

HB1960



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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

TWENTY-FIFTH STATE LEGISLATURE
Regular Session 2010

Wednesday, February 3, 2010
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 1960 -- RELATING TO MORTGAGE
FORECLOSURES.**

TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to comment on House Bill No. 1960, Relating to Mortgage Foreclosures. My name is Stephen Levins, and I am the Executive Director of the Department's Office of Consumer Protection ("OCP").

House Bill No. 1960 proposes to require the mortgagee in an alternate power of sale foreclosure procedure to attach a copy of the original, signed mortgage agreements and any amendments to the notice of default. Currently, there is no such requirement. One of the benefits of this proposal is that the mortgagor would be assured

of possessing the full mortgage contract that he or she is being accused of breaching. Although in most instances mortgagors probably would have had this information prior to the initiation of the foreclosure proceedings, there may be instances in which it can not be located, especially if the documents have been lost, misplaced or destroyed. Under these circumstances it would be particularly beneficial to the mortgagor to be provided with copies.

Thank you for this opportunity to testify on House Bill No. 1960. I will be happy to answer any questions that the Committee members may have.

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SOCIETY OF HAWAII

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Executive Director

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

Hearing : Monday, February 3, 2010, 2:00 p.m.
State Capitol, Conference Room 325

IN SUPPORT OF HB 1960

Chair and Members of the Committee:

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, other low and moderate income families who are consumers and families facing default and foreclosure on their homes. We are testifying in support of HB 1960 as it may 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, what to do if you are in danger of losing your home through foreclosure and issues relating to predatory mortgage lending.

HB 1960 seeks to require that a mortgagee in a non-judicial, power of sale foreclosure attach a copy of the original, signed mortgage agreement and any amendments thereto to the notice of default.

Requiring a copy of the mortgage documents and related amendments will only serve to clarify who actually possesses the right to foreclose and may make the power of sale foreclosure process more efficient. In some cases, a homeowner is foreclosed upon by a mortgagee who does not in fact hold the right to foreclose. In other cases mortgages have been sold and resold so many times that is unclear as to who actually has the right to foreclose on the property. By requiring the attachment of a copy of the original mortgage documents and any amendments, homeowners will know upfront who has the right and ability to foreclose on their homes and will prevent situations where the incorrect party is

foreclosing on a home. In turn this requirement will streamline the non-judicial foreclosure process and eliminate the need for so-called produce the note litigation.

Practically speaking, it makes sense to require that a mortgagee seeking to foreclose on someone's home provide the correct documentation that they actually have the right to foreclose.

The Legal Aid Society of Hawaii supports the bill, and its efforts to protect the consumers in the State of Hawaii.

Conclusion:

We appreciate these committees' recognition of the need to protect consumers in the State of Hawaii. HB 1960 attempts to strengthen protections for consumers by requiring mortgage lenders to attach a copy of the original mortgage documents and related amendments to the notice of default. We support HB 1960 its attempts to protect homeowners in the State of Hawaii. Thank you for the opportunity to testify.



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Presentation to the House Committee on Consumer Protection & Commerce

Wednesday, February 3, 2010, at 2:00 pm, Conf Rm 325

Testimony for HB 1960 Relating to Mortgage Foreclosures

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

My name is Neal Okabayashi for the Hawaii Bankers Association. We oppose HB 1960 which is another well-intended bill which would hurt homeowners.

The bill would require a lender to include a plethora of documents with their notice of default, and in our experience, the more paper you send a borrower, the more likely the borrower will not read it or miss the essential information which is the action that the borrower must undertake to cure the default.

We also note that this bill assumes certain facts about loan documentation which is incorrect. Many lenders document residential mortgage loans on Fannie Mae or Freddie Mac forms and those forms provide for only the borrower's signature. Thus, the requirement that we provide a copy of loan documents signed by both the mortgagor and mortgagee is inconsistent with marketplace realities, and thus renders the requirement moot.

Most importantly by requiring copies of all written agreements which modify a note, passage of this bill would hinder loan modification programs to help homeowners. We submit that this Committee should support efforts by lenders to help homeowners rather than by passing well-meaning legislation which has the opposite effect.

Not all loan modification programs are reduced to writing. Sometimes, the agreement can be oral and informal. For example, if a borrower says I can pay you in full in two months, we sometimes note that in our files rather than drafting a written agreement, or one drafted by a lawyer which only hurts the borrower because of costs. Basically, the foregoing example is a two month deferral of due dates in the promissory note. If we had

to reduce such an informal agreement to writing, that would be a disincentive to loan modification programs.

The reality is that a vast majority of foreclosures result from unemployment or underemployment (for example, loss of second job). It is best to let banks have the flexibility to help borrowers because we have the motivation and financial expertise to help.

HAWAII FINANCIAL SERVICES ASSOCIATION

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February 3, 2010

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

Re: **House Bill 1960 (Foreclosure)**
Hearing Date/Time: Wednesday, February 3, 2010, 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. Financial services loan companies make mortgage loans and other loans.

