

MORTGAGE FORECLOSURE TASK FORCE
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor as required by section 92-7(b), Hawaii Revised Statutes ("HRS").

Date: August 2, 2011

Time: 9:30 a.m.

Place: Queen Liliuokalani Conference Room
King Kalakaua Building, 1st Floor
335 Merchant Street
Honolulu, Hawaii 96813

Present: Marvin S.C. Dang, Esq., Vice Chairperson
Everett S. Kaneshige, Deputy Director, DCCA
Iris K.I. Catalani, Member
Glenn Ching, substitute member for Kevin Oda
Susan Pang Gochros, substitute member for Julia H.
Verbrugge
Steven Guttman, Esq., Member
Lorrin Hirano, Member
Francis P. Hogan, Esq., Member
Jeff Gilbreath, Member
Gary Y. Kawamoto, Member
Bruce B. Kim, Member
John Morris, Member
Jane Sugimura, Member
Joan Takano, Member
Steven Tam, Member
Ryker J. Wada, Member
Colin A. Yost, Member
George J. Zweibel, Member
James C. Paige, Deputy Attorney General
Faith Nishimura, Secretary

Guests: Albert J. Denys, Jr., Certified Hawaii
Stefanie Sakamoto, Hawaii Credit Union League
Kim Harmon, Face Hawaii

Nani Ferris, Law Offices of Marvin Dang
Dean Sugano, Legislative Reference Bureau
Charlotte Carter-Yamauchi, