Collection Law Section

Reply to: **KARYN A. DOI, CHAIR**
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February 17, 2026

Re: H.B. 2612 (Relating To Mortgages)
Hearing: February 18, 2026, 2:00 p.m.
Testimony in Opposition

Dear Representative Scot Matayoshi, Chair, Representative Tina Nakada Grandinetti, Vice Chair, and Committee Members:

This testimony is submitted on behalf of the Collection Law Section ("CLS") of the Hawaii State Bar Association. [1]

The CLS **opposes** H.B. 2612.

H.B. 2612 is an attempt to circumvent two recent decisions by the Hawaii Supreme Court ("HSC") specifically finding that the applicable statute of limitations for foreclosures is 20 years. In both Bank of New York Mellon as Trustee for Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-11 v. White, 156 Haw. 246 (2025) and Deutsche Bank Trust Company Americas as Trustee for Residential Accredit Loans, Inc. Mortgage Asset-Backed Pass-Through Certificates, Series 2005-Q01 v. Szymanski, 2025 WL 2319603 (2025) the HSC specifically found that the applicable statute of limitations for mortgage foreclosure actions is 20 years pursuant to Section 657-31 of the Hawaii Revised Statutes ("HRS"). In both of those cases, the petitioners argued that the six-year statute of limitations set forth in HRS § 657-1 should apply to mortgage foreclosure actions. The HSC

[1] *The comments and recommendations submitted reflect the viewpoint of the Collection Law Section of the Hawaii State Bar Association only. This viewpoint has not been reviewed or approved by the HSBA Board of Directors.*

disagreed and found that HRS § 657-1 only applied to debt recovery actions founded on a contract.

The proposed revision to HRS § 506-1 set forth in H.B. 2612 would reduce the statute of limitations for mortgage foreclosure actions to 6 years by preventing a foreclosing mortgagee from initiating a foreclosure action when the time to commence suit on the promissory note, which the mortgage secures, has expired. While the six-year statute of limitations set forth in HRS § 657-1 may apply to the promissory note the mortgage secures, the HSC and the Intermediate Court of Appeals of the State of Hawaii ("ICA") have found, with good reason, that there are different limitation periods for an action to recover a money judgment on a promissory note and to foreclose on the property that acts as security for the debt. Part II of Chapter 657 entitled "Real Actions", specifically HRS § 657-31, states that "[n]o person shall commence an action to recover possession of any lands, or make any entry thereon, unless within twenty years after the right to bring the action first accrued." In White, the HSC pointed out that, unlike an action to recover a money judgment on a debt, a foreclosure action is a legal proceeding to gain title or force a sale of the property for satisfaction of a note that is in default and secured by a lien on the subject property. Because a foreclosure action is an action against the land, the applicable statute of limitations is the one that applies to real actions, which would be HRS § 657-31. In evaluating whether the six-year statute of limitations set forth in HRS § 657-1 should apply, the HSC found that promissory notes and mortgages are two distinct securities. While a promissory note is a promise to pay a monetary obligation, a mortgage is a conveyance of an interest in real property that is given as security for the payment of the promissory note. The HSC concluded that "[b]ecause a mortgage is a conveyance of a real property interest, the statute of limitations on actions to 'recover possession of any lands, or make any entry thereon' is most fitting." Id. at 249. According to the HSC, this is because the interest in real property (and recovery thereof), rather than the note itself, drives the action. The HSC specifically pointed out that an action to foreclose is not barred when the time to recover a money judgment on the promissory note has already expired. H.B. 2612 would directly contradict this holding by the HSC.

The HSC's rulings in White and Szymanski did not change the applicable statute of limitations for foreclosure actions, but simply upheld what the law had been going as far back as 1904. In both White and Szymanski the HSC made reference to Hilo v. Liliuokalani, 15 Haw. 507 (Haw. Terr. 1904) and Kipahulu Sugar Co. v Nakula, 20 Haw. 620 (Haw. Terr. 1911) which both held that the statute of limitations is the "period applicable to real actions." The ICA has consistently applied the twenty-year statute of limitations for foreclosure actions as well. As cited in White, the ICA, in Bowler v. Christiana Tr., a Div. of Wilmington Sav. Fund Soc'y, FSB, 2018 WL 4659562 (Haw. App. 2018), found that a mortgage is a conveyance of a real property interest, which allows the mortgagee to sell and take possession of the property. The

ICA went on to state that this is what makes the statute of limitations on actions "to recover possession of any lands, or make any entry thereon," under HRS § 657-31 most analogous to a foreclosure action, as opposed to an action to recover a debt. The ICA also pointed out that a mortgagee may foreclose on the mortgage after the statute of limitations has run on an action to recover on the underlying promissory note. Again, H.B. 2612, if it were to become law, would directly contradict the ICA's holding in Bowler by making it impossible for a foreclosing mortgagee to prosecute a foreclosure action if the six-year statute of limitations to recover on the promissory note pursuant to HRS § 657-1 had already expired.

The applicable statute of limitations for mortgage foreclosure actions is 20 years and that has been the case for over 100 years. Countless mortgage contracts are entered into in the State of Hawaii with the understanding that, should the borrower default, the mortgagee will have 20 years from the date of the default to commence a foreclosure action. Any change to that precedent, especially if it were retroactive, would significantly impair the ability of those who seek loans for the purchase of real property to obtain financing and will undoubtedly reduce the pool of lenders available to those who wish to purchase a home.

Maintaining a 20-year statute of limitations for mortgage foreclosure actions does not leave borrowers without defenses related to the time that has elapsed between the default and the commencement of the foreclosure action. If a borrower does feel that the borrower has been prejudiced by any delay on the part of the foreclosing mortgagee in commencing its foreclosure action, the borrower is free to raise the defense of laches which would limit the foreclosing mortgagee's recovery where the foreclosing mortgage is guilty of unreasonable delay in pursuing its claim.

Lastly, maintaining a 20-year statute of limitations for foreclosure actions can benefit borrowers. Frequently borrowers attempt to engage in loss mitigation discussions with their lender to either modify their loan or find a way to reduce their debt. This process can take an extended period of time and if a lender is forced into filing a foreclosure action before it has had a chance to explore all the available loss mitigation options, borrowers will ultimately suffer.

For the reasons stated above, this measure should be deferred. Thank you for considering this testimony.

Sincerely,

/s/ Charles Prather

Charles Prather

The Collection Law Section

SanHi
GOVERNMENT STRATEGIES
A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 17, 2026

TO: Representative Scot Matayoshi, Chair
Representative Tina Grandinetti, Vice Chair
Committee on Consumer Protection & Commerce

FROM: Mihoko Ito / Tiffany Yajima

RE: **H.B. 2612 – Relating to Mortgages**
Hearing Date: Wednesday, February 18, 2026 at 2:00 p.m.
Conference Room: 329

Dear Chair Matayoshi, Vice Chair Grandinetti, and Members of the Committee:

We submit these **comments** on behalf of the Hawaii Bankers Association (HBA). HBA represents seven Hawai`i banks and one bank from the continent with branches in Hawai`i.

H.B. 2612 proposes to clarify that a mortgage does not exist independent of the debt it secures and therefore cannot be enforced separately from that debt.

While we appreciate the intent of this measure, we are concerned that H.B. 2612 may unintentionally introduce uncertainty into Hawaii's mortgage finance system. Existing Hawaii law recognizes the interdependent relationship between a mortgage and the underlying collateral. Redefining this relationship in statute risks creating ambiguity in several critical areas, including mortgage assignments, servicing transfers, secondary market transactions, and foreclosure processes.

Banks provide stable, predictable access to mortgage credit for Hawaii residents. Any statutory change that complicates the enforceability or transferability of mortgage interests could disrupt well-functioning lending practices, increase compliance burdens, and reduce the willingness of lenders and investors to participate in Hawaii's housing market.

Thank you for the opportunity to submit this testimony.

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

February 17, 2026

The Honorable Scot Z. Matayoshi, Chair
The Honorable Tina Nakada Grandinetti, Vice Chair
Members of the House Committee on Consumer Protection and Commerce

Hearing Date: February 18, 2026
Hearing Time: 2:00 pm
Hearing Place: Hawaii State Capitol, Conference Room 329

Re: HB 2612 Relating to Mortgages

I am Victor Brock, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. The members of the MBAH originate and service, or support the origination and servicing, of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation or rules, it is related only to mortgage lending and servicing.

The MBAH **opposes HB2612**. The Bill amends HRS 506-1 to include the following statement: "*A mortgage does not exist independent of the debt it secures* ***and shall not be independently enforceable from the debt***." While Hawaii courts have applied the "inseparability doctrine" which holds that mortgages cannot exist independently of the debts they secure, the promissory note underlying the mortgage lien is an independent contract and may be enforced separately from the mortgage. A creditor may elect to pursue separate remedies, including suing on the note for personal judgment, enforcing the mortgage lien through foreclosure, or pursuing both provided statutory authority is present. The mortgage and note are treated as distinct causes of action, and foreclosure does not merge or extinguish the debt itself. The mortgage lien continues until the debt is satisfied, and judgment debt does not bar a subsequent foreclosure action to enforce the lien. Therefore, HB2612 would alter the current mortgage statutory framework; create confusion as to the ability of a lender exercise rights under the promissory note while reserving rights under the mortgage, thereby forcing an election of remedies by the lender.

Thank you for the opportunity to present this testimony.
Victor Brock
Mortgage Bankers Association of Hawaii

Hawaii Credit Union League
Your Partner For Success
Unite for Good

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Testimony to the House Committee on Consumer Protection and Commerce
Thursday, February 18, 2026, 2:00 PM
Conference Room 329

LATE

To: The Honorable Scot Matayoshi, Chair
The Honorable Tina Nakada Grandinetti, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League (HCUL), the local trade association for 45 Hawaii credit unions, representing over 879,000 credit union members across the state.

HCUL offers the following testimony in opposition to HB 2612, Relating to Mortgages. This bill clarifies that a mortgage does not exist independent of the debt it secures and shall not be independently enforceable from the debt.

While we understand the intent of HB 2612 may be to clarify legal principles surrounding mortgage enforcement, we are concerned that the bill could create unintended consequences that negatively impact credit availability and legal certainty in Hawaii's housing finance market. Hawaii law already recognizes the relationship between a mortgage and the underlying debt. By attempting to redefine this relationship in statute, the bill may unintentionally create ambiguity regarding assignments, servicing transfers, secondary market transactions, and/or foreclosure proceedings.

Credit unions are not-for-profit, member-owned financial cooperatives. Our focus is on serving local communities. Policies that destabilize mortgage markets or increase compliance complexity could increase uncertainty in mortgage enforcement, in turn unintentionally restricting access to home loans for Hawaii residents.

Thank you for the opportunity to provide comments on this important issue.

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

February 18, 2026

Rep. Scot Z. Matayoshi, Chair
Rep. Tina Nakada Grandinetti, Vice Chair
and members of the House Committee on Consumer Protection & Commerce
Honolulu, Hawaii 96813

Re: **H.B. 2612 (Mortgages)**
Hearing Date/Time: Wednesday, February 18, 2026, 2:00 p.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**.

This Bill purports to clarify that a mortgage does not exist independent of the debt it secures and shall not be independently enforceable from the debt.

This Bill would amend Hawaii Revised Statutes §506-1 to add: "A mortgage does not exist independent of the debt it secures and shall not be independently enforceable from the debt."

With this Bill's seemingly simple amendment to HRS §506-1, this Bill, if enacted into law, will have negative ramifications.

For Hawaii mortgage foreclosure cases in the Circuit Courts, the promissory note (i.e., the debt contract) is subject to a 6-year statute of limitations in Hawaii Revised Statutes §657-1, while the mortgage lien is subject to a 20-year statute of limitations in HRS §657-31. The Hawaii law for the 20-year statute of limitations has been in existence for over 100 years.

This Bill is a veiled attempt to enable delinquent borrowers and others to use this Bill to assert in court that a mortgage lien expires when the debt action (i.e. the promissory note) becomes time-barred by the 6-year statute of limitations. They would argue that mortgage foreclosures in those situations should not be subject to the 20-year statute of limitations in HRS §657-31.

This Bill as drafted would circumvent HRS §657-31 and a unanimous opinion of the Hawaii State Supreme Court decision in 2025 [1] which was then followed by the Court's unanimous Summary Disposition Order in 2025. [2] The Court stated in both cases that the statute of limitations for mortgage foreclosure actions is 20 years per HRS Sec. 657-31.

The HFSA agrees with the Hawaii Supreme Court. Mortgage foreclosures are governed by the 20-year statute of limitations period.

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[1] Bank of New York Mellon, as Trustee for Certificateholders of CWABS, Inc. Asset-Backed Certificates, Series 2006-11 v. White, 156 Haw. 246, 563 P.3rd 629 (2025).

[2] Deutsche Bank Trust Company Americas as Trustee for Residential Accredit Loans, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2005-Q01 v. Szymanski, SCWC-21-0000438 (2025).

LATE

This Bill as drafted is bad public policy. If enacted, it would discard precedent and predictability. It would lead to uncertainty, confusion, enhanced litigation, increased attorneys' fees and costs, and lengthy delays. That would not be in the public interest.

The HFSA joins with the testimonies in opposition to this Bill submitted by the Collection Law Section of the Hawaii State Bar Association, the Hawaii Credit Union League, the Mortgage Bankers Association of Hawaii, and others.

Accordingly, the **HFSA urges your Committee to defer this Bill, i.e., not pass this Bill**.

Thank you for considering our testimony.

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

(MSCD/hfsa)

HB-2612
Submitted on: 2/15/2026 3:52:07 PM
Testimony for CPC on 2/18/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lisa Seikai Darcy	Individual	Support	Written Testimony Only

Comments:

Support HB 2612

Aloha Chair Matayoshi, Vice Chair Grandinetti and committee members,

My name is Lisa Darcy and I reside in Kula, Maui, HI and am writing in support of HB 2612. Mahalo for your time and willingness to make legislative changes which update the communities needs and do not cling to past decisions because, "that's the way we do it".

We must adapt to current community needs and do what is necessary to keep every community member housed. Stated in earlier filings, this is not just about papers, it is about anchoring families to land which holds generational ties and cultural linking. Making the foreclosure timeline longer contributes to neighborhood blight, “zombie” properties, and erosion of county tax bases. I am grateful you are considering the impact of these changes and appreciate all you do to support housing needs.

Mahalo plenty,

Lisa Darcy

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February 16, 2026

Testimony to the House Committee on Consumer Protection, Thirty-Third Legislature, State of Hawai'i in Support of H.B. No. 2612.

Thank you for hearing H.B. No. 2612. This bill is needed to undo the dangerous consequences of the recent decision *Bank of New York Mellon v. White*, 156 Hawai'i 246, 573 P.3d 629 (2025), which incorrectly interpreted Hawai'i laws to allow foreclosure to proceed long after the underlying note has become unenforceable.

H.B. No. 2612 will reaffirm and restore Hawai'i's long-settled rule: a mortgage exists only as security for an enforceable debt. No enforceable debt, no foreclosure. This is the "lien theory" of mortgages. That is, no "zombie" mortgages can hang over a debtor's head after the debt no longer exists.

While reciting law identifying Hawai'i as a lien theory state, *White* anyway adopted pre-1939 mortgage theory law – thus allowing a mortgage to be enforced without an enforceable note. *White* confuses these separate theories. H.B. No. 2612 cuts through this confusion by plainly stating: "A mortgage does not exist independent of the debt it secures and shall not be independently enforceable from the debt."

Community organizations, Lahaina Community Land Trust, Nā Aikane o Maui, Molokai Community Service Council, De-Occupy Hawai'i, Honolulu Tenants Union, Hawai'i Filipinos for Truth, Justice and Democracy, Kōkua Council for Senior Citizens of Hawai'i, Maui Housing Hui, Maui Medic Healers Hui, Hawai'i Alliance for Progressive Action, Share Your Mana, Mutual Aid Lahui, Maui Tomorrow Foundation, Food Not Bombs Hawai'i, Ho'opae Pono Peace Project, and West Maui Preservation Association sought to provide an amicus brief in *White*.[1] These groups understand the direct connection between Hawai'i residents seeking shelter, stability, and the ability to remain in their homes have a direct and ongoing interest in keeping foreclosure law grounded in lien theory. For many local families, foreclosure is not merely the loss of an asset. It is the forced severance from ancestral lands that have anchored generations. This threat is not abstract.

In 1939, the Hawai'i Legislature adopted lien theory by creating the law: a mortgage "shall create a lien only as security for the obligation and shall not be deemed to pass title." That choice matters. Under lien theory, the mortgagee does not hold title, does not hold a present estate in land, and does not hold a possessory interest. Foreclosure is not the recovery of land. It is a judicial process to enforce a debt through sale of the pledged property. Treating foreclosure as if it were a free-

[1] Lance Collins and I represented these community organizations. The court denied our request to file an *amicus* brief.

standing real property action is incompatible with the lien-theory statute the Legislature enacted to clarify the law and to settle that mortgages do not pass title and are liens only.

In lien theory, the mortgage is not an object of ownership. It does not have a life of its own. It is a contingent security interest that exists solely to support the underlying obligation. When the obligation is no longer enforceable, the lien has nothing left to secure. Allowing the lien to persist independently converts a mortgage into the very thing the 1939 Legislature rejected: an interest that functions like ownership, detached from debt. If that severance is permitted, then the scope of debt liability for peoples' homes is greatly broadened.

This bill is also necessary to restore coherence to Hawai'i's standing doctrine in foreclosure cases. Hawai'i courts have repeatedly held a plaintiff, usually a bank, seeking to foreclose must prove entitlement to enforce the note, and the standing requirement overlaps with the plaintiff's burden to prove it can enforce the promissory note. That is – *who owns the debt?* This question is complicated by rampant debt-swapping that occurred during the U.S. subprime mortgage crisis in the late 2000s.

Foreclosure standing is not a technicality. It is the doctrinal expression of lien theory itself. The injury asserted in foreclosure is default on the debt, not the mere existence of a recorded mortgage document. If the note is time-barred, the plaintiff is no longer entitled to enforce it. And if the plaintiff is not entitled to enforce the note, it lacks standing to foreclose. A rule that extends foreclosure rights regardless of whether the note remains enforceable collides with this settled line of authority and opens the door to foreclosure without a legally enforceable obligation.

