

HAWAII FINANCIAL SERVICES ASSOCIATION

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February 29, 2012

Rep. Marcus R. Oshiro, Chair
and members of the House Committee on Finance
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 2018, HD 1 (Foreclosures)**
Hearing Date/Time: Wednesday, February 29, 2012, 10:00 a.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 as drafted.

The purposes of this Bill are to: (a) repeal the provision automatically making all violations of the mortgage foreclosure law an unfair or deceptive act or practice, and (b) following the expiration of the Mortgage Foreclosure Dispute Resolution program in 2014, specify certain foreclosure violations as unfair or deceptive acts or practices, limit the types of violations that may void a title transfer of foreclosed property, and establish a time limit for filing actions to void title transfers of foreclosed property.

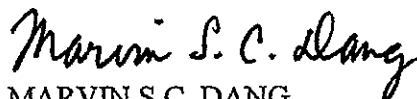
A provision in Act 48 (2011) is HRS Sec. 667-60 (unfair or deceptive act or practice). It is cited as one of various reasons why lenders have elected to pursue judicial foreclosures, rather than non-judicial foreclosures, after May 5, 2011 (the effective date of Act 48).

Section 2 of this Bill is a step in the right direction to address the problematic wording in HRS Sec. 667-60. This Section repeals HRS Sec. 667-60. We support Section 2.

However, we recommend that Section 1 of this Bill be deleted. This Section provides that when the Mortgage Foreclosure Dispute Resolution Program expires in 2014, there would be certain foreclosure violations specified as unfair or deceptive acts or practices, there would be a limit on the types of violations that may void a title transfer of foreclosed property, and there would be a time limit for filing actions to void title transfers of foreclosed property.

Section 1 should be deleted because the repeal of HRS 667-60 (unfair or deceptive act or practice) should not be dependent on whether there is a Mortgage Foreclosure Dispute Resolution Program. This Section would permit a court action to be brought to void the transfer of title after a non-judicial foreclosure sale. The court action could be filed up to 180 days after the transfer of title. This provision will have the negative consequence of discouraging third parties from bidding at reasonable price levels at non-judicial foreclosure auctions.

Thank you for considering our testimony.



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Testimony to the House Committee on Finance
Wednesday, February 29, 2012

Testimony in Opposition to HB 2018 HD1, Relating to Foreclosures

To: The Honorable Marcus Oshiro, Chair
The Honorable Marilyn Lee, Vice-Chair
Members of the Committee on Finance

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 81 Hawaii credit unions, representing approximately 811,000 credit union members across the state. Approximately 60 of our credit unions write mortgage loans in the State of Hawaii. We are in opposition to HB 2018 HD1.

While the proposed changes to this bill are an improvement, we feel that lenders have always been subject to laws regarding Unfair and Deceptive Acts or Practices (UDAP) under Chapter 480, so this section is not necessary.

Many Hawaii credit unions are too small to survive even one successful attack under these UDAP provisions. Making virtually any technical and/or inadvertent mistake in the administration of a foreclosure an "unfair and deceptive act or practice" creates a risk that is extremely large for Hawaii's credit unions.

Thank you for the opportunity to present testimony.

Presentation to the Committee on Finance
Wednesday, February 29, 2012 at 10:00 a.m.
Testimony on HB 2018, HB1, HD1 Relating to Foreclosures

In Opposition

TO: Honorable Marcus R. Oshiro, Chair
Honorable Marilyn B. Lee, Vice Chair
Members of the Committee

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in opposition to HB 2018, HD1. HBA is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii.

This bill repeals the provision automatically making all violations of the mortgage foreclosure law an unfair or deceptive act or practice. Following the expiration of the mortgage foreclosure dispute resolution program in 2014, specifies certain foreclosure violations as unfair or deceptive acts or practices, limits the types of violations that may void a title transfer of foreclosed property, and establishes a time limit for filing actions to void title transfers of foreclosed property.

