



**Testimony to the Twenty -Fifth State Legislature, 2009 Session**

House Committee on Consumer Protection & Commerce  
The Honorable Robert N. Herkes, Chair  
The Honorable Glenn Wakai, Vice Chair

Monday, February 2, 2009, 2:00 p.m.  
State Capitol, Conference Room 325

by  
Russell Tellio  
Court Administrator  
First Circuit Court

**WRITTEN TESTIMONY ONLY**

---

**Bill No. and Title:** House Bill No. 976 Relating to Foreclosure

**Purpose:** Requires the Circuit Court to provide written notification to parties to a foreclosure action for a specified period prior to the issuance of a judgment. Takes effect July 1, 2009, and sunsets June 30, 2010.

**Judiciary's Position:**

The Judiciary opposes House Bill No. 976 for the following reasons.

First, present law already provides for sufficient notice to the parties in a court action. Before seeking action by the court, the party seeking to enforce a claim against another party must first serve the claim upon the other party.

Second, this bill places an unnecessary burden on the court both in terms of staff resources and funds. In foreclosure actions, difficulty locating or serving documents upon a mortgagor, in person or by mail, is not uncommon.

To meet the requirements of House Bill No. 976, the court would need to expend staff resources and funds to locate and serve notice upon mortgagors, which is a concern in light of the budget shortfall and increasing foreclosures.

Thank you for the opportunity to testify on House Bill No. 976.

**The Honorable Robert N. Herkes, Chair**  
**The Honorable Glenn Wakai, Vice Chair**  
**House Committee on Consumer Protection and Commerce**

**The Honorable Jon Riki Karamatsu, Chair**  
**The Honorable Ken Ito, Vice Chair**  
**House Committee on Judiciary**

**Hearing : Monday, February 2, 2009, 2:00 p.m.**  
**State Capitol, Conference Room 325**

**IN SUPPORT OF HB 976**

**Chair and Members of the Committees:**

My name is Ryker Wada, representing the Legal Aid Society of Hawai'i ("LASH"). I am advocating for our clients who include the working poor, seniors, citizens with English as a second language, disabled and other low and moderate income families who are consumers. We are testifying in support of HB 976 as it would strengthen protections for consumers in the State of Hawaii.

I supervise a housing counseling program in the Consumer Unit at the Legal Aid Society of Hawaii. The Homeownership Counseling Project provides advice to individuals and families about homeownership issues. Specifically the project provides information on how to prepare yourself before purchasing a home and what to do if you are in danger of losing your home through foreclosure. In the past Fiscal Year we serviced more than 200 clients in our Project.

HB 976 seeks to amend HRS 667 to require that the Circuit Court to notify a mortgagor and any subsequent mortgagee in writing at least 90 days prior to the issuance of the judgment.

LASH is in favor of any additional consumer protections for homeowners including additional notice requirements. The additional time required by HB 976 may benefit homeowners by giving them more time to find appropriate solutions for their mortgage troubles.

LASH anticipates a growing number of foreclosures in the coming years as the so-called exotic mortgage products mature and consumers are not able to keep up with their adjusted mortgage payments

or find a suitable refinance. With the growing number of foreclosures, there will only be an increase in the need for appropriate remedies for the State of Hawaii.

The Legal Aid Society of Hawaii supports HB 976 and its efforts to create additional protections for consumers.

**Conclusion:**

We appreciate these committees' recognition of the need to protect consumers in the State of Hawaii. HB 976 attempts to strengthen protections for consumers. Thank you for the opportunity to testify.



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

January 30, 2009

The Honorable Robert Herkes, Chair and  
Members of the House Committee on  
Consumer Protection and Commerce  
State Capitol, Room 320  
Honolulu, Hawaii 96813

The Honorable Jon Riki Karamatsu, Chair and  
Members of the House Committee on Judiciary  
State Capitol, Room 302  
Honolulu, Hawaii 96813

Re: House Bill 976 Relating to Foreclosure

Dear Chair Herkes, Chair Karamatsu, members of the House Committee on Consumer Protection and Commerce, and members of the House Committee on Judiciary:

I am Rick Tsujimura, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of real estate lenders in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, and other financial institutions. The members of the MBAH originate 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.

MBAH opposes House Bill 976 Relating to Foreclosure.

MBAH opposes this legislation because it will drag out the foreclosure process to conceivably almost 1 year, depending upon how many "judgments" are obtained by a lender. If a lender must provide 90 days notice for each judgment, it would drag the process on, and increase the costs for both lenders and the borrowers.

It is also unclear whether the bill addresses final judgments. During the foreclosure process there could be three judgments (default judgment, summary judgment and order confirmation sale). Thus the process could take as many as 270 days.

For these reasons MBAH requests that this measure be held. Thank you for the opportunity to present this testimony.



# HAWAII BANKERS ASSOCIATION

1000 BISHOP ST., SUITE 301B • HONOLULU, HAWAII 96813-4203  
PHONE: (808) 524-5161 • FAX: (808) 521-4120

Presentation to the House Committee on Consumer  
Protection and Commerce House Judiciary Committee  
Monday, February 2, 2009, at 2:00 p.m.

