall have the right to recover damages in
12 the amount of reasonable expenditures necessary to
13 secure adequate substitute housing, the recovery to be
14 made either by action brought in the district court or
15 by deduction from the rent upon submission to the
16 renting party of receipts totaling at least:

17 (A) The amount of abated rent; plus

18 (B) The amount claimed against the rent.

19 (b) In any district court proceeding brought by the tenant
20 under this section, the court may award the tenant substitute



1 housing expenditures, reasonable court costs, and attorney's
2 fees.

3 **§667- Medical cannabis; tenant use; eviction.** Any
4 provision in a rental agreement allowing for eviction of a
5 tenant who has a valid certificate for the medical use of
6 cannabis in any form is void unless the rental agreement allows
7 for eviction for smoking tobacco and the tenant uses medical
8 cannabis by means of smoking.

9 **§667- Early termination of tenancy; change of locks;**
10 **victims of domestic violence.** (a) A tenant may terminate a
11 rental agreement without penalty or fees for early termination
12 or liability for future rent if the tenant or an immediate
13 family member of the tenant residing at the foreclosed property
14 has been the victim of domestic violence during the ninety days
15 preceding the date the notice of early termination was provided
16 to the renting party. The notice shall be given at least
17 fourteen days prior to the early termination date specified in
18 the notice, which shall be no more than one hundred four days
19 from the date of the most recent act of domestic violence.

20 Subject to subsections (b) and (c), if a tenant of a
21 foreclosed property or an immediate family member of the tenant



1 has been the victim of domestic violence and the tenant does not
2 elect to be released from the rental agreement, the tenant may
3 require the renting party to change the locks to the foreclosed
4 property by submitting a request to the renting party to do so.

5 (b) Within three days of the receipt of the request in
6 subsection (a), the renting party shall change the locks at the
7 tenant's expense. If the renting party fails to act within the
8 three-day period, the tenant may change the locks without the
9 renting party's permission and shall give the renting party a
10 key to the new locks.

11 (c) If the person who committed domestic violence against
12 the tenant or immediate family member of the tenant is also a
13 party to the rental agreement, the locks shall not be changed
14 unless there is a court order requiring the person to vacate the
15 foreclosed property and a copy of the order has been furnished
16 to the renting party.

17 (d) The tenant shall not be required to pay any additional
18 rent, fees, or security deposit because of the exclusion of the
19 person who committed domestic violence from the foreclosed
20 property.



1 (e) The person who committed domestic violence against the
2 tenant or immediate family member of the tenant shall not be
3 entitled to any damages or other relief against the renting
4 party or the tenant who in good faith complies with this
5 section.

6 §667- Court order to vacate; domestic violence. (a) If
7 a court of competent jurisdiction, in an action relating to
8 domestic violence, has ordered the person who committed domestic
9 violence against the tenant or immediate family member of the
10 tenant to vacate the foreclosed property, upon issuance of the
11 order, neither the renting party nor the tenant shall have any
12 duty to:

13 (1) Allow the person access to the foreclosed property,
14 unless the person is accompanied by a law enforcement
15 officer; or

16 (2) Provide the person with keys to the foreclosed
17 property.

18 (b) If the person is a party to the rental agreement, then
19 upon issuance of the court order requiring the person to vacate
20 the foreclosed property, the person's interest in the tenancy
21 shall terminate, and the renting party and remaining tenant



1 shall be entitled to any actual damages resulting from that
2 termination.

3 (c) Any remaining tenant shall not be required to pay any
4 additional rent, fees, or security deposit because of the
5 termination of the person who committed domestic violence's
6 interest as a tenant of the foreclosed property.

7 §667- Other provisions applicable. All of the
8 provisions of chapter 667 not inconsistent with this part and
9 which may appropriately be applied to the persons,
10 circumstances, and situations in a judicial foreclosure of an
11 unoccupied residential property subject to this part shall be
12 applicable to the rights and obligations imposed by this part."

13 SECTION 4. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 5. If any provision of this Act, or the
17 application thereof to any person or circumstance, is held
18 invalid, the invalidity does not affect other provisions or
19 applications of the Act that can be given effect without the
20 invalid provision or application, and to this end the provisions
21 of this Act are severable.

