



SanHi

GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 9, 2026

TO: Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Committee on Commerce & Consumer Protection

FROM: Mihoko Ito / Tiffany Yajima

RE: **S.B. 2946 – Relating to Foreclosure**
Hearing Date: Wednesday, February 11, 2026 at 9:30 a.m.
Conference Room: 229

Dear Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

We submit this testimony 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.

The banking industry respectfully submits **comments** with concerns regarding S.B. 2946. While we appreciate the bill's intent to expand homeownership opportunities, the measure significantly extends and complicates the foreclosure process by delaying sale finality and creating a post-sale bidding period. These changes introduce uncertainty into the system and may discourage competitive bidding, potentially reducing sale proceeds and harming both borrowers and lienholders.

This bill creates new compliance requirements for lenders and servicers, including tracking notices, managing extended timelines, and verifying bidder eligibility based largely on self-certification. Mortgagees are not well-positioned to validate occupancy status or future intent, which may increase disputes, litigation risk, and title uncertainty. These delays and added costs can increase costs and ultimately affect the availability and cost of credit for Hawai'i consumers. Clear and predictable foreclosure timelines are essential to maintaining stability and mitigating risk in Hawai'i's lending market.

HBA also has other concerns with the bill in its current form including that: 1) the term "public sale" is ambiguous and could apply to various points in a foreclosure transaction, 2) the bill does not have clear procedures for a bidder's notice of intent to be delivered to the mortgagee and 3) there is no way for the mortgagee to guarantee a prospective owner occupant's eligibility and prevent property flipping.

Finally, the committee should consider that homeowners in foreclosure are typically in distress, and an efficient process helps them avoid interest and the other costs of foreclosure from continuing to accrue. By lengthening the foreclosure process, this bill shifts an economic balance from Hawaii homeowners to provide an advantage to “eligible bidders.”

We welcome the opportunity to further discuss this proposal and appreciate the opportunity to submit testimony on this measure.



Collection Law Section

Chair:

Karyn A. Doi

Vice Chair:

William J. Plum

Secretary:

Charles Prather

Treasurer:

Justin Scott Moyer

Directors:

David W. H. Chee

Marvin S.C. Dang

Karyn A. Doi

Christopher Shea Goodwin

Steven Guttman

Paul A. Ireland Kofinow

Allison M. Lee

Justin Scott Moyer

Robert Park

William J. Plum

Charles Prather

Reply to:

KARYN A. DOI, CHAIR

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February 9, 2026

**Re: S.B. 2946 (Relating To Foreclosures)
Hearing: February 11, 2026, 9:30 a.m.
Testimony in Opposition**

Dear Senator Jarrett Keohokalole, Chair, Senator Carol Fukunaga, 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 has also submitted testimony in opposition to H.B. 1775, the companion bill to S.B. 2946, which was deferred by the Committee on Consumer Protection & Commerce.

The CLS **opposes** S.B. 2946.

S.B. 2946 largely ignores the current practice for the sale of foreclosed properties. Judicial foreclosure cases are split into two parts: (1) the foreclosure judgment and (2) the subsequent foreclosure sale. As a result of a typical foreclosure judgment, a commissioner is appointed by the Court to sell the property. The commissioner is tasked with conducting open houses of the property and an auction once the commissioner has conducted the requisite open houses and published notice of the sale pursuant to Section 667-20 of the Hawaii Revised Statutes (“HRS”) unless otherwise ordered by the Court. At the auction, the commissioner solicits bids and takes a 10% down payment

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.*

from the highest bidder. Upon completion of the auction, the commissioner files a report identifying the highest bidder and the foreclosing mortgagee is required to file a motion to confirm the sale. At the hearing on the motion to confirm the sale, any interested party can appear and re-open the bidding if that party is willing to bid 5% higher than the winning bid at the auction conducted by the commissioner. Once a final bid has been submitted, the foreclosing mortgagee asks the Court to confirm the sale. The Court is tasked with determining whether the winning bid is fair and reasonable and must reject the bid if it is so grossly inadequate so as to shock the conscience. HawaiiUSA Federal Credit Union v. Monalim, 147 Haw. 33, 38 (2020). Once the sale has been confirmed by the Court, an order confirming the sale is entered by the Court. The order confirming sale is subsequently recorded by the foreclosing mortgagee and the Court-appointed commissioner conveys the property to the highest bidder. As part of the foreclosure sale, if there are excess proceeds after the foreclosing mortgagee has been paid, those proceeds are deposited with the Court. At that point, typically pursuant to a motion, the excess proceeds are distributed according to the priority of liens pursuant to HRS § 667-3 and, after all lienors have been paid, any excess proceeds are paid to the owner of the property pursuant to HRS § 667-10.