White's reliance on a "real property action" analogy and a twenty-year limitations period applied to adverse possession does not fit lien theory. In a lien-theory state, foreclosure is not analogous to ejectment, entry, or the recovery of possession because the mortgagee has no title and no right to possession until judgment and sale. Nor does possession impact mortgage rights. The defining difference between title theory and lien theory is not whether the mortgagor remains physically on the property. The defining difference is whether the mortgage transfers legal title. Under early title theory, the mortgagee held legal title at execution, subject to redemption. Under lien theory today, both legal and equitable title remain with the mortgagor unless and until foreclosure judgment and sale occur. The mortgagor is in possession because they still own the property, not because the law is merely permitting them to remain despite a transfer of title.

Extending the foreclosure window to twenty years makes the mortgage outlive the enforceability of the note and creates perverse incentives that undermine the statutes of limitations. Limitation periods exist to prompt timely enforcement, prevent litigation of stale claims, and protect defendants from the unfairness of decayed evidence and lost records. If foreclosure can proceed after the note becomes unenforceable, delay becomes strategy rather than risk. A creditor can wait out the limitations period on the debt (generally six years), especially where the note is questionable, voidable, or difficult to prove, then proceed only against the home itself. That approach undermines repose and invites the kind of gamesmanship and injustice that limitations law is designed to prevent.

The consequences are not confined to individual borrowers. This policy change would impose real spillover harms across Hawai'i. Condominium associations and their members are particularly

exposed when mortgagees delay action. If a borrower abandons a unit and the mortgagee fails to act, homeowner associations must still maintain the property and meet reserve and statutory obligations. The shortfall falls on the remaining unit owners, and associations are constrained in their own collection and enforcement options so long as a senior mortgage remains in place. A legal regime that tolerates decades of inaction shifts the costs of delay onto neighbors and communities, especially at a time when condominium costs and insurance pressures are already destabilizing households.

The risk extends beyond mortgages. If a nonpossessory lien is treated as a "real property interest" for limitations purposes, the same reasoning can migrate to other lien types. That would blur the line between ownership interests, which can exist independent of debt, and security interests, which should not. Such a transformation is not a minor procedural adjustment. It is a structural shift that weakens finality and invites enforcement actions long after underlying obligations have gone stale or become legally unenforceable. If such a policy change is to occur at all, it is for the Legislature to make that choice expressly and with safeguards, not for it to arise through a judicial analogy that contradicts the Legislature's own lien-theory statute.

Finally, the issue is of exceptional public importance. Hawai'i is still living with the long aftershocks of crisis-era lending and foreclosure. Allowing foreclosure rights to persist far beyond the enforceability of the note reopens that era's wounds by creating a pathway to revive enforcement against homes decades later, especially against communities already disproportionately harmed by prior foreclosure waves. Stale foreclosure actions also predictably burden the courts with lost-note disputes, broken chains of assignment, and degraded evidence. Meanwhile, long-dormant mortgages hanging over properties for decades undermine stability, cloud title, and hinder community recovery.

This bill correctly affirms what Hawai'i's lien-theory system has always required: foreclosure is not a free-standing property action. It is a remedy inseparable from a valid, enforceable debt. By rejecting the interpretation that allows mortgages to be enforced long after the note is time-barred, the Legislature will restore the legal coherence of Hawai'i foreclosure law, re-align incentives toward timely enforcement, protect families and communities from destabilizing surprise foreclosures, and uphold the policy settlement Hawai'i made in 1939 when it chose lien theory.

I have included a copy of our proposed amicus brief filed as an exhibit in *White*.

For these reasons, I strongly urge the Committee to pass this bill.

Very truly yours,

Bianca Isaki

LAW OFFICE OF BIANCA ISAKI

IN THE SUPREME COURT OF HAWAII

THE BANK OF NEW YORK MELLON, formerly known as THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2006-11, Respondent/Plaintiff-Appellee,	Case No. CAAP-21-0000400
	Certiorari to the Intermediate Court of Appeals
	HON. KEITH K. HIRAOKA HON. KAREN T. NAKASONE HON. SONJA M.P. MCCULLEN
vs.	
	Civ. No. 1CC181000644
BRENDA MERLE WHITE; ASSOCIATION OF APARTMENT OWNERS OF KUMELEWAI COURT; MILILANI TOWN ASSOCIATION, Respondents/Defendants-Appellees,	(Foreclosure)
	Appeal of Foreclosure Orders
	CIRCUIT COURT OF THE FIRST CIRCUIT HON. JEANNETTE H. CASTAGNETTI
and	
GABI KIM COLLINS, Petitioner/Defendant-Appellant	

[PROPOSED] BRIEF OF AMICUS CURIAE

EXHIBIT "A"

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ATTORNEYS FOR AMICI CURIAE Lahaina Community Land Trust, Nā Aikane o Maui, Molokai Community Service Council, De-Occupy Hawaiʻi, Honolulu Tenants Union, Hawaiʻi Filipinos for Truth, Justice and Democracy, Kōkua Council for Senior Citizens of Hawaiʻi, Maui Housing Hui, Maui Medic Healers Hui, Hawaiʻi Alliance for Progressive Action, Share Your Mana, Mutual Aid Lahui, Maui Tomorrow Foundation, Food Not Bombs Hawaiʻi, Hoʻopae Pono Peace Project, West Maui Preservation Association and Representative Tina Nakada Grandinetti

SUBJECT MATTER INDEX

TABLE OF AUTHORITIES

Hawai'i cases

Other cases

Statutes

Treatises and Textbooks

Articles

Judith Fox, "The Foreclosure Echo: How Abandoned Foreclosures Are Reentering the Market," 26 *B.C. L. Rev.* 870 (2015). 15

Norman Geis. *Escape from the Fifteenth Century: The Uniform Land Security Interest Act*. 30 Real Estate, Probate, and Trust Journal. 289-323 (1995) 6

Debbie Gruenstein Bocian, Wei Li & Keith S. Ernst, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures* (Center for Responsible Lending, Dec. 2011) 14

Anita Hofschneider, "Two Years After Wildfire, Maui Homeowners Face a New Threat: Foreclosure," *Honolulu Civil Beat* & *Grist* (Aug. 11, 2025) 1

Leonard A. Jones. *A Treatise on the Law of Mortgages of Real Property* (1878) 5

William Lloyd. *The Genesis of the Lien Theory*. 32 Yale L. Rev. 233-246 (1923) 5

J. Douglass Poteat. *State Legislative Relief for the Mortgage Debtor During the Depression*, 5 Law and Contemporary Problems 517-544 (Fall 1938) 6

Jacob Rabinowitz. *Story of the Mortgage Retold*. 94 U. Pa. L. Rev. 94 -109 (1945) 5

RealtyTrac, Year-End 2010 U.S. Foreclosure Market Report; Business Insider, States With the Highest Foreclosure Rates (Oct. 28, 2010) 14

University of Hawai'i Economic Research Organization, Hawai'i's Real Estate Cycle – Past, Present, and Future (Nov. 2009) 14

BRIEF OF AMICI CURIAE

I. INTRODUCTION

Amici Curiae Lahaina Community Land Trust, Nā Aikane o Maui, Molokai Community Service Council, De-Occupy Hawai‘i, Honolulu Tenants Union, Hawai‘i Filipinos for Truth, Justice and Democracy, Kōkua Council for Senior Citizens of Hawai‘i, Maui Housing Hui, Maui Medic Healers Hui, Hawai‘i Alliance for Progressive Action, Share Your Mana, Mutual Aid Lahui, Maui Tomorrow Foundation, Food Not Bombs Hawai‘i, Ho‘opae Pono Peace Project and West Maui Preservation Association are active grassroots, community organizations that address and respond to Hawai‘i residents' need for shelter. Amicus Curiae Representative Tina Nakada Grandinetti serves Hawai‘i's Twentieth Representative District; her graduate and professional work has focused on addressing Hawai‘i's housing crisis.

Amici Curiae work includes advocating for affordable housing, assisting homeowners in distress, supporting unhoused individuals and families, and promoting policies that protect the stability of Hawai‘i communities. They have a direct and ongoing interest in the proper application of foreclosure and mortgage law, as these issues directly affect the availability, security, and affordability of housing for the people they serve – Hawai‘i's people.

For many Hawai‘i families, the threat of foreclosure is not the loss of a financial asset – it is the forced severance from ancestral lands that have anchored generations.[1] As a Native Hawaiian homeowner who survived the 2023 Lahaina fire recently explained, "It doesn't just anchor me. It anchors my children and grandchildren. Because at the end of the day, whatever they choose in life, they will always have that piece of ʻāina." Mikey Burke (quoted in Anita Hofschneider, "Two Years After Wildfire, Maui Homeowners Face a New Threat: Foreclosure," *Honolulu Civil Beat* & *Grist* (Aug. 11, 2025)).