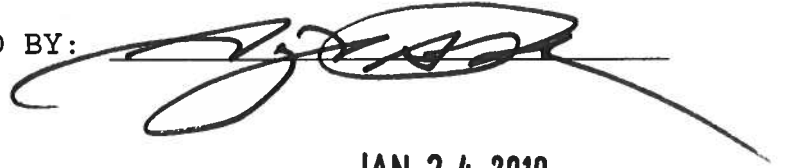


1 SECTION 6. New statutory material is underscored.

2 SECTION 7. This Act shall take effect upon its approval.

3

INTRODUCED BY:

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be the name of the legislator who introduced the bill.

JAN 24 2019



H.B. NO. 1557

Report Title:

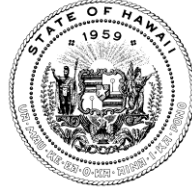
Unoccupied Residential Property; Foreclosure

Description:

Imposes fines on a homeowner, foreclosing party, or prevailing purchaser in foreclosure auctions when a vacant residential property subject to foreclosure remains unoccupied during the foreclosure process. Establishes conditions under which a property may be rented.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.





DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection and Commerce
Friday, February 1, 2019
2:00 p.m.
State Capitol, Conference Room 329**

**On the following measure:
H.B. 1557 RELATING TO UNOCCUPIED RESIDENTIAL PROPERTIES**

Chair Takumi and Members of the Committee:

My name is Stephen Levins, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection. The Department offers comments on this bill.

The purpose of this bill is to impose fines on a homeowner, foreclosing party, or prevailing purchaser in foreclosure auctions when a vacant residential property subject to foreclosure remains unoccupied during the foreclosure process. The underlying policy is to guard against having vacant properties fall into disrepair.

The Department has serious concerns with this measure. Among other things, it authorizes penalizing a homeowner who holds legal title to property and legal right to occupancy during the pendency of a foreclosure merely for keeping the property vacant. Imposing such a fine would likely raise constitutional due process concerns.

If the purpose of this measure is to address the possible deterioration of vacant property, other viable alternatives can address this problem. County building inspectors

Testimony of DCCA

H.B. 1557

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can cite homeowners who violate applicable county building codes, and if the citations are valid, the homeowners will be subject to fines. Consequently, instead of fining a homeowner for keeping a housing unit unoccupied, the homeowner will be fined for not maintaining it properly. This would specifically address the problem being postured and using processes authorized by law.

Thank you for the opportunity to testify on this bill.

HB-1557

Submitted on: 1/30/2019 12:07:12 PM

Testimony for CPC on 2/1/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kevin Agena	Hawaiian Properties, Ltd.	Oppose	No

Comments:

HB-1557

Submitted on: 1/30/2019 12:17:46 PM

Testimony for CPC on 2/1/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Oppose	No

Comments:

This Bill imposes unrealistic obligations on foreclosure property that will be impossible to enforce.



January 31, 2019

VIA WEB TRANSMITTAL

Hearing Date: Friday, February 1, 2019

Time: 2:00 p.m.

Place: Conference Room 329

Committee on Consumer Protection & Commerce
House of Representatives, the 30th Legislature
Regular Session of 2019

Re: Community Associations Institute's **Testimony opposing** HB 1557

Dear Chair Takumi, Vice Chair Ichiyama and Committee members:

I am a member of the Hawaii Chapter of the Community Associations Institute Legislative Action Committee ("CAI"). We represent the condominium and community association industry.

This testimony is in opposition to HB 1557. The purpose of the Act is to prevent residential property subject to judicial foreclosure actions from becoming unoccupied following a homeowner's receipt of the notice of judicial foreclosure by:

- (1) Making the homeowner liable for a fine if the homeowner fails to occupy or rent the foreclosed property thirty days after the notice of foreclosure has been served; [and]
- (2) Transferring liability to pay a fine from a homeowner to the foreclosing party if the sale of the foreclosed property is postponed or cancelled[.]

Our opposition addresses these two provisions.