## Testimony for HB 976 Relating to Foreclosure

TO: The Honorable Robert Herkes, Chair  
The Honorable Glenn Wakai, Vice Chair  
Members of the House Committee on Consumer Protection and Commerce

I am Neal Okabayashi appearing for the Hawaii Bankers Association. We are opposed to this measure as it is both vague and does not afford additional protections to the borrower. In a judicial foreclosure, notice of the foreclosure is required to be served on the borrower and even if the borrower defaults by not appearing, the courts do require that lenders continue to give notice to borrowers of the motion for summary judgment and interlocutory decree of foreclosure. Thus, ample notice is provided to the borrower.

# 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 2, 2009

Rep. Robert N. Herkes, Chair  
and members of the House Committee on Consumer Protection & Commerce  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **House Bill 976 (Foreclosure)**  
**Hearing Date/Time: Monday, February 2, 2009, 2:00 P.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.

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

The purpose of this Bill is to require the Circuit Court to provide written notification to "the mortgagor and any subsequent mortgagee" in a foreclosure action at least 90 days prior to the "issuance of the judgment". This would take effect on July 1, 2009, and would be repealed on June 30, 2010.

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 observations:

1. This Bill only applies to judicial foreclosures, not to non-judicial foreclosures. I estimate that non-judicial foreclosures currently represent around 90% of all foreclosures in Hawaii.

2. The words "subsequent mortgagee" should be clarified because it is unclear whether it refers to junior mortgagees (lenders) or to another type of mortgagee.

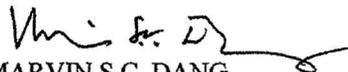
3. It is unclear what "judgment" the words "issuance of the judgment" refer to. Under Hawaii Revised Statutes Section 667-51, there are 3 types of foreclosure judgments that could apply: (a) a judgment entered on a decree of foreclosure to appoint a foreclosure commissioner, (b) a judgment entered on an order to confirm the sale of the foreclosed property, and (c) a deficiency judgment. This Bill should identify which type of judgment would be affected.

4. A judicial foreclosure is an equitable proceeding. For this reason, if a mortgagor (borrower) shows good cause to the judge why there should be a delay, the judge already has the power to stay, i.e. delay, the appointment of a foreclosure commissioner or the confirmation of a sale.

5. Arguably, the 90-day advance notice period should not apply in every case. For example, if the mortgagor (borrower) does not contest the judicial foreclosure proceeding, the 90-day period could result in an unnecessary delay.

I am 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)



# Housing Hawaii

Advocating Creating Maintaining Affordable Housing

## **Board of Directors**

### **President**

Kevin Carney, EAH  
Housing

### **Vice-President**

Rene Berthiaume,  
TransPacific Housing  
Development  
Corporation

### **Secretary** – Denise

Boswell, Rural  
Community  
Assistance  
Corporation

### **Treasurer** - Chuck

Wathen, Wathen and  
Associates, Ltd.

### **Director** - Kyle

Chock, The Pacific  
Resource Partnership

### **Director** - Ralph

Mesick, Bank of  
Hawaii

### **Director** - Laree

Purdy, Abigail  
Affordable Housing  
and Facilitated Home  
Ownership

### **Director** – Gregg

Robertson, Robertson  
& Company, LLC

### **Director** – Brian

Takahashi, Architects  
Hawaii

### **Director** – Kirk

Caldwell, City and  
County of Honolulu

### **Director** – Kamaile

Sombelon, Lokahi  
Pacific

January 30, 2009

The Honorable Robert N. Herkes, Chair  
House Committee on Consumer Protection & Commerce  
Hawaii State Capitol, Room 320  
Honolulu, HI 96813

Dear Chair Herkes and Members:

## **RE: HB 976, RELATING TO FORECLOSURE**

I am Nani Medeiros, Executive Director of Housing Hawaii, testifying in support of House Bill 976, Relating to Foreclosure. This bill requires the circuit court to notify in writing the mortgagor or mortgagee at least ninety days prior to issuing a judgement on foreclosure. The bill will sunset on June 30, 2010.

### *Summary:*

While mainland US cities have experienced a steady increase in home foreclosures since 2006, Hawaii home foreclosures did not begin to sharply increase until the third quarter of 2008 and continue to do so. If home prices continue to fall in Hawaii, distressed borrowers will be in even more danger of foreclosure. Hawaii should coordinate a comprehensive foreclosure prevention and response system to assist homeowners and stabilize neighborhoods. This bill represents one piece of the communication and coordination system that is needed to address the foreclosure issue and to provide assistance with foreclosure prevention and neighborhood stabilization

### *Amendment:*

We recommend extending the sunset date until at least June 30, 2011 to accommodate for the increase in foreclosures that may continue to occur well past June 2010.

Thank you for your time and the opportunity to testify.

Nani Medeiros  
Executive Director  
Housing Hawaii

---

### **Executive Director**

Nani Medeiros

**Housing Hawaii, 841 Bishop Street, Suite 2208, Honolulu, HI 96813**

**Phone: 808-469-7774**

**Email: [housinghawaii@hawaii.rr.com](mailto:housinghawaii@hawaii.rr.com)**

**[www.housinghawaii.org](http://www.housinghawaii.org)**