Hawai‘i has adhered to lien theory since 1939: a mortgage "creates a lien only… and shall not be deemed to pass title." HRS § 506-1(a). In lien theory, foreclosure enforces the debt by judicial sale; it is not recovery of an estate in land. Equity "follows the law," so where the Legislature supplies a limitations period for the note, that period governs the mortgage that secures it. See

1 See *Chuck v. Gomes*, 56 Haw. 171, 180, 532 P.2d 657, 662 (1975) (Richardson, CJ dissenting) quoted in *Robinson v. Zarko*, 155 Hawai‘i 390, 406, 565 P.3d 735, 751 (2025) ("'Mindful of our Hawaiian heritage,' we must not lose sight of the cultural traditions which attach fundamental importance to keeping ancestral land in a particular family line.")

Honolulu Brewing & Malting Co. v. Bartlett, 23 Haw. 192, 196 (Terr., 1916). Put simply: no enforceable debt, no foreclosure.

Section A explains why HRS § 657-31's real action analogy does not fit lien theory and addresses *Hilo*'s possession point. Section B organizes the history, doctrinal rules, standing, policy incentives, and spillover consequences if reconsideration is not granted. Section C addresses the public-importance criteria that this decision will have if not reconsidered or depublished.

II. ARGUMENT

A. Why § 657-31 Doesn't Fit Lien Theory; and Why Possession Isn't the Hinge

The Court's reliance on HRS § 657-31 rests on the premise that foreclosure is "more analogous" to a real property action than to a contract action. That premise only holds in a title theory jurisdiction. In a lien theory state such as Hawai'i, the mortgagee never holds title, an estate in land, or any possessory interest; the mortgage is not "real property" in the sense contemplated by HRS § 657-31. It is a nonpossessory security interest – a lien – that exists only to secure the underlying debt.

The lien is not an object of ownership. It is not an "estate in land" that can be recovered like title in ejectment, or possession in an action for entry. It is a legal right contingent on the enforceability of the obligation it secures. When that obligation expires, the lien has nothing left to secure and vanishes. That result follows from Hawai'i's 1939 adoption of lien theory: HRS § 506-1(a) ("shall create a lien only as security for the obligation and shall not be deemed to pass title").

Importing title-theory analogies from *Hilo v. Liliuokalani,* 15 Haw. 507 (Terr., 1904) and *Kipahulu Sugar Co. v. Nakila*, 20 Haw. 620 (Terr. 1911) recasts a lien as a recoverable estate in land, which lien theory rejects. In lien theory, the remedy is debt enforcement by judicial sale, not recovery of a present estate. It effects a satisfaction of the debt through sale of the pledged property. Treating foreclosure as an HRS § 657-31 "real-property action" recharacterizes security as ownership, a result the Legislature rejected in 1939.

Even under the Court's analogy principle, the apt analogue is the note's limitations period – not § 657-31's twenty-year window. . In a lien-theory state, foreclosure enforces the debt secured by the mortgage, not an independent possessory estate. Where the law provides a specific statute of limitations for that debt, equity does not override it. As this Court explained long ago:

> Equity follows the law, does not oppose the law; it assists parties in the protection of their legal rights when the law is unable to do so; it protects the vigilant, but does not invade private fundamental rights to impose under a contract obligations not assumed in such contract, either by express terms or by necessary implication. To grant the relief sought by plaintiff would be to impose new obligations not contemplated either by the promisor or the promisee when the note in question was given.

Honolulu Brewing & Malting Co. v. Bartlett, 23 Haw. 192, 196 (Terr., 1916). Applying a longer, real-property-based period here would do exactly that, impose new obligations the parties never undertook.

The applicable limitations period is set by HRS § 490:3-118(a) or HRS § 657-1, not HRS § 657-31.[2]

Possession is not the hinge: title v. lien is. *Hilo* reflects title theory's transfer of legal title at execution; Hawai'i's lien theory leaves both legal and equitable title with the mortgagor until judgment and sale. The Court read *Hilo v. Lili'uokalani* to indicate the distinction between title and lien theory of mortgages was irrelevant because mortgagors in both eras retained possession until foreclosure was complete.

That reading misapprehends the law. Possession is not the defining difference between title theory and lien theory – the core distinction is in the nature of the legal interest the mortgage conveys. The Restatement (Third) of Property (Mortgages) § 4.1 makes this explicit: "(a) A mortgage creates only a security interest in real estate and confers no right to possession of that real estate on the mortgagee. (b) Any agreement, whether in a mortgage or not, that grants the mortgagee, as mortgagee, the right to possession in the future is unenforceable[.]"

In early 1900s Hawai'i under title theory, the mortgage conveyed legal title to the mortgagee at the outset, subject only to the mortgagor's equitable right of redemption. That is why statutes such as Revised Laws of Hawai'i § 2858 (1915) provided a redemption period – they restored title to the mortgagor after foreclosure. The fact that the mortgagor could physically remain on the land during the redemption period did not alter the legal reality: under title theory, the mortgagee already

2 Under HRS § 490:3-118(a), an action to enforce a note payable at a definite time must be commenced within six years after the due date(s) stated in the note or, if the debt is accelerated, within six years after the accelerated due date. Prior to acceleration, each unpaid installment accrues when that installment comes due; a valid acceleration fixes a single accrual date for the remaining balance. HRS § 657-1 supplies the general six-year period for contract claims, but where negotiable-instrument rules apply, the UCC controls. See HRS § 490:10-103.1

held legal title from the moment the mortgage was executed. In *Hilo*, the problem was that the mortgagee attempted to enter the property only two months after default, without waiting the full statutory redemption year.

Under lien theory today, no legal or equitable title passes to the mortgagee, if at all, until a foreclosure judgment is entered and the property is sold. The mortgagor is not in possession because the legislature "allows" them to remain despite a transfer of title; they are in possession because they still own the property. That is a fundamentally different legal posture from title theory.

Under HRS § 657-31, a "real property action" is one "to recover possession of any lands" or "make any entry thereon." Such an action restores possession to a party already vested with legal title or recognizes the title of one who is already the lawful owner; it does not itself create or convey legal title to a party who does not already hold it. *See* Ch. 669, HRS. For example, title in an adverse possession claimant is perfected when the statutory requirements are satisfied for the requisite period – not when the court renders judgment as occurs at the end of a foreclosure action. *Keawe v. Kana*, 30 Haw. 204, 207 (Terr., 1927) ("By that time his possession had ripened into a fee simple title."). An ejectment or quiet title judgment recognizes existing ownership right while foreclosure confers a new one. "A foreclosure action is a legal proceeding to gain title or force a sale of the property[.]" *Bank of Am., N.A. v. Reyes-Toledo,* 139 Hawai'i 361, 372, 390 P.3d 1248, 1254-55 (2017)

The "possession in both eras" argument is akin to asserting a renter and a homeowner are the same because both live in the house – ignoring the critical difference in the legal rights that define that occupancy.

B. Doctrine and Consequences in Lien Theory

1. Historical Path to Hawai'i's Lien Theory

To understand what is being "foreclosed" in a foreclosure action in Hawai'i today, it is necessary to trace the historical evolution of the mortgage. The doctrinal path runs from conveyance (title theory) to security (lien theory), culminating in Hawai'i's 1939 statute through which modern foreclosure must be read.

Roman law distinguished between *pignus* – a pledge or pawn where the lender held possession of the collateral – and *hypotheca* – a security where the borrower retained possession but the property stood liable for the debt. *See* Edgar N. Durfee, "The Lien or Equitable Theory of the

Mortgage–Some Generalizations," 10 *Mich. L. Rev.* 587 (1912).

In medieval England, usury laws prohibited charging interest directly. Jacob Rabinowitz. *Story of the Mortgage Retold*. 94 U. Pa. L. Rev. 94 -109 (1945) Mortgages were structured so that the lender took the rents and profits of the land in lieu of interest. The arrangement was a conditional conveyance: the borrower conveyed title to the lender, with a provision that title would be reconveyed if the debt was paid. If repayment was not made by the due date, the lender's title became absolute. If the lender was not already in possession, an ejectment action could be brought. The burden of proving repayment always rested on the borrower. Leonard A. Jones. *A Treatise on the Law of Mortgages of Real Property* (1878)

Over time, equity courts intervened to soften the harshness of absolute forfeiture, creating the equity of redemption – the borrower's right to recover title by paying the debt and related costs, even after the due date. The lender had to account for any rents and profits collected during the redemption period. This right was perpetual until barred by court order. *Id.*

By the seventeenth century, lenders petitioned equity courts to set a fixed date for redemption, after which the borrower's right was foreclosed and the lender's ownership became unconditional. This "strict foreclosure" was draconian: the lender kept the property outright, regardless of any equity the borrower might have had. *Id.*

To avoid such inequity, foreclosure by sale emerged, whereby the property was sold and the debt paid from the proceeds, with any surplus going to the borrower. This later evolved into power-of-sale clauses in mortgages and the use of foreclosure sales in judicial proceedings. *Id.*

The American colonies initially followed England's title theory, in which the mortgage conveyed legal title to the lender until redemption or foreclosure. William Lloyd. *The Genesis of the Lien Theory*. 32 Yale L. Rev. 233-246 (1923) But by the beginning of the nineteenth century, states began adopting Lord Mansfield's lien theory, famously articulated in *King v. St. Michaels* (1781, K.B.) 2 Douglas 630:

> If the estate on which a pauper resides is substantially his property, that is sufficient, whatever forms of conveyance there may be; and therefore a mortgagor in possession gains a settlement, because the mortgagee, notwithstanding the form, has but a chattel, and the mortgage is only a security. It is an affront to common sense to say the mortgagor is not the real owner.