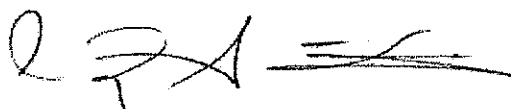
A major concern of Government Sponsored Enterprises (GSEs), such as Fannie Mae and Freddie Mac, with ACT 48 was section 667-60 covering Unfair or deceptive act or practice (UDAP). The previous version of this bill restates what is the present state of the law that troubled borrowers always have the right to bring up a UDAP violation use 480-2 as evidenced in the wording as follows:

"Nothing in this chapter shall be construed as preventing a mortgagor from asserting that a violation of this chapter [shall have committed] is an unfair or deceptive act or practice under section 480-2..."

If the Committee moves this bill forward, **we respectfully request the permanent repeal of section 667-60.**

We remain unsure if the GSEs and lenders would use the NJF process without further changes in other parts of Chapter 667.

Thank you for the opportunity to provide our testimony.



Gary Y. Fujitani
Executive Director



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The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair
House Committee on Finance

Hearing : Wednesday, February 29, 2012, 10:00 a.m.
State Capitol, Conference Room 308

In opposition to HB 2018, HD1 Relating to Foreclosures

Chair and Members of the Committees:

My name is Madeleine Young, representing the Legal Aid Society of Hawai'i ("Legal Aid"). 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 and families facing default and foreclosure on their homes. I provide bankruptcy services as a staff attorney in Legal Aid's Consumer Unit. Specifically, I teach a clinic to show individual consumer debtors how to prepare and file their own petition for chapter 7 bankruptcy relief, as well as provide full representation to Legal Aid clients in bankruptcy matters. I give counsel and advice to clients on protected income sources, exempt assets, and settlement options regarding their consumer debts. I also provide legal services to clients regarding mortgage default and foreclosure matters, wage garnishment avoidance, fair debt collection practices, debt collection defense, as well as student loan, tax debt, and other consumer debt problems.

We are testifying in opposition to HB 2018, HD1 as it would seriously weaken protections for mortgage consumers in the State of Hawai'i.

HB 2018, HD1 would repeal the provision of § 667-60, HRS, declaring that any violation of Chapter 667 is an unfair or deceptive act or practice ("UDAP") under § 480-2, HRS. Lenders argue that HB 2018, HD1 would remove what they say is a chilling deterrent to using the mortgage foreclosure dispute resolution program established under Part V of Chapter 667. HB 2018, HD1 would also establish a time limit for filing actions to void title transfers of foreclosed properties.

In response to lenders' concerns, 13 of 17 voting members of the Mortgage Foreclosure Task Force ("Task Force") carefully crafted a compromise regarding the UDAP provisions. The

Task Force's proposed subsections (a) and (b) of § 667-60 would expressly limit foreclosing mortgagees' UDAP liability only to specifically delineated Chapter 667 violations. Furthermore, proposed subsection (c) would limit to 180 days the time for filing a court action seeking to void the wrongful transfer of title in a nonjudicial foreclosure. These recommended revisions to § 667-60 address lenders' stated liability concerns but still preserve the most important homeowner protections.

HB 2018, HD1 would not only remove important UDAP protections for mortgage consumers, it would also greatly reduce the time now available for these consumers to file a court action to void the wrongful transfer of title in a nonjudicial foreclosure. Borrower representatives on the Task Force reluctantly agreed to a 180-day limit solely as a tradeoff for specifically retaining UDAP liability for the serious chapter violations listed in Task Force subsections (a) and (b). Repealing these provisions would make it more difficult for homeowners to establish foreclosure-related UDAP violations, and would severely restrict the time homeowners have to seek relief in court to save their homes by challenging wrongful foreclosures.

Conclusion:

For the above reasons, we respectfully request that HB 2018, HD1 receive no further consideration and that you instead approve the Task Force's recommended revisions to § 667-60, which reflect substantial compromise and balance the legitimate interests of homeowners and lenders alike. Thank you for the opportunity to testify.