The HFSA **opposes** this Bill as drafted. This testimony is based, in part, on my experience as an attorney who has actively done foreclosures for 32 years since 1978.

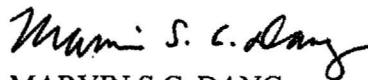
The purpose of this Bill is to require the mortgagee in an alternate power of sale foreclosure procedure to attach a copy of the original, signed mortgage agreement and any amendments thereto to the notice of default.

1. This Bill states that the mortgage has to be signed by the mortgagor (borrower) and the mortgagee (lender). In actuality, only the mortgagor signs the mortgage.

2. The borrower/mortgagor already gets a copy of the loan documents after the loan is made. Additional copies of the loan documents should only be given on the borrower's request, and not automatically with the notice of default.

3. This Bill would make changes to Part II of Chapter 667 of the Hawaii Revised Statutes ("HRS"). Part II is the "Alternate Power of Sale Foreclosure Process". I was involved in drafting Part II during the 1997 and 1998 legislative sessions. However, before the legislation passed in 1998, the legislature made certain changes to Part II that made it essentially unusable and unworkable. As a result, no lender today uses the Part II alternate power of sale process which are in HRS Sections 667-21 through 667-51. Instead, all non-judicial foreclosures are initiated under the provisions in HRS Sections 667-5 through 667-10, much of which was first enacted 136 years ago in 1874.

We are willing to work with your Committee to revise this Bill if necessary. Thank you.



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

(MSCD/hfsa)

HOUSE OF REPRESENTATIVES
COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep.Robert N. Herkes, Chair

Rep.Glenn Wakai, Vice Chair

Wednesday, February 3, 2010

2:00 p.m., Conf.Rm.325, State Capitol

Testimony in Support of HB 1960

Mr.Chair, distinguished Committee members and others:

I am Keoni Kealoha Agard, a concerned citizen, and an attorney licensed to practice law in the State of Hawaii. I testify today on behalf of dozens of individuals who have been personally victimized by predatory lending practices by lenders here and on the Mainland.

Chapter 667, HRS provides a fast track to lenders to bring a non judicial foreclosure action against borrowers without any court intervention whatsoever and without the procedural safeguards that are normally provided to any borrower in a courtroom, or a judicial proceeding. One potential safeguard to assist borrowers in this current economic crisis is to make a sincere effort to begin to level the playing field and to provide some protection to borrowers in this financially strapped economy that we all face today.

Court decisions on the Mainland have determined that unless the original is produced, the lender(s) cannot move to foreclose in the absence of same. Courts have reasoned that because the loss of one's personal residence is such a serious matter, that before it takes place, the lender should at the least be required to show the "original" note and mortgage to prove it is the true

holder of the mortgage and note, thus has proper authority and standing to foreclose. Under Hawaii law, there is no such requirement on the books, at this time.

However, this bill makes it a requirement for lender(s) and their successors to attach the "original" signed mortgage agreement and any subsequent mortgage agreements, notes, or documents that amended or altered the same by the signatories. Without this requirement lenders can wrongfully foreclose on unsuspecting homeowners in Hawaii. Without this requirement, in some instances, lenders can foreclose on Hawaii homeowners without having proper authority to do so. This current condition leaves too much room for potential abuse. Instead, protections should be afforded to innocent consumers, Hawaii homeowners. If passed HB 1960 will provide a much needed safeguard to borrowers who are fighting to preserve and protect their homes from potential loss forever.

In 2009, there was a reported 10,000 foreclosures in Hawaii, with those numbers expected to increase substantially in 2010. If you or others have lost their home through foreclosure, you know what a devastating experience that is. As responsible legislators, it is imperative to take steps necessary to provide safeguards to consumers and homeowners who desperately need your kokua. It is the right thing to do.

We thank you for this opportunity to provide testimony before your committee.

HB1960

From: Davelyn Aniu [davelynaniu@yahoo.com]
Sent: Sunday, January 31, 2010 8:57 AM
To: CPCtestimony
Cc: Davelyn Aniu
Subject: HB 1960

Davelyn Aniu- Hawaiian Alliance Affiliate
Committee on Consumer Protection & Commerce
Date: February 3, 2010
Time: 2:00pm

I have been with Hawaiian Alliance for 1 year and have seen the foreclosure wave on the Big Island. It is not a good feeling to see everyone especially hawaiian people suffer and lose their homes. Hawaiian Alliance specializes in helping people stay in their homes we do a forensic audit which requires the mortgage company to submit an ORIGINAL NOTE not a copy. We need to see the original note to see if the mortgage company owns the home. Not a scanned copy. I am proposing that the Original note is submitted not a copy of the note. But since the bank owns the loan they should have the original note.