Id. The English never adopted Mansfield's theory. But by the end of the twentieth century, most

American states had, while some of the original thirteen colonies and a few other states with restrictive English-era usury laws continuing to follow the title theory of mortgages. Norman Geis. *Escape from the Fifteenth Century: The Uniform Land Security Interest Act*. 30 Real Estate, Probate, and Trust Journal. 289-323 (1995)

Under lien theory, legal and equitable title remain with the mortgagor until decree and sale.

But Hawaiian Kingdom and early Territorial courts adhered to title theory. *Campbell v. Kamaiopili*, 3 Haw. 477, 478 (King. 1872) reasoned that a mortgage and the note are "two distinct securities" and the statute of limitations on the note did not bar foreclosure. *See also Kaikainahaole v. Allen*, 14 Haw. 527 (Terr. 1902); *Hilo v. Lili'uokalani*, 15 Haw. 507 (Terr. 1904); *Kipahulu Sugar Co. v. Nakila*, 20 Haw. 620 (Terr. 1911).

The farm and home mortgage catastrophe of the Great Depression led state and territorial legislatures to intervene in several ways to protect borrowers including anti-deficiency statutes, extending redemption periods and foreclosure moratoria. J. Douglass Poteat. *State Legislative Relief for the Mortgage Debtor During the Depression*, 5 Law and Contemporary Problems 517-544 (Fall 1938) Many of these efforts were struck down by state supreme courts for being unconstitutional.

Within that context, the title theory of mortgages was abolished in 1939 in Hawai'i, when the Territorial Legislature enacted Act 255, adopting the lien theory of mortgages – now codified at HRS § 506-1(a):

> Every transfer of an interest in real property or fixtures made as security for the performance of another act. . . is to be deemed a mortgage and shall create a lien <u>only as security for the obligation and shall not be deemed to pass title</u>.

Id. (Emphasis added).

Introduced as Senate Bill No. 66, the Senate Judiciary Committee reported the bill favorably:

> As there are many problems unsettled arising out of mortgages of realty, that is, whether or not such mortgages merely create liens on the property involved or pass title, what rights a mortgagee obtains on after acquired property of the mortgagor, etc., your committee has redrafted the bill to meet and clear up, so it believes, the aforesaid unsettled questions, and so redrafted a copy of such redraft being hereto attached, your committee recommends passage of the bill.

1938 Haw. Senate Journal 727 (Stand Com Rep No. 169)

Similarly, the House Judiciary Committee made amendments and reported the amended bill, which was enacted, favorably, stating:

> This Bill has for its purpose the clarification of the law of mortgages and the extent of the lien of mortgages. The Bill definitely settles the question as to whether a mortgage passes title and the Bill specifically provides that mortgages on personal and real property create a lien only and shall not be deemed to pass title.

1939 Haw. House Journal 1337 (Stand Com Rep No. 396)

That statutory choice has anchored Hawai'i's mortgage law ever since. "Hawaii has espoused the lien theory of mortgages since 1939." *Adair v. Kona Corp.*, 51 Haw. 104, 110, 452 P.2d 449, 453 (1969). "A mortgage may be enforced only by, or in behalf of, a person who is entitled to enforce the obligation the mortgage secures." *Bank of Am., N.A. v. Reyes-Toledo*, 139 Hawai'i 361, 371 n.17, 390 P.3d 1248, 1258 n.17 (2017) (quoting Restatement (Third) of Property (Mortgages) § 5.4(c) (1997)).

"In embracing the lien theory of mortgages, Hawai'i joins the substantial majority of states. At least thirty-four of the fifty states follow the lien theory of mortgages." *Hawaii Nat. Bank v. Cook*, 99 Hawai'i 334, 343, 55 P.3d 827, 836 (App. 2000), *rev'd on other grounds*, 100 Hawai'i 2, 58 P.3d 60 (2002).

In a lien theory state like Hawai'i, foreclosure is not the recovery of an estate or possessory interest – it is the judicial process to enforce a security interest by ordering a sale. Once the underlying obligation becomes unenforceable (e.g., by expiration of the statute of limitations), the lien loses its foundation and cannot be foreclosed independently. This is the same as if the underlying obligation were void or voidable. To treat it otherwise would be to revert to title-theory principles the Legislature abandoned nearly a century ago.

The Intermediate Court of Appeals ("ICA") in both the instant case and *In the Matter of the Application of Bowler*, CAAP-16-0000728 (App. Sep. 28, 2018) (mem.) was incorrect when it stated a "mortgage is a conveyance of a real property interest."[3] Rather, it is a security interest that authorizes sale (and post-judgment possession) only if statutory and contractual conditions are met. Until those conditions are met, a mortgagee has no claim to recovery of possession or entry.

As the Colorado Supreme Court put it: "A deed of trust in real property given as security for

3 The petitioners in *Bowler* did not raise, and the ICA did not address, the 1939 statutory change by which Hawai'i abandoned the title theory of mortgages in favor of lien theory. The ICA noted: "Koiwa neither identifies any particular legal authority that the *Kipahulu Sugar* court relied on that is invalid nor presents any further authority in support of this point." However, *Kipahulu Sugar* is not binding on this Court because it rested on legal principles the Legislature expressly abrogated in 1939.

a debt is a mortgage. A mortgage is not a conveyance of a real property interest, because Colorado subscribes to a lien theory of mortgages." *Columbus Invs. v. Lewis*, 48 P.3d 1222, 1225 (Colo. 2002).

Reyes-Toledo is cited for the proposition: "A mortgage is a conveyance of an interest in real property that is given as security for the payment of the note." *Id.,* 139 Hawai'i at 367–68, 390 P.3d at 1254–55. This sentence cites the definition of "mortgage" in Article 9 of the Uniform Commercial Code ("UCC") as adopted in Hawai'i. HRS § 490:9-102: "Mortgage" means a consensual interest in real property, including fixtures, that secures payment or performance of an obligation. But HRS § 490:9-102 further defines mortgage in the definition of encumbrance: "'Encumbrance' means a right, other than an ownership interest, in real property. 'Encumbrance' includes mortgages and other liens on real property."

Both courts and the UCC call it an "interest in real property," but in context that means an encumbrance (a non-ownership right) – a security interest that must be transformed judicially to obtain title or possession. *Columbus Investments v. Lewis*, 48 P.3d 1222, 1225 (Colo. 2002). The UCC, as adopted in Hawai'i, defines a mortgage broadly as "a consensual interest in real property…that secures payment or performance of an obligation." HRS § 490:9-102. That "interest" is classified under the UCC as an "encumbrance," meaning "a right, other than an ownership interest, in real property." Thus, both definitions are consistent: in each, the mortgage does not transfer ownership but grants a nonpossessory encumbrance – a security right in the property that exists solely to secure the underlying obligation.

The conflation of a real property interest with the broader "interest" has misguided the ICA, in its unpublished decisions, to implement the title theory of mortgages. If the Court does not reconsider its decision here, further inconsistencies with Hawai'i's lien-theory tradition will occur. This would invite a return to pre-1939 principles the democratically-elected Legislature expressly rejected, undermining Hawai'i's established lien-theory framework.

The Legislature's adoption of lien theory in 1939 was a deliberate rejection of the idea that a mortgage is a free-standing property interest. If a mortgage can survive without the enforceable debt it secures, then the 1939 change in law is meaningless.

2. Majority Rule: The Remedy Expires with the Note

Lien-theory jurisdictions overwhelmingly hold: when the note is time-barred, foreclosure is

time-barred.