With respect to the first proviso, instead of fining an owner for vacating the property following receipt of the notice of foreclosure, the focus of the statute should be on requiring the foreclosure notice to inform the homeowner that until the sale closes and the property is conveyed to a new purchaser, the homeowner will remain liable for the payment of the maintenance and reserve fees--if the home is within a condominium or a homeowner's association-- and for their mortgage, if applicable. Most homeowners vacate their units based on the mistaken belief that if they move out, they will no longer be responsible/liable for the payments. As a result, they often end up paying rent to reside elsewhere and then finding out that they are still responsible for the payments incurred as to the property on which their lender or their association is foreclosing, notwithstanding that the owner prematurely vacated the same.

In addition, this first proviso also fails to provide for a means to appeal the fine such that if the owner can show good cause as to why they have been absent from the unit, then the fine could be waived. For example, if an owner is active duty military and their duty required them to be off island for undetermined periods of time such that it is not feasible for them to rent the unit, then good cause may exist to support a waiver of the fine. Any fine system should include an appeal process to ensure the homeowner is provided due process.

With respect to the second proviso, transferring liability to pay a fine of \$1,000/day from a homeowner to the foreclosing party if the sale of the foreclosed property is postponed or cancelled, the language fails to take into consideration that there may be valid reasons for postponing or canceling the foreclosure. For example, the sale may need to be postponed so the parties will have more time to reach a settlement so the homeowner can keep his/her home. The language of this proviso, as drafted, should be void as against public policy because it will serve to discourage associations and lenders from entering into any settlement discussions if those discussions might require the sale be postponed.

Moreover, as with the first proviso, this second proviso also fails to provide for a means to appeal the fine such that if the foreclosing party can show good cause as to why it was necessary to postpone or cancel the sale, then the fine could be waived. For example, if the sale was postponed to allow the parties additional time to settle the case then this would arguably qualify as good cause for postponement. The postponement is thus beneficial to both parties and benefits society as a whole because it promotes continued homeownership. As noted above, any fine system should include an appeal process to ensure the foreclosing party is provided due process.

January 31, 2019

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Based on the foregoing, we respectfully submit that HB 1557 should be held.
Thank you for your time and consideration.

Sincerely yours,



R Laree McGuire
CAI LAC Hawaii

HB-1557

Submitted on: 1/29/2019 2:07:49 PM

Testimony for CPC on 2/1/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Philip Nerney	Individual	Oppose	No

Comments:

HB-1557

Submitted on: 1/30/2019 10:29:44 AM

Testimony for CPC on 2/1/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Patti Pinto	Individual	Support	No

Comments:

HB 1557

In Support

I am in support of HB 1557 as it is a step in the right direction. In my area, foreclosed vacant properties are numerous and they have become, almost without exception, hubs of crime. Not only drug sales and use, but domestic abuse and violence. Burglaries in neighborhoods around these home increase, sometimes making a neighborhood feel under siege.

This measure will assist by 1) creating fewer vacant foreclosed houses; 2) an increase in affordable rentals; and 3) greater possibility of enforcement and intervention when it becomes necessary.

Please support this measure and help us to return our neighborhoods to places we would like to live.

Patti Pinto

Pikake St., Fern Acres

HB-1557

Submitted on: 1/31/2019 10:12:06 AM

Testimony for CPC on 2/1/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Claudia	Individual	Support	No

Comments:

Aloha ka kou,

I am writing in support for HB 1557. I have been a member of the Board of Directors of Fern Acres Community Association in Upper Puna for nearly 20 years. In the past few years, it has become apparent that we have a serious problem with unauthorized people occupying empty structures in our subdivision. Remediation has been nil. Lately, we have been making some inroads into the problem with support from our community policing officer, but each positive action is a drop of water in a vast ocean.

Please support and pass this bill and begin to create reasonable and enforceable legislation to help Puna deal with this serious criminal, health and community problem.

Mahalo,

Claudia Zirroli

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

LATE

February 1, 2019

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. 1557 (Unoccupied Residential Properties)**
Hearing Date/Time: Friday, February 1, 2019, 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 (a) imposes fines on a homeowner, foreclosing party, or prevailing purchaser in foreclosure auctions when a vacant residential property subject to foreclosure remains unoccupied during the foreclosure process, and (b) establishes conditions under which a property may be rented.