S.B. 2946 circumvents the foregoing and removes judicial oversight from the foreclosure sale process. First, S.B. 2946 allows for not only a bid, but a “[n]onbinding written notice of intent to place a subsequent bid.” As a result, a bidder does not even have to actually “bid.” That party simply must demonstrate its willingness to bid. Second, a party is allowed to submit a bid, or notice of its intent to bid, to the mortgagee and not the Court-appointed commissioner. This will undoubtedly cause confusion as it is not the mortgagee’s responsibility to monitor the bidding process and ultimately conduct the auction. The mortgagee is then placed in the position of forwarding any bid or notice of intent to bid to the commissioner and act as a pseudo-commissioner. Third, S.B. 2946 states that if an eligible bidder “submits a subsequent bid that is equal to or exceeds the amount of the latest and highest bid of the successful bidder, the eligible bidder shall be the final successful bidder.” This almost completely eliminates the confirmation process. Declaring the eligible bidder the “final successful bidder” prevents the Court from making any determination as to whether the bid was fair and reasonable or so grossly inadequate as to shock the conscience as required by applicable law. It also prevents interested bidders from being able to appear at the hearing on the foreclosing mortgagee’s motion to confirm and being able to bid 5% higher than the highest bid. Fourth, S.B. 2946 requires that the eligible bidder make the down payment to the foreclosing mortgagee instead of to the commissioner. Again, S.B. 2946 makes the foreclosing mortgagee the pseudo-commissioner. Courts will likely frown on having the foreclosing

mortgagee this involved in the foreclosure sale process when previously a neutral, detached third-party commissioner was responsible for these tasks.

It is understandable that the goal of S.B. 2946 is to get more tenants and those who wish to buy a property in foreclosure as their primary residence involved in the foreclosure auction process. However, there is nothing preventing that from happening now. Currently, as stated above, the Court-appointed commissioner conducts open houses and publishes notice of the auction. Any tenant will surely be aware that the property in which the tenant resides is going to auction. Similarly, those who wish to buy a property in foreclosure to be used as their primary residence can monitor foreclosure notices that are published. These parties can appear at the auction and bid or can appear at the hearing on the foreclosing mortgagee's motion to confirm the sale and re-open the bidding. If S.B. 2946 becomes law, the auction process will be essentially gutted. No interested party is going to bother showing up to the auction to bid when that party knows that an eligible bidder can simply submit a bid for one cent more immediately thereafter and no party is going to show up at the hearing on the motion to confirm the sale to re-open the bidding.

The current judicial foreclosure auction and confirmation process is open and available to all. Any party can appear at the auction and bid or can appear at the hearing on the foreclosing mortgagee's motion to confirm the sale and re-open the bidding. This includes tenants and those who wish to buy a property in foreclosure as their primary residence. In a judicial foreclosure, judicial oversight is essential to ensure that the auction process is fair and that the commissioner obtains the best bid under the circumstances. Allowing an eligible bidder to be "the final successful bidder" strips the Court of its ability to oversee the process and forcing the foreclosing mortgagee to act as its own commissioner ultimately threatens the neutrality of the foreclosure process. Ultimately, getting the highest and best bid should be paramount, regardless of whether that bidder is an "eligible bidder," but this measure would create serious uncertainty and instability in the judicial foreclosure process.

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

Sincerely,

/s/ Charles Prather

Charles Prather
Paul A. Ireland Koftinow
The Collection Law Section



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

February 5, 2026

The Honorable Jarrett Keohokalole, Chair
The Honorable Carol Fukunaga, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection

Hearing Date: February 11, 2026
Hearing Time: 9:30am
Hearing Place: Hawaii State Capitol, Conference Room 229

Re: SB 2946 Relating to Foreclosures

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 strongly opposes SB 2946.

SB 2946 specifies that a judicial foreclosure sale is not final until the earliest of either fifteen days after the public sale, unless an eligible bidder submits a subsequent bid or written notice of intent to submit a subsequent bid, or forty-five days after the public sale.

The bill would override the current judicial foreclosure sale process where a foreclosure sale becomes final when a Circuit Court judge enters an order confirming the sale of the mortgaged property to the highest bidder. The bill does so by taking language from current Chapter 667, Part II, Section 667-36.5 applicable to non-judicial "power of sale" foreclosures and inserts it into Part 1A of Chapter 667.

The MBAH strongly opposes SB 2946. The current judicial foreclosure process provides certainty to lenders, potential purchasers, borrowers, and foreclosure commissioners appointed by the Circuit Court to sell properties being foreclosed on, since a foreclosure sale is not final until a Circuit Court judge enters an order confirming the sale to the successful bidder. SB 2946 would, under certain circumstances, deem a sale final 15 days after the public auction, with no further action by the foreclosure

commissioner, foreclosing lender, or Circuit Court. SB 2946 will, in essence, turn a judicial foreclosure into a non-judicial foreclosure.