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House Committee on Finance

Hearing: Wednesday, February 29, 2012, 10:00 a.m.
Conference Room 308, State Capitol, 415 South Beretania Street

IN OPPOSITION TO HB 2018, HD1

Chair Oshiro, Vice Chair Lee, and Committee Members:

My name is George Zweibel. I am a Hawaii Island attorney and have represented mortgage borrowers living on Oahu, Hawaii, Kauai and Maui for many years. Earlier, I was a regional director and staff attorney at the Federal Trade Commission enforcing consumer credit laws as well as a legal aid consumer lawyer. I have served on the Legislature's Mortgage Foreclosure Task Force ("Task Force") since its inception in 2010, although the views I express here are my own and not necessarily those of the Task Force.

I strongly oppose HB 2018, HD1 because it would drastically reduce existing homeowner rights and protections and encourage widespread noncompliance with chapter 667.

HB 2018, HD1 would repeal the provision of § 667-60 declaring that any violation of chapter 667 is an unfair or deceptive act or practice ("UDAP") under § 480-2. Effective October 14, 2014, it would restore more limited UDAP liability and establish a time limit for filing actions to void title transfers of foreclosed properties.

HB 2018, HD1 seeks to eliminate lenders' claimed reason for their decision to boycott nonjudicial foreclosures – potential liability for "trivial" violations of chapter 667 – so they will reconsider and participate in Act 48 dispute resolution. However, in attempting to solve one problem, HB 2018, HD1 would create a much bigger one.

In response to lenders' professed liability concerns, the Task Force painstakingly crafted a compromise that was approved by 13 of 17 voting members. Specifically, the Task Force's proposed subsections (a) and (b) of § 667-60 would limit foreclosing mortgagees' UDAP liability to listed, serious chapter 667 violations. To get Task Force approval, another major concession to

lenders was added. Proposed subsection (c) would additionally limit to 180 days the time for filing a court action seeking to void the wrongful transfer of title in a nonjudicial foreclosure. Read together, the Task Force's recommended revisions to § 667-60 address lenders' stated liability concerns but still preserve the most important homeowner protections. Although HB 2018, HD1 would implement the Task Force UDAP compromise, it would not do so until after the dispute resolution program is currently scheduled to end.¹

Delaying implementation of the revised § 667-60 until after the dispute resolution program ends is self defeating. Presumably, the rationale for sunseting the program was an assumption that the foreclosure crisis would abate by then. Thus, the intended protection afforded by retaining UDAP liability for the most serious chapter 667 violations would not be available until *after* the time when they are needed most has passed. Nor would they ever apply to violations related to dispute resolution, which HB 2018, HD1 specifically seeks to encourage.

Moreover, the Task Force UDAP compromise specifically sought to address lenders' stated concerns, thereby removing their claimed reason for not allowing the dispute resolution program to operate. Delaying the effective date of the compromise until after the dispute resolution ends eliminates the reason for the compromise. Arguably, full restoration of the current version of § 667-60 would be much more appropriate than the "compromise" version now set forth in Section One of HB 2018, HD1.

For the above reasons, I respectfully request that HB 2018 receive no further consideration and that the Finance Committee instead approve the Task Force's recommended revisions to § 667-60, which reflect substantial compromise and balance the legitimate interests of homeowners and lenders alike.

Thank you for the opportunity to testify on this important issue.

¹ In my separate testimony on H.B. No. 1875, HD1 I request that Act 48's sunset provision relating to dispute resolution be repealed, because (1) mortgagees' decision to stop doing nonjudicial foreclosures will reduce to considerably less than the intended three years the period during which dispute resolution is actually available, and (2) by facilitating negotiations between owner-occupants and mortgagees to determine whether a loan modification or other agreement avoiding nonjudicial foreclosure is possible, the dispute resolution program will benefit homeowners and loan holders alike for as long as it is available.