This Bill imposes a fine of \$1,000 per day on the foreclosing party (e.g. a mortgage lender) if the public judicial foreclosure sale is postponed or cancelled and if the foreclosed property is unoccupied. The foreclosing party would be unfairly forced to pay this daily fine even for circumstances that are not within its control.

There are various circumstances where a judicial foreclosure sale would be postponed or cancelled. One circumstance would be if the homeowner, over the objection of the foreclosing party, obtains an order from a judge to postpone or cancel the scheduled sale.

A second circumstance would be if the homeowner timely sends to the servicer for the foreclosing party a loss mitigation application package before the date of the scheduled foreclosure sale. The foreclosing party can’t move forward with the foreclosure sale until (a) the homeowner is notified that the homeowner isn’t eligible for any loss mitigation option, and the homeowner has exhausted the appeals process, or (b) the homeowner rejects all loss mitigation offers, or (c) the homeowner doesn’t comply with the terms of the loss mitigation agreement.

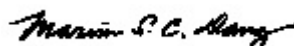
A third circumstance would be if the homeowner decides to file a federal bankruptcy petition. The filing would then result in a “stay” that would force the postponement or cancellation of the foreclosure sale.

Under this Bill, the foreclosing party would be unfairly required to pay \$1,000 per day for these and other circumstances that were caused by the homeowner or by others, and not by the foreclosing party.

The rental provisions in this Bill are similarly problematic because they fail to consider the situation where a foreclosure commissioner has been appointed by the judge to take possession of the property and to schedule the public sale.

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 The
Committee on Consumer Protection & Commerce
February 1, 2019 at 2:00 P.M.
State Capitol Conference Room 329

Testimony in Opposition to House Bill 1557

TO: The Honorable Roy M. Takumi, Chair, Committee on Consumer Protection & Commerce
The Honorable Linda Ichiyama, Vice Chair Committee on Consumer Protection & Commerce
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.

This bill seeks to correct a problem of unkempt real property in the midst of a foreclosure by punishing those who do not have the right or power to correct the situation.

The bill is justified by the length of time to conduct a judicial foreclosure. Normally, it takes 210 to 330 days to complete a judicial foreclosure but the timeline is dictated by judicial backlog, the need to effect service sometimes by publication, obtain a hearing date (which is difficult on the Neighbor Islands because of the lack of judges and precedence for criminal cases), and obtain a judicial order signed by the Court and the parties. The case will take longer if there are loan mitigation efforts, and especially if there are serial loan mitigation requests. Thus, besides judicial backlog, the delay is caused by the mortgagor's engagement in loan mitigation or simply an effort to delay foreclosure to stay in the house longer at no cost.

Banks are rightfully concerned if a property subject to a foreclosure is in poor condition because the banks have a vested interest in obtaining the best price possible at the foreclosure sale. The banks recovery of the loan proceeds is related to the price obtained at auction so the banks have a vested interest in the property's condition. The situation is no different than a realtor staging a home on the market for sale so the seller may obtain a higher price. However, there is a vast difference between the banks and the realtor. The banks do not have the power or right to improve or maintain the property which raises the question why this bill seeks to punish the banks at the rate of a \$1,000 a day fine or \$30,000 or \$31,000 a month. Since in many cases, Fannie Mae or Freddie Mac is the holder of the mortgage, a\this bill such as this will be a disincentive for Fannie or Freddie to buy mortgages made in Hawaii, and hurt housing sales in Hawaii to the detriment of Hawaii residents.

This bill assumes that any unkept condition is the result of lack of occupancy but sometimes, it is the result of the occupancy by either the mortgagor or tenant. It should be noted that not every foreclosure property is owner-occupied but could also be a home that is a rental unit.

It is not normally the case that the property is vacant during foreclosure unless the mortgagor abandons the property. Local banks do not normally attempt to evict the mortgagors, or occupants, unless there are attempts to damage the property. Absent the potential for damage, it is in the better interests of the banks to let the mortgagor remain in the property.