A mortgage is a lien to secure a debt. If the debt is extinguished or rendered unenforceable, the lien cannot be executed on its own. This principle is widely recognized in nearly all lien theory states. See, e.g., *Robin v. Crowell*, 55 Cal. App. 5th 727, 744, 270 Cal. Rptr. 3d 25, 36 (2020) ("the right to bring an action for judicial foreclosure of a deed of trust [expires] upon expiration of the statute of limitations on the underlying debt"); *Westin Hills W. Three Townhome Owners Ass'n v. Fed. Nat'l Mortg. Ass'n*, 283 Neb. 960, 966, 814 N.W.2d 378, 384 (2012) ("A lien on real estate for payment of a debt is a right to have the debt satisfied out of the land, if not otherwise paid. Thus, a lien cannot exist in the absence of the debt… it presupposes the existence of a debt"); *LLP Mortg., Ltd. v. Food Innovisions, Inc.*, 997 So. 2d 628, 630 (La. App. 2008), writ denied, 999 So. 2d 762 (La. 2009) ("mortgages are accessories to the obligations they secure"); *Mortg. Invs. Corp. v. Battle Mountain Corp.*, 70 P.3d 1176, 1185 (Colo. 2003), as modified on denial of reh'g (June 9, 2003) ("If… a creditor fails to sue to enforce the promissory note after default within the six-year limitations period, the creditor's right to foreclose… is extinguished"); *Madden v. Alaska Mortg. Grp.*, 54 P.3d 265, 268 (Alaska 2002) ("the six-year limit would ordinarily govern both an action on [a] promissory note and an action to foreclose the deed of trust securing his note"); *Abboud v. Abboud*, 2000 OK Civ App 116, 14 P.3d 569, 571 (2000) ("After the limitations period has run on the underlying debt, the lien is extinguished."); *Atlee Credit Corp. v. Quetulio*, 22 Ariz. App. 116, 117, 524 P.2d 511, 512 (1974) ("since there is no statute expressly relating to mortgages, this action on the mortgage was controlled by the six year limitations period applicable to actions on contracts in writing"); *Oehler v. Philpott*, 263 S.W.2d 201, 204 (Mo. 1953) ("there can be no foreclosure if the obligation is barred by limitation"); *Montana Valley Land Co. v. Bestul*, 126 Mont. 426, 429, 253 P.2d 325, 326 (1953) ("the mortgage itself remained good and valid… so long as the debt itself is not barred by the Statute of Limitations"); *Griffith v. Humble*, 46 N.M. 113, 122 P.2d 134, 136 (1942) ("as the courts do not regard a mortgage as a conveyance of real estate, they hold that when the debt is barred, the mortgage is also extinguished, because, being a mere incident to the debt, it cannot exist independently of its principal, which is the debt."); *Markus v. Chicago Title & Tr. Co.*, 373 Ill. 557, 560, 27 N.E.2d 463, 465 (1940) ("where the debt is paid or barred by the Statute of Limitations, a mortgage being but incident to the debt, is no longer a lien on the property"); *Monast v. Manley*, 228 Iowa 641, 293 N.W. 12, 13 (1940) ("when a debt is barred by the statute of limitations the remedy upon the mortgage is

also barred has been many times held by this court"); *Warning's Ex'r v. Tabeling*, 280 Ky. 232, 133 S.W.2d 65, 67 (1939) ("The fact that the note was secured by a mortgage on real estate does not alter the case… no relief can be granted under the mortgage after the debt… is barred by limitation"); *Bracklein v. Realty Ins. Co.*, 95 Utah 490, 80 P.2d 471, 478 (1938) ("plaintiff's cause of action is founded upon the note and mortgage, and when the bar of the statute has run against the debt as evidenced by the note there can be no recovery"); *Johnson v. Lowman*, 193 Ark. 8, 97 S.W.2d 86, 88 (1936) ("on that date the debt was barred, or the right to foreclose the mortgage was barred"); *Pratt v. Pratt*, 121 Wash. 298, 300, 209 P. 535, 535 (1922) ("a mortgage creates nothing more than a lien in support of the debt which it is given to secure... It must be considered at the outset of the consideration of this subject as settled by this court, that, when a debt secured by a mortgage is barred by the statute of limitations, the mortgage is also barred"); *King v. Rodgers*, 108 Kan. 311, 195 P. 598, 598 (1921) ("where the statute of limitation has run against a note which is secured by a mortgage, mortgage may not be enforced").

Wisconsin is the only lien theory state that allows a mortgage to be foreclosed, based upon court precedent, when the debt is barred. Wisconsin courts today still follow *Wiswell v. Baxter*, 20 Wis. 680 (1866), a case involving a mortgage under seal – meaning no consideration was required and the limitation period was much longer than an ordinary contract. Delaware, Pennsylvania, Rhode Island and South Dakota still follow the English common law's differential treatment of mortgages under seal giving those under seal much longer statutes of limitation for enforcement. Despite that, even the same Wisconsin court had noted a few years earlier: "A mortgage differs widely from an absolute conveyance of land. For all the purposes of negotiation and trade, it is regarded as mere personalty. It attaches itself to the debt and follows its destinies and ownership. It is beneficially assigned, transferred, released, surrendered, re-issued and revived with the instrument evidencing the debt, and with no other forms or ceremonies than are requisite to do so with the latter." *Blunt v. Walker*, 11 Wis. 334, 348 (1860). Nevertheless, Wisconsin courts eventually extended *Wiswell*'s rule to all mortgages – under seal or ordinary – and have declined to reconsider this direct conflict with lien theory.

A handful of lien theory states allow foreclosure after the debt would otherwise be barred because of specific statutory provisions enacted by their legislatures setting independent limitation periods for mortgage foreclosures or validating "ancient mortgages." These include Indiana,

Michigan, Minnesota, Nebraska, Nevada, and West Virginia. Nevada also permits non-judicial foreclosure after the debt is time-barred on the theory that such a sale is not an "action" subject to the statute of limitations. *Facklam v. HSBC Bank USA for Deutsche ALT-A Sec. Mortg. Loan Tr.*, 133 Nev. 497, 499, 401 P.3d 1068, 1070 (2017). And the issue in *Facklam* was a mortgagor seeking to quiet title, not a mortgagee attempting to use a quiet title statute of limitations to revive the debt. When lien-theory legislatures intend independent foreclosure clocks, they say so expressly.

In title theory and mixed theory states, the rationale is different. Maryland treats foreclosure as a special court proceeding with no statute of limitations. *Daughtry v. Nadel*, 248 Md. App. 594, 242 A.3d 1158 (2020). Massachusetts explains that in a title theory state, foreclosure may proceed without the note because the mortgage itself transfers legal title: "A real estate mortgage in Massachusetts has two distinct but related aspects: it is a transfer of legal title to the mortgage property, and it serves as security for an underlying note or other obligation… the transfer of title is made in order to secure a debt, and the title itself is defeasible when the debt is paid." *Eaton v. Fed. Nat'l Mortg. Ass'n*, 969 N.E.2d 1118, 1124 (Mass. 2012). Massachusetts also recognizes "in contrast to some jurisdictions… a mortgage and the underlying note can be split." *Id.* at 576. Ohio, a mixed theory state, preserves title theory's conditional title concept: "A mortgage conveys a conditional property interest to the mortgagee as security for a debt, and upon default, legal title to the mortgaged property passes to the mortgagee as between the mortgagor and mortgagee." *Deutsche Bank Nat'l Tr. Co. v. Holden*, 60 N.E.3d 1243, 1249 (Ohio 2016). This legal fiction exists largely to preserve title theory remedies such as ejectment – remedies that do not translate to Hawai'i's lien regime. In a pure lien-theory state, no title – defeasible or otherwise – passes to the mortgagee; once the debt is barred, the mortgage cannot stand alone.

Permitting foreclosure to survive the statute of limitations on the debt in a lien-theory state would not merely create a procedural anomaly – it would effectively reintroduce the core feature of title theory, allowing a lender to treat a lien as if it were an ownership interest that persists without an enforceable obligation. Accordingly, if the note is unenforceable, the lien cannot be enforced.

3. Standing Requires an Enforceable Obligation

Standing requires entitlement to enforce both the obligation and the mortgage that secures it. If the note is unenforceable, the plaintiff cannot demonstrate an enforceable obligation – and

thus cannot meet the standing requirement to foreclose. *See Reyes-Toledo*, 139 Hawai‘i at 367, 390 P.3d at 1254 ("[i]n order to prove entitlement to foreclose, the foreclosing party must demonstrate that all conditions precedent to foreclosure under the note and mortgage are satisfied and that all steps required by statute have been strictly complied with. This typically requires the plaintiff to prove the existence of an agreement, the terms of the agreement, a default by the mortgagor under the terms of the agreement, and giving of the cancellation notice. A foreclosing plaintiff must also prove its entitlement to enforce the note and mortgage.").

This requirement flows from the nature of a mortgage in a lien theory state: the mortgage is only an incident of the debt, not an independent estate or property interest. Without an enforceable obligation, the mortgage is an empty form – a lien with no enforceable obligation to secure. Once the note is time-barred, there is no enforceable obligation to support foreclosure, and no standing to proceed.

Allowing foreclosure to continue after the debt's enforceability has expired would invert this principle, granting lenders a remedy without a right and effectively elevating the mortgage into a free-standing property interest – a hallmark of title theory that Hawai‘i's statute repudiates. If that is permitted, Hawai‘i will have turned its back on lien-theory law.

4. Incentives: Repose Should Not Become a Tactic

If foreclosure outlives the note, delay becomes strategy rather than risk. Permitting foreclosure on "noteless" mortgages creates an enforcement path that circumvents debtor protections and defenses, and incentivizes creditor inaction – especially when the underlying debt may be unenforceable or indefensible. By severing the mortgage from the enforceable obligation it secures, lenders are given a perverse incentive to wait. Rather than diligently enforcing their rights, they can allow the statute of limitations to expire on a questionable or void note, thereby potentially eliminating the borrower's ability to contest the debt itself, and then proceed solely against the property.

This approach subverts the purposes of limitations law. Statutes of limitations exist to prompt timely enforcement, protect defendants from stale claims, and ensure disputes are resolved while evidence is still fresh. *Webb v. OSF International, Inc.*, 156 Hawai‘i 28, 37, 569 P.3d 447, 456 (2025) (collecting cases on the purposes of statutes of limitations) If a creditor can ignore the debt,

let the limitations clock run, and then foreclose solely on the lien, the incentive structure is reversed: delay becomes a strategy rather than a risk. Borrowers may lose not only their ability to challenge the debt in court, but also the repose that limitations periods are designed to guarantee.