The bill also allows a subsequent bidder to submit a bid ".....equal to or in excess to the amount of the highest bid of the successful bidder." Currently, a subsequent bidder may only reopen the bidding by offering not less than 5% more than the highest bid of the successful bidder. Under the bill, there is a possibility that the property will be sold for a lower price than currently allowed under the judicial foreclosure process, thereby harming borrowers.

The bill also requires the eligible bidder in subsequent bid meet the following criteria: be an eligible tenant buyer; a prospective owner-occupant; a nonprofit corporation whose primary activity is the development and preservation of affordable housing; a community land trust; or a state or county government department or agency. If a subsequent bidder does not meet the above criteria, they are not allowed to submit a subsequent bid thereby discriminating against other potential subsequent bidders who may bring a higher price and thereby bringing additional harm to borrowers.

Thank you for the opportunity to present this testimony.

Victor Brock
Mortgage Bankers Association of Hawaii

SB-2946

Submitted on: 2/9/2026 3:12:56 PM

Testimony for CPN on 2/11/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Rachel Glanstein	Testifying for AOA Lakeview Sands	Oppose	Written Testimony Only

Comments:

Aloha,

I oppose SB 2946. There may be a conflict, and usually in judicial foreclosure actions, the judge should determine who is the final successful bidder. I also join in the testimony of the HSBA Collection Law Section which sets forth a number of other reasons why the bill should be deferred.

Mahalo,

Rachel Glanstein

SB-2946

Submitted on: 2/9/2026 7:21:59 AM

Testimony for CPN on 2/11/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mark McKellar	Testifying for Law Offices of Mark K. McKellar, LLC	Oppose	Written Testimony Only

Comments:

I join in the testimony of the HSBA Collection Law Section which sets forth several reasons why the bill should be deferred.

Sincerely,

Mark McKellar

LATE



Hawaii Credit Union League

Your Partner For Success



1654 South King Street
Honolulu, Hawaii 96826-2097
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Web site: www.hcul.org
Email: info@hcul.org

Testimony to the Senate Committee on Consumer Protection and Commerce
Wednesday, February 11, 2026, 9:30 AM
Conference Room 229

To: The Honorable Jarrett Keohokalolei, Chair
The Honorable Carol Fukunaga, 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 comments regarding SB 2946, Relating to Foreclosures.

We have concerns that SB 2946 may unintentionally lengthen and complicate judicial foreclosure proceedings, which could create broader negative impacts on mortgage lending in Hawaii. This bill provides that a judicial foreclosure sale would not be considered final until: 15 days after the public sale, unless a subsequent bid or notice of intent to bid is submitted, or 45 days after the public sale. This creates a prolonged period of uncertainty after the auction has already taken place, which could create uncertainty that could, in turn, discourage participation at foreclosure auctions - potentially lowering sale prices and increasing losses. Credit unions and other mortgage lenders are already held to strict deadlines and procedural requirements in Hawaii's judicial foreclosure process.

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

LATE

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 11, 2026

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
and members of the Senate Committee Commerce and Consumer Protection
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **S.B. 2946 (Foreclosures)**
Hearing Date/Time: Wednesday, February 11, 2026, 9:30 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.**

This Bill: (a) specifies that a judicial foreclosure sale is not final until the earliest of either fifteen days after the public sale, unless an eligible bidder submits a subsequent bid or written notice of intent to submit a subsequent bid, or forty-five days after the public sale; (b) requires subsequent successful bidders to make a downpayment.

The HFSA joins in the testimony of the Collection Law Section of the Hawaii State Bar Association in opposition to this Bill.

This Bill would add a new section to part IA of Hawaii Revised Statutes chapter 667. Part IA deals with “foreclosure by action”, i.e., judicial foreclosures.

The current practice and process throughout Hawaii is that the judicial foreclosure process is overseen by a Circuit Court judge. The judge appoints a neutral foreclosure commissioner to have notices published in the newspaper about any open houses and about the public foreclosure sale (public auction) of the property being foreclosed. The commissioner conducts the public auction and receives the downpayment from the high bidder. The mortgagee, i.e., the lender or its servicer, is not involved with accepting subsequent bids.

Also under the current court practice and process, a few weeks/months after the auction, there will be a court hearing for the judge to approve (confirm) the highest bid from either (1) the qualified bidder at the public auction, or (2) any qualified bidder who re-opens the bidding in court and is the highest bidder. Any re-opening bid in court must be 5% higher than the highest bid at the public auction.

However, this Bill inexplicably creates a new process for a “subsequent bid” in the current judicial foreclosure process. This Bill does so by copying into the judicial foreclosure process the provisions for a “subsequent bid” that’s used for non-judicial foreclosures in HRS section 667-29.5.

