

SB 1068

**TESTIMONY IN SUPPORT OF THE INTENT OF
SB1068 - RELATING TO REAL PROPERTY**

February 10, 2009 at 2:15 p.m.

The Legal Aid Society of Hawaii hereby provides testimony to the House Committee on Housing on SB1068 – Relating to the Real Property, supporting the intent of the bill, but requesting amendments.

The Legal Aid Society of Hawaii provides free legal services to the low-income population of the State of Hawaii. In 2008, we received over 1,400 calls on housing related cases, approximately 600 of which dealt directly with landlord tenant issues. With the growing number of foreclosures in Hawai'i, we started to receive more calls in 2008 from tenants who were renting properties that were being foreclosed on. In many of these cases tenants are left in situations with no knowledge that a foreclosure is taking place, not knowing who to pay rent to, whether they will have a place to live after the foreclosure and not knowing what will happen to their security deposit.

We believe that this bill does aim to provide some of the initial protections needed by tenants facing eviction due to a foreclosure, however we believe that a comprehensive bill to protect tenants should require:

- (1) Notice to the renter that the property is being foreclosed on, including information on who rent should be paid to and a statement of their rights;
- (2) At least 30 days prior to the sale the owner shall provide notice on the date of the sale shall be sent to the tenant;
- (3) New owners to honor a lease that existed prior to the notice of foreclosure;
- (4) Owners to transfer the security deposit to the new owner or if deposit is not transferred, the tenant can use the security deposit as credit for one months rent;
- (5) Upon the approval of a sale at auction by a court pursuant to part I of chapter 667 or the recordation of the affidavit and conveyance document pursuant to section 667-33, notice be provided to the tenant by both the owner and new owner that the sale has been completed and that rent shall now be paid to the new owner.

As such, we would recommend that the committee replace the language of this bill with the attached revised bill which incorporates these five provisions.

Thank you for this opportunity to testify.

Sincerely,

Sheila P. Lippolt
Supervising Attorney
Housing Unit

Report Title:

Mortgage Foreclosures; Real Estate; Rental Housing

Description:

Requires foreclosing lender to give notice to tenants of rental housing units facing foreclosure before tenant may be served with an eviction notice. Requires landlords to give notice of pending foreclosure to tenants of dwelling units. Provides remedies.

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

S.B. NO. 1068

A BILL FOR AN ACT

RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE.

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

SECTION 1. The purpose of this Act is to address the situation of a residential tenant after a foreclosure of the tenant's rental unit. More specifically, this Act subjects the mortgagee in possession or purchaser of the rental unit to the rental agreement between the former landlord and tenant until the agreement expires.

SECTION 2. Section 521-45, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Unless otherwise agreed, a landlord who ~~conveys~~:

- (1) ~~Conveys premises [which] that include a dwelling unit subject to a rental agreement in a good faith sale to a person not connected with the landlord and discloses, in writing, in any form of contract for the sale of such premises; or~~
- (2) ~~Loses, because of a foreclosure sale or action, the landlord's interest in premises that include a dwelling unit subject to a rental agreement;~~

is relieved of liability under the rental agreement and under this chapter as to events occurring subsequent to the conveyance.

(b) The new owner who purchases ~~or comes into possession of~~ the premises referred to in subsection (a) is liable under the rental agreement until the agreement expires and under this chapter."

SECTION 3. Chapter 521, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . FORECLOSURE OF DWELLING UNIT

§521-A Notice of foreclosure; foreclosure sale. (a) Before the commencement of a tenancy, the landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall disclose to the tenant in writing if the dwelling unit being rented is the subject of a pending foreclosure action pursuant to chapter 667. If the dwelling unit is subject to a pending foreclosure action, the landlord or authorized person shall provide the tenant with a copy of:

- (1) The decree of foreclosure pursuant to section 667-1;

(2) Notice of foreclosure pursuant to section 667-5; or

(3) Notice of default pursuant to section 667-22,

together with a written notice substantially in the following form:

"As is set forth in the attached notice, this property is undergoing foreclosure. For more information on this action, you should contact the mortgagee, attorney of the mortgagee, or person responsible for issuing the attached notice

A sale at auction may or may not occur as a result of this foreclosure. Currently, the sale of this property has been set for _____ (time, date, and place) or no date for sale of this property has been established. You will receive written notice of the sale at least thirty days before it takes place.

If there is a sale of this property at auction, the following will occur:

If you entered into your rental agreement before _____ (date the foreclosure action was initiated), your current rental agreement shall remain in effect after the purchase, however the new owner is not required to renew the agreement after it expires.

If you entered into your rental agreement after _____ (date the foreclosure action was initiated) and the agreement included a notice of the foreclosure, your rental agreement will become a month-to-month rental agreement on the date a court approves the sale. The new owner may offer to honor your current rental agreement but is not required to do so. You may accept or reject any such offer.

If you entered into your rental agreement after _____ (date the foreclosure action was initiated) and the agreement did not include a notice of the foreclosure, within fourteen days after purchasing the home, the new owner must give you a written offer to honor your current rental agreement. If you do not accept that offer, your rental agreement will become a month-to-month agreement.

During the pendency of the sale, rent shall be paid to the owner with whom you have the rental agreement. Following the sale, both the owner and the new owner shall provide notice to you as to who and where your rent shall be directed. Your security deposit shall be transferred from the owner to the new owner.

Note: With a month-to-month rental agreement, pursuant to Chapter 521, the landlord may terminate the agreement by providing written notice of termination to the tenant at least forty-five days prior to the date of termination and the tenant may terminate the agreement by providing written notice of termination to the landlord at least thirty days prior to the date of termination."

(b) At least thirty days prior to a foreclosure sale, the landlord shall provide to the tenant a copy of the notice of foreclosure sale pursuant to part I of chapter 667 or public notice of public sale pursuant to section 667-27.

§521-B Leases, Foreclosure sale. (a) Except as provided in this section, any rental agreement for a residential property that is the subject of a foreclosure action shall remain in effect upon the approval of a sale at auction by a court pursuant to part I of chapter 667 or the recordation of the affidavit and conveyance document pursuant to section 667-33.

(b) If a tenant entered into a rental agreement after foreclosure begins and the tenant was not provided the notice of a foreclosure action or notice of sale as required by section 521-A, an owner who purchases the property at auction, within fourteen days after that purchase is concluded with the issuance of a court order pursuant to part I of chapter 667 or recordation of the affidavit and conveyance document pursuant to section 667-33, shall offer to honor the existing rental agreement. If the tenant does not accept that offer within fourteen days, the rental agreement shall convert to a month-to-month rental agreement.

§521-C Payment of Rent. (a) During the pendency of a sale, rent will continue to be paid to the landlord with whom the tenant has the lease.

(b) Upon the approval of a sale at auction by a court pursuant to part I of chapter 667 or the recordation of the affidavit and conveyance document pursuant to section 667-33, if the tenant is to remain in the property, notice shall be provided to the tenant by both the landlord and new owner as to who and where the rent shall be directed to.

§521-D Security Deposit. Upon notice of approval of a sale at auction by a court pursuant to part I of chapter 667 or the recordation of the affidavit and conveyance document pursuant to section 667-33, if the tenant is to remain in the property, the owner shall transfer to the new owner the security deposit previously paid by the tenant; if the security deposit is not transferred the tenant may use the previously paid security deposit as a credit toward one month's rent.

§521-E Remedies. If a landlord or a successor in interest either fails to provide the written notices as required by section 521-A, fails to honor a rental agreement as required by section 521-B; or fails to provide notice to the tenant as to whom rent shall be directed to as required by section 521-C, or if a landlord fails to transfer the tenant's security deposit as required by section 521-D, a tenant may recover, in addition to any other remedy under law:

(1) The greater of the actual damages or one month's rent plus the security deposit amount and reasonable attorney's fees; or

(2) Obtain injunctive relief to enforce the rental agreement, or both."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2009.

HAWAII FINANCIAL SERVICES ASSOCIATION

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February 17, 2009

Senator Rosalyn H. Baker, Chair
and members of the Senate Committee on Commerce and Consumer Protection
Senator Suzanne Chun Oakland, Chair
and members of the Senate Committee on Human Services
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 1068 (Foreclosures)**
Hearing Date/Time: Tuesday, February 17, 2009, 1:15 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 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 a foreclosing lender to give notice to tenants of rental housing units facing foreclosure before tenant may be served with an eviction notice. It requires landlords to give notice of pending foreclosure to tenants of dwelling units. It also provides remedies for tenants who do not receive the notices required by this Bill.

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. It is important that a residential tenant know if his or her rental of a real property will be adversely affected by a foreclosure action against the owner/landlord's interest in that property. The tenant also needs to be given adequate notice before being required to vacate the property.

2. This Bill requires the foreclosing lender to give the tenant notice of a foreclosure 3 days before the commencement of an action for ejectment or summary possession. However, the foreclosing lender is not always the party who purchases the foreclosed property. Also, the foreclosing lender would necessarily have prior notice of the actions of the new owner of the foreclosed property concerning any subsequent ejectment or summary possession action.

We recommend instead that this Bill require the new owner who purchases the real property from a foreclosure sale to give the tenant adequate notice before the commencement of an action for ejectment or summary possession. We do not believe that 3 days notice is adequate notice.

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



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Presentation to the Senate Committee on
Human Services and Committee on
Commerce and Consumer Protection
Tuesday, February 17, 2009, at 1:15PM

Testimony for SB 1068 Relating to Foreclosures

TO: The Honorable Suzanne Chun Oakland, Chair
The Honorable Les Ihara, Jr., Vice Chair
Members of the Senate Committee on Human Services

TO: The Honorable Rosalyn H. Baker, Chair
The Honorable David Y. Ige, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection

My name is Neal Okabayashi and I testify for the Hawaii Bankers Association in opposition to section 2 of SB 1068. While the intent of this bill is laudable, the consequences will be harmful to the people this bill is intended to help.

Under new subsection (b) of section 667-5.5, a person who is foreclosing on a property occupied as a dwelling unit must notify the tenant of the pending foreclosure at least three days before starting an action for ejectment or summary possession. There is a certain incongruity in the language because a foreclosing person is not able to file a summary possession action; only the person holding title to the property (the landlord) or a receiver may do so. Thus this provision should be eliminated.

I also note that the definition of "tenant" is taken from the Landlord Tenant Code ("Code") and while the definition is technically correct, it is also misleading at the same time because it fails to account for tenants who are not subject to the Code under section 521-7. In some cases, there will be no foreclosure (e.g., a government owned housing facility) but in some cases, it could so if the Committees will pass this bill, it should be amended by inserting on page 4, line 11, after "agreement" the following: ". . . except for a dwelling unit not subject to chapter 521, Hawaii Revised Statutes".



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February 16, 2009

The Honorable Suzanne Chun Oakland, Chair

Senate Committee on Human Services

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce & Consumer Protection

State Capitol, Room 016

Honolulu, Hawaii 96813

RE: S.B. 1068 Relating to Foreclosures

Hearing date: Tuesday, February 17, 2009 @ 1:15 p.m.

Aloha Chair Chun Oakland, Chair Baker and Members of the Joint Committees:

I am Mihoko Ito, attorney with Goodwill Anderson Quinn & Stifel, here to testify on behalf of the Hawai'i Association of REALTORS® (HAR) and its 9,600 members in Hawai'i. HAR **opposes Section 1 of S.B. 1068**, which requires landlords to give notice of pending foreclosure to tenants of dwelling units, within 3 days of the date that foreclosure proceedings have commenced.

HAR feels this bill places an unfair burden on property managers, who may not be aware of nor involved in foreclosure proceedings. Typically, when a foreclosure proceeding is initiated, the lender or lien holders send notice to the address of the primary owner's residence. If the owner does not contact the property manager, it would be unfair for the property manager to be subject to the notice requirements contemplated in S.B. 1068.

If the Committee is inclined to pass this bill, HAR requests that an effective date of November 1, 2009 be inserted so that we may review and revise our form Rental Agreement accordingly.

Mahalo for the opportunity to testify.