The doctrine that "security follows the debt" exists precisely to prevent this kind of dissociation between the lien and the obligation. If the obligation is gone, so is the security. To permit foreclosure without an enforceable note is to discard that foundational rule, reintroducing – through the back door – title-theory principles Hawai‘i rejected in 1939, and opening the door to the very abuses limitations statutes and the adoption of lien theory were enacted to prevent.

5. Spillover Risks Beyond Mortgages

Reclassifying nonpossessory liens as "real property interests" for limitations risks spillover – and, if ever, is a legislative choice. By treating a mortgage lien as a "real property interest" for purposes of HRS § 657-31, the Court's reasoning risks unintended application far beyond the mortgage context. Mortgages in a lien theory jurisdiction like Hawai‘i do not convey title or a present possessory estate; they create a nonpossessory security interest – a lien – that exists solely to secure the underlying obligation.

If such a lien is deemed a "real property interest" for limitations purposes, the same logic could apply to other statutory liens – such as mechanic's liens, judgment liens, or tax liens – allowing their enforcement long after the underlying obligation has become unenforceable. This would upend the long-settled principle that liens are incidents of the debts they secure and cannot survive once the debt is barred.

Such a shift would blur the boundary between ownership interests, which can exist independent of debt, and security interests, which cannot. It would weaken the finality and repose that limitations statutes are designed to provide, and open the door to enforcement actions on stale or extinguished debts simply because they happen to be secured by real property. In doing so, it risks carrying Hawai‘i further down the road back to title theory – a path the Legislature has already closed. And it should be for the Legislature to change that policy, if at all.

C. Exceptional Public Importance

The systemic stakes are substantial for homeowners and communities still absorbing crisis-era lending impacts. The Court's ruling on the limitations period for mortgage foreclosure has consequences far beyond the parties to this case. "Public policy, tax law and other forces of government encourage most Americans with any savings to store a significant portion of that wealth in the real property value of their home." *See* Lance D. Collins, "Fast Tracking the Luxury Housing Crisis" in *Social Change in West Maui* at 49 (2019). It directly affects the legal finality of thousands of loans originated during the 2000s housing boom and subsequent subprime mortgage crisis, when Hawai'i experienced unprecedented levels of mortgage delinquency and foreclosure.

During the Great Recession (2007-2012), Hawai'i's pipeline of seriously delinquent loans and pending foreclosures reached historic highs. By the third quarter of 2009, 3.11% of all home loans statewide were ninety days or more delinquent; on Maui, the rate was 7.36%–levels UHERO concluded "portend continued increases in foreclosure rates." University of Hawai'i Economic Research Organization, Hawai'i's Real Estate Cycle – Past, Present, and Future (Nov. 2009) (statewide 90+ days delinquent 3.11%; Maui 7.36%)

Nationwide, more than 3.8 million foreclosure filings occurred in 2010 alone, with Hawai'i ranked among the top ten states for foreclosure rate in the third quarter of that year. RealtyTrac, Year-End 2010 U.S. Foreclosure Market Report; Business Insider, States With the Highest Foreclosure Rates (Oct. 28, 2010).

These crisis-era defaults often involved securitized subprime or "Alt-A" products with aggressive terms. Many loans went into default early, but were not foreclosed due to servicer backlog, litigation moratoria, strategic delay, or questions on enforceability.

The foreclosure crisis was not evenly distributed. National studies found that borrowers of color were roughly 70% more likely than white borrowers to lose their homes. Debbie Gruenstein Bocian, Wei Li & Keith S. Ernst, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures* (Center for Responsible Lending, Dec. 2011). Native Hawaiian, Filipino and Pacific Islander households, who make up a significant share of Hawai'i's owner-occupants, were overrepresented among borrowers with high-cost and subprime mortgages, amplifying vulnerability to foreclosure shocks.

Extending foreclosure rights long after the debt is unenforceable disproportionately impacts

precisely those homeowners – often Native Hawaiian, Pacific Islander and Filipino – who were targeted by subprime lending during the last crisis. Many of these borrowers have spent more than a decade rebuilding financial stability, with no reason to expect that a lender could return decades later to enforce a lien after the debt itself has been extinguished. The effect will be to re-open wounds from the foreclosure wave of 2008–2012, targeting the same communities that bore the brunt of predatory lending.

Permitting mortgagees to foreclose decades after the underlying note becomes time-barred creates a new enforcement pathway that circumvents the statute of limitations for the debt itself. In a lien-theory jurisdiction, the mortgage is security only; the debt and the lien are part of a single obligation. Severing them undermines debtor protections and incentivizes creditor inaction–particularly for crisis-era loans where notes are no longer enforceable. If the foreclosure remedy is extended to twenty years independently of the debt, mortgagees who took no action during the contract limitations period can now revive enforcement against homeowners, even in cases involving long-resolved financial hardship. The effect will be to resurrect a significant backlog of aged mortgages, destabilizing communities still recovering from the last foreclosure wave.

Reviving enforcement rights on stale mortgages will also burden the courts. Stale foreclosure actions are more likely to involve lost note litigation, incomplete chains of assignment, and stale evidence–multiplying disputes over standing and title. Prolonged foreclosure timelines are linked to neighborhood blight, "zombie" properties, and erosion of county tax bases. *See, e.g.,* Judith Fox, "The Foreclosure Echo: How Abandoned Foreclosures Are Reentering the Market," 26 *B.C. L. Rev.* 870 (2015).

Historically, in title theory jurisdictions that allowed foreclosure after the note became unenforceable, equity imposed safeguards: broad redemption rights, strict accounting of rents and profits, and return of surplus to the mortgagor. Those guardrails are absent from Hawai'i's modern foreclosure process. When the Legislature enacted Act 255 in 1939, it deliberately abandoned title theory in favor of lien theory, making the mortgage a lien only, enforceable solely as security for a valid obligation. That policy choice reflected a careful balance between lender security and borrower protection. Allowing foreclosure to survive long after the debt is time-barred upends that balance, removes the borrower protections that lien theory was intended to secure, and undermines the legislative settlement struck in 1939.

III. CONCLUSION

In Hawai‘i’s lien-theory system, foreclosure is a debt-enforcement remedy, not an estate-recovery action, and the limitations analysis should reflect that structure. For these reasons, the decision should be reconsidered or depublished.

DATED: Makawao, Maui, Hawai‘i August 18, 2025

/s/ Lance D. Collins
LAW OFFICE OF LANCE D. COLLINS
LANCE D. COLLINS
Attorney for Amici Curiae

Honolulu, Hawai‘i August 18, 2025

/s/ Bianca Isaki
LAW OFFICE OF BIANCA ISAKI
BIANCA ISAKI
Attorney for Amici Curiae

HB-2612
Submitted on: 2/16/2026 11:45:12 AM
Testimony for CPC on 2/18/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Daniel Kanahele	Individual	Support	Remotely Via Zoom

Comments:

TESTIMONY IN STRONG SUPPORT OF H.B. 2612

I strongly support this bill.

My family has been the victim of predatory lending. After nearly 15 years in court, I believed our lives were finally getting back on track. Then a new financial institution sued us again, trying to enforce what is now a zombie mortgage.

This bill would correct the Hawai'i Supreme Court's decision in Bank of New York Mellon v. White. That decision allows a mortgage to be enforced even when the note it was meant to secure can no longer be enforced.

In 2006, I was unemployed and living in my family's home in Maui Meadows in South Maui. My brother inherited the home with me, but he lived in Florida with his family and ran a business. He needed money for his business, and I wanted to refinance a small amount of credit card debt at a lower interest rate.

We were offered a predatory mortgage that did not require proof of income, employment, or assets. My brother agreed to pay most of the new mortgage payment because he received most of the refinance funds.

What we did not understand was that only I signed the note. My brother never signed it. I alone was legally responsible for the debt.

When the economy collapsed in 2008, my brother’s business struggled. We fell behind on payments and the loan was accelerated.

In 2010, Aurora Loan Services filed a foreclosure lawsuit. After my brother passed away, the case was dismissed. In 2012, Nationstar Mortgage filed another foreclosure.

I argued that the loan was the result of illegal equity stripping. Nationstar refused to provide key documents in discovery, and the trial court granted summary judgment against me.

Nationstar produced three different versions of the note, each with different signatures and endorsements. They could not all have been true copies.

The Intermediate Court of Appeals vacated the foreclosure. The Hawai'i Supreme Court later ruled that I was entitled to discovery to pursue my defenses.

The case returned to the trial court. Nationstar took no action. The court dismissed the case for lack of prosecution. That dismissal was later affirmed on appeal.

Last year, Wells Fargo filed yet another foreclosure. This time, they stated they were not enforcing the note and were seeking only to foreclose on the mortgage.

We moved to dismiss because the time limit to enforce the note had expired more than 11 years earlier, in 2014.

Before our dismissal hearing, the Hawai'i Supreme Court issued its decision in Bank of New York Mellon v. White. Even though Hawai'i has long followed the rule that the mortgage follows the note, the court ruled that a mortgage can still be enforced after the note is no longer enforceable.

Now, in this third foreclosure lawsuit, the new financial institution is again refusing to provide discovery. Now, they argue that because the note is no longer enforceable, they do not have to respond to claims that the mortgage resulted from predatory lending. They want to enforce the mortgage while avoiding any review of how the loan was created.

This bill restores a basic rule that people understand and has been the law in Hawai'i since 1939: if you cannot enforce the debt, you should not be able to take the home.

Without this fix, lenders can wait out the time limit on a note and still foreclose years later, shielded from scrutiny about how the loan was made.

Please pass this bill to prevent more families from facing zombie mortgages like mine.

HB-2612
Submitted on: 2/16/2026 8:33:08 PM
Testimony for CPC on 2/18/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Joycelyn Unciano	Individual	Support	Written Testimony Only

Comments:

A PROMISSORY NOTE IS A PROMISE TO PAY. A MORTGAGE SECURES PROPERTY DUE TO A PROMISSORY NOTE.

WHEREFORE, A MORTGAGE IS EXTINGUISHED WITHOUT A VALID PROMISSORY NOTE.

TESTIMONY IN SUPPORT OF HB 2612 2-17-26

_____

Aloha,

My name is Gabriela Collins and I respectfully submit testimony in strong support of HB 2612. I am not an attorney nor am I the borrower on the loan. I am the registered owner of the property that is central to the BONY v. White case, and living the real-world consequences of the legal issue this bill addresses.

I purchased my home in 2015 after a completed association foreclosure and have lived there for more than 15 years. Yet today, I am facing the forced sale of my home based on a debt that is no longer legally enforceable. After the recent court interpretation applying a twenty-year enforcement period to mortgages, a foreclosure may proceed even though the underlying debt obligation can no longer be collected. HB 2612 addresses this situation by clarifying that a mortgage exists only as security for a debt and should not be independently enforceable once that debt is barred by the passage of time.

This issue creates several problems for homeowners and for the legal system.

First, Hawaii law requires mortgage servicers to maintain loan records for only 7 years, under HRS 454M-5(j), but foreclosures may now occur long after those records no longer exist. A homeowner can therefore face the loss of a home in a proceeding where the documentation needed to verify the obligation may no longer be available. This creates an evidentiary impossibility for property owners to meaningfully defend their rights, and it invites fraud and allows foreclosures to rely on fabricated documents.

Second, foreclosure is a remedy for repayment of debt. When the debt is no longer enforceable but the property can still be seized for two decades forward, the nature of the proceedings change and an impairment of contract rights occurs. The forced sale of a home no longer operates as repayment of an obligation but rather operates to create revenue and unjustly enrich a non-injured claimant.

HB 2612 restores the intended relationship between the obligation and the security, and it brings the contract back to a level playing field.

Third, the current interpretation has created uncertainty in how foreclosure cases are being evaluated. When the debt itself is no longer central to the case, the usual factual inquiries regarding standing and authority, verification of the obligation and the right to enforce it, and whether the claimant has sustained an injury in fact — become difficult to assess. Clear statutory guidance is needed so courts, lenders, and homeowners can operate under the same understanding and under the same limitation period under the contract.

HB 2612 does not cancel debts nor does it prevent legitimate foreclosures. It simply confirms a longstanding principle: a mortgage is security for a debt and does not survive the expiration of that debt.

I respectfully ask the Committee to indicate in its report that HB 2612 is intended as a clarification of existing law rather than the creation of a new rule. For many years, homeowners, lenders, and purchasers relied on the understanding that a mortgage serves only as security for an enforceable debt. Homes were purchased, investments were made, and long-term decisions were made based on that settled expectation. Clarifying legislative intent will help protect those reliance interests, promote stability of land titles, and allow courts to apply the law consistently in matters that are currently pending.

Without this clarification, property owners face long-term uncertainty in title and housing stability, as well as an impairment of their right to be secure in their homes from unreasonable seizure, which the 20 year time frame certainly is. This bill restores predictability, fairness, and finality to the real estate market and to homeownership in Hawaii.

I respectfully ask the Committee to pass HB 2612, and I'm grateful to Tina Grandinetti for bringing this legislation forward. Passing this bill will restore balance to the contract and will ensure that homeowners are treated fairly and equally under the law.

Mahalo for your time and consideration.

Respectfully submitted,

Gabriela Collins
808-781-1076

HB-2612
Submitted on: 2/17/2026 10:27:55 AM
Testimony for CPC on 2/18/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Gloria Kanahele	Individual	Support	Written Testimony Only

Comments:

Support

HB-2612
Submitted on: 2/17/2026 11:16:47 AM
Testimony for CPC on 2/18/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lucienne de Naie	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Matayoshi, Vice -Chair Grandinetti and committee members

I strongly support this bill. Local families in Hawaii already face major barriers to home ownership. I personally klnow families who have had to fight to keep their homes after being subject to predatory lenders suing for foreclosure.

Mahalo nui for supporting this bill to clarify that those practices have no home in Hawaii

Lucienne de Naie, Huelo, Maui

HB-2612
Submitted on: 2/17/2026 1:18:52 PM
Testimony for CPC on 2/18/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Debra Greene	Individual	Support	Written Testimony Only

Comments:

Nuff already! Hawaiians have been through enough! This bill is necessary to protect them against the predatory lending that was rampant. It's necessary in order to correct the Hawai'i Supreme Court’s recent decision in Bank of New York Mellon v. White. That decision allows a mortgage to be enforced even when the note it was meant to secure can no longer be enforced. It will help to address issues with predatory lending practices (zombie mortgages) which, as a result of the courts ruling, may bring thousands of Hawaii homes into mortgage foreclosure actions by lenders for zombie mortgages long after the notes are no longer enforceable. Not fair! Please protect native Hawaiians (what's left of them) who fell victim to this unreasonable practice by supporting this bill.

LATE

HB-2612
Submitted on: 2/17/2026 7:32:05 PM
Testimony for CPC on 2/18/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Routh Bolomet	Individual	Support	Written Testimony Only

Comments:

I support hb2612

LATE

HB-2612
Submitted on: 2/17/2026 9:33:23 PM
Testimony for CPC on 2/18/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
jeanne schaaf	Individual	Support	Written Testimony Only

Comments:

Aloha, I am writing to strongly support HB2612 to protect Hawaiian families. This bill will correct the Hawai'i Supreme Court's recent decision in Bank of New York Mellon v. White. This decision now allows a mortgage to be enforced even when the note it was meant to secure can no longer be enforced. It will help to address issues with predatory lending practices which, as a result of the courts ruling, may bring thousands of Hawaii homes into mortgage foreclosure. If mortgages are purchased by new debt collectors, they could foreclose the mortgages, throwing families out of their homes.

HB-2612
Submitted on: 2/18/2026 12:34:53 AM
Testimony for CPC on 2/18/2026 2:00:00 PM

LATE

Submitted By	Organization	Testifier Position	Testify
Gregory Misakian	Individual	Support	Written Testimony Only

Comments:

I support HB2612.

Gregory Misakian

HB-2612
Submitted on: 2/18/2026 8:29:25 AM
Testimony for CPC on 2/18/2026 2:00:00 PM

LATE

Submitted By	Organization	Testifier Position	Testify
Kelly King	Individual	Support	Written Testimony Only

Comments:

Strongly support!

LATE

TESTIMONY OF MELODIE ADUJA

In Support of HB2612 - RELATING TO MORTGAGES

House Committee on Consumer Protection & Commerce (CPC)

Hearing: Wednesday, February 18, 2026, 2:00 PM

Place: Conference Room 329 & Videoconference

Aloha Chair Matayoshi, Vice Chair Grandinetti, and Members of the Committee:

My name is Melodie Aduja, and I am testifying in strong support of HB2612, which clarifies that a mortgage cannot exist independently of the debt it secures and cannot be enforced separately from that underlying obligation.

HB2612 provides an important statutory clarification that aligns Hawai‘i law with long-standing legal principles: a mortgage is a security instrument, not a free-standing asset. By ensuring that the enforceability of a mortgage is inseparable from the enforceability of the debt itself, this measure promotes transparency, prevents abusive or misleading practices, and protects both homeowners and lenders from unnecessary litigation.

This clarification is especially important in an era of complex mortgage transfers, securitization, and servicing arrangements. HB2612 helps ensure that borrowers are not subjected to foreclosure actions by entities that cannot demonstrate a valid, enforceable debt relationship. At the same time, it provides certainty to legitimate lenders and servicers by codifying the foundational rule that the mortgage follows the note.

In short, HB2612 strengthens consumer protections, reduces ambiguity in mortgage enforcement, and supports a fair and orderly lending system in Hawai‘i.

For these reasons, I respectfully urge the Committee to pass HB2612.

Thank you for the opportunity to testify.

Mahalo nui loa,

Melodie Aduja

HB-2612
Submitted on: 2/18/2026 10:09:00 AM
Testimony for CPC on 2/18/2026 2:00:00 PM

LATE

Submitted By	Organization	Testifier Position	Testify
Susan Leilani Hunkins	Individual	Support	Written Testimony Only

Comments:

I support this bill and feel the courts have made a mistake. This bill will elevate mortgage predators who could go after Hawaii people who are unaware that they even had a mortgage. These people could be unaware that they were supposed to pay anything.

Dr. Susan Hunkins