Because this Bill states that this new process is “notwithstanding any other law to the contrary”, this new process problematically changes and upends the current judicial process. It eliminates the role of the judicial foreclosure’s court-appointed commissioner and the role of the judge when there’s a “subsequent bid” after the “public sale”. This Bill brings the mortgagee (i.e., the lender) into the post-public sale process by having the mortgagee (not the neutral court-appointed commissioner) receive the “subsequent bid”. This Bill also minimizes or eliminates the discretion of and the oversight by the judge at

S.B. 2946 (Foreclosures)

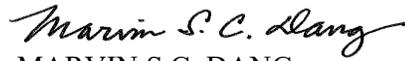
Testimony of Hawaii Financial Services Association

Page 2 of 2

the confirmation hearing to either confirm or not confirm the sale if there's a "subsequent bid" after the "public sale".

Accordingly, we ask that your Committee "hold" or "defer" (i.e., do not pass) this Bill as drafted.

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

(MSCD/hfsa)

SB-2946

Submitted on: 2/7/2026 5:45:02 PM

Testimony for CPN on 2/11/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Joe M Taylor	Individual	Oppose	Written Testimony Only

Comments:

This is a bad bill

SB-2946

Submitted on: 2/8/2026 11:49:39 PM

Testimony for CPN on 2/11/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Steve Glanstein	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill. It definitely makes a mockery of the bidding process. If a prospective buyer who agrees to reside on the property wishes to avoid the foreclosure bidding process, the prospective buyer simply has to wait and make an offer slightly higher than the highest bid at the auction. Why have a foreclosure process if somebody can steal the property by showing up at the auction and make a subsequent offer just slightly more than the accepted one?

SB-2946

Submitted on: 2/9/2026 10:57:11 AM

Testimony for CPN on 2/11/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Anne Anderson	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Member of the Committee:

I oppose S.B. No. 2946. The new subsection 667- (b) (found on page 2, lines 10-15) appears to conflict with the new subsection (c) (found on page 2, lines 16-18) because subsection (b) allows an eligible bidder who makes a bid "equal" to the amount of the latest and highest bid of the successful bidder the final successful bidder while subsection (c) states that the "successful bidder" is the "highest bidder." Additionally, in judicial foreclosure actions, the judge should determine who is the final successful bidder. I also join in the testimony of the HSBA Collection Law Section which sets forth a number of other reasons why the bill should be deferred.

Respectfully submitted,

M. Anne Anderson

SB-2946

Submitted on: 2/9/2026 12:59:51 PM

Testimony for CPN on 2/11/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Lance S. Fujisaki	Individual	Oppose	Written Testimony Only

Comments:

I join in the testimony of the HSBA Collection Law Section which sets forth a number of reasons why the bill should be deferred.

SB-2946

Submitted on: 2/9/2026 1:20:46 PM

Testimony for CPN on 2/11/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
John Toalson	Individual	Oppose	Written Testimony Only

Comments:

I oppose SB 2946. The new subsection 667- (b) (found on page 2, lines 10-15) appears to conflict with the new subsection (c) (found on page 2, lines 16-18) because subsection (b) allows an eligible bidder who makes a bid "equal" to the amount of the latest and highest bid of the successful bidder the final successful bidder while subsection (c) states that the "successful bidder" is the "highest bidder." Additionally, in judicial foreclosure actions, the judge should determine who is the final successful bidder. I also join in the testimony of the HSBA Collection Law Section which sets forth a number of other reasons why the bill should be deferred.

John Toalson

SB-2946

Submitted on: 2/10/2026 10:52:03 PM

Testimony for CPN on 2/11/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Primrose Leong-Nakamoto	Individual	Oppose	Written Testimony Only

Comments:

I oppose SB 2946. The new subsection 667- (b) (found on page 2, lines 10-15) appears to conflict with the new subsection (c) (found on page 2, lines 16-18) because subsection (b) allows an eligible bidder who makes a bid "equal" to the amount of the latest and highest bid of the successful bidder the final successful bidder while subsection (c) states that the "successful bidder" is the "highest bidder." Additionally, in judicial foreclosure actions, the judge should determine who is the final successful bidder. I also join in the testimony of the HSBA Collection Law Section which sets forth a number of other reasons why the bill should be deferred.

SB-2946

Submitted on: 2/7/2026 9:17:49 PM

Testimony for CPN on 2/11/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Oppose	Written Testimony Only

Comments:

Please accept this as testimony opposed to SB2046.

Instead of reforming foreclosure sales outcomes, it omits basic due process protections, homeowner safeguards, and judicial oversight. Among its many failures, there is no protection or benefit for the homeowner, no due process safeguards for existing bidders, no safeguards against bid manipulation, no meaningful judicial oversight, no remedy if the subsequent bidder defaults.

Please defer this bill.

Lynne Matusow