

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

Fax No.: (808) 521-8522

February 11, 2009

Rep. Rida Cabanilla, Chair
and members of the House Committee on Housing
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 1825 (Foreclosures)**
Hearing Date/Time: Wednesday, February 11, 2009, 10:30 A.M.

I am the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is the trade association for Hawaii's financial services loan companies which are regulated by the Hawaii Commissioner of Financial Institutions under the Code of Financial Institutions (Chapter 412, Article 9 of the Hawaii Revised Statutes).

The HFSA wants to **comment** on this Bill.

The purpose of this Bill is to require mortgagors and mortgagees to explore options to avoid foreclosure, including modification or restructuring of loans. It also requires notice of foreclosure be given to a tenant of the foreclosed property with the option to keep a rental agreement in full force or to vacate property in 60 days.

Based on my experience as an attorney in private practice who has actively handled foreclosures for 31 years since 1978, I would like to make the following comments:

1. During the first 120 days in which a loan is in default, lenders generally make reasonable attempts to contact the mortgagor (borrower) and to work on alternatives to foreclosure. A lender should not be forced to follow a rigid statutory procedure when a lender is working with a mortgagor (borrower) to avoid foreclosure on a defaulted loan.

2. This Bill imposes a multitude of additional requirements on lenders that are onerous and contain traps for the unwary.

3. This Bill requires the mortgagee (lender) to mail to a tenant in possession of the subject property a notice of the tenant's rights after the auction (i.e. the tenant can enter into a new rental agreement with the new property owner or vacate the property in a specified number of days). We recommend that this Bill be revised to allow the notice to be posted at the property (rather than mailed).

4. The new owner who purchases the real property from a foreclosure sale should not be bound to a rental agreement that is longer than month-to-month. We recommend that this Bill be revised to state that after the foreclosure sale is held and after title to the real property has changed to the new owner, any rental agreements should be converted to a month-to-month tenancy. Under the Residential Landlord Tenant Code, a month-to-month tenant needs to be given 45 days advance notice to vacate. That seems reasonable and should apply here. Of course, the new owner and any existing tenant can try to agree on a longer rental term.

We are willing to work with your Committee on any revisions to this Bill.

Thank you for considering our comments.



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

(MSCD/hfsa)



The REALTOR® Building
1136 12th Avenue, Suite 220
Honolulu, Hawaii 96816

Phone: (808) 733-7060
Fax: (808) 737-4977
Neighbor Islands: (888) 737-9070
Email: har@hawaii Realtors.com

February 10, 2009

The Honorable Rida Cabanilla, Chair
House Committee on Housing
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 1825 Relating to Foreclosures
Hearing date: February 11, 2009 @ 10:30 a.m.

Aloha Chair Cabanilla and Members of the Committee:

I am Mihoko Ito, an attorney with Goodwill Anderson Quinn & Stifel, here to testify on behalf of the Hawai'i Association of REALTORS® (HAR) and its 9,600 members. HAR **submits comments** regarding **H.B. 1825** which requires: 1) mortgagors and mortgagees to explore options to avoid foreclosure, including modifying or restructuring loans, and 2) notice of foreclosure be given to a tenant of the foreclosed property with the option to keep rental agreement in full force or vacate premises in 60 days.

HAR notes that this bill does not address the issue of what happens to a tenant's security deposit with the original landlord, if the existing rental agreement remains in full force between the tenant and a new successor of interest. The responsibility for delivering and/or accepting the security deposit should be clarified.

If this Committee is inclined to pass the bill, HAR suggests the following amendments:

1. Under Section 3, notice requirement should be 45 days, rather than 60 days. The 45 days notice is the same number of days a landlord must give to terminate a rental agreement.
2. An effective date of November 1, 2009 should be specified so that HAR may review and revise its Rental Agreement and other forms accordingly.

Mahalo for the opportunity to testify.