From: Davelyn Aniu [davelynaniu@yahoo.com]
Sent: Sunday, January 31, 2010 9:04 AM
To: CPCtestimony
Cc: Davelyn Aniu
Subject: HB 1960

Davelyn Aniu- Client Hawaiian Alliance
Committee on Consumer Protection & Commerce
Date: February 3, 2010
Time: 2:00pm

It is not a nice feeling to lose your home and get a foreclosure notice served to you. I am having a hard time but if it wasn't for Hawaiian Alliance. I wouldn't be in my home now. The audit from Hawaiian Alliance SAVED my home. I am still in process with the Hawaiian Alliance attorneys but at least I am Still in my home. I propose a original note is needed to make sure the right mortgage company owns your home. NOT A SCANNED COPY....

From: Davelyn Aniu [davelynaniu@yahoo.com]
Sent: Monday, February 01, 2010 9:10 PM
To: CPCtestimony
Subject: HP 1960

John Aniu- Client of Hawaiian Alliance
Committee of Commerce & Consumer Protection
Date: Feb. 3, 2010
HB1960

Our home was foreclosed but the forensic audit helped stop the foreclosure. I propose that the original note needs to be present,
Mahalo

wakai2-Daniel

From: Lori Enriquez [queenofbenefits@gmail.com]
Sent: Sunday, January 31, 2010 6:55 PM
To: CPCtestimony
Subject: testimony on HB 1960

Aloha!

Testimony on HB 1960

Lori Enriquez
PO Box 1518
Pahoa, HI 96778

Aloha! My name is Lori Enriquez and this subject is very personal to me as I was in foreclosure not to long ago due to unforeseen circumstances. This bill should read the original signed note, not signed mortgage agreement. With out the original signed note the mortgage companies have no standing to foreclose in non-judicial foreclosures, but they do it all the time. Here and across the country we have had to deal with a company called MERS.when having foreclosures pending on our properties. They have been found to have no standing by four State supreme court rulings. During my mortgage difficulties I had a forensic loan audit done by Hawaiian Alliance and it exposed numerous federal violations on my loan. A qualified written request was sent to the lender under RESPA code and in the response I recieved back, documentation of the note transferring many times and a mortgage company, that I had never heard of was the supposed owner of the note. Because my loan has been securitized and sold many times, I do not even know who the note holder is and I do not know if the servicing company has the right to foreclose on me. (the servicer tried to foreclose on me.) It is very important that when a foreclosure notice is served that it is authenticated that the person who has the original note is the party that is foreclosing. Other wise it is a fraud foreclosure and our Hawaii families do not even know they are victims of a fraudulent act against them. Please stop the bleeding of our families here in hawaii . If you are interested I have attached a case about MERS <http://www.webofdebt.com/articles/mers.php>

Mahalo!

Wakai2 P

From: [REDACTED]
Sent: Sunday, January 31, 2010 9:12 AM
To: CPCtestimony
Cc: Davelyn Aniu
Subject: HB 1960

Linda Molina(Kupuna)- Client Hawaiian Alliance
Committee on Consumer Protection & Commerce
Date: February 3, 2010
Time: 2:00pm

I am a client of Hawaiian Alliance who helped me with my foreclosure. My auction was held on Jan. 15, 2010. The Attorney filed a federal complaint to stop the foreclosure so we can letigate with the bank. Guess what the foreclosure was stoped/postponed till February 19, 2010. But I am still in my house. We are asking for a Original note. I propose you ask the mortgage company for the original note. As a kupuna it is not a good feeling to get served with a foreclosure notice. All I want is to lower my mortgage payments not lose my home....
Mahalo

Wakai2 P

From: [REDACTED]
Sent: Monday, February 01, 2010 9:44 PM
To: CPCtestimony
Subject: HB 1960

Linda Molina- Hawaiian Alliance Client
I am a client of Hawaiian Alliance. I propose the original note be send with the foreclosure documents.

Testimony for CPC 2/3/2010 2:00:00 PM HB1960

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: **Donna R Walker**

Organization: Individual

Address: 13-3546 Luana St Pahoa, HI 96778

Phone: 808-938-7074

E-mail: jenizaryuhm1@aol.com

Submitted on: 1/31/2010

Comments:

To the House of Representatives;

I am submitting testimony on behalf of HB 1960. As we have personally experienced a foreclosure in the recent past, I am in support of this bill. I have phone records that detail how many times I tried to contact the particular lender and asked for original documents to where we could determine what our rights were. Before we knew it we had Intent to Foreclose documents served personally by a sheriff, mailed by certified mail, and regular mail. At that point we gave up; unfortunately we weren't financially able to afford to hire an attorney to assist us in this matter on top of caring for my disabled father and mother. Our government needs to act on how we the tax payers have been wronged by the very financial institutions that received tax dollars to correct what we all know is the ultimate unprecedented Wall Street crash and resulting economic disaster.

Presently, we are fighting to save my mother's home and again, we are dealing with an out-of-state lender who can't provide original documents. This is unacceptable and must be stopped. We are working with a local alliance to get the legal advice that was not available during our disaster.

Please seriously consider your constituents when making your decision by providing a yes vote. For once I pray you our representatives support the tax payers and not special interests. Before you know it we will have a greater homeless population with empty homes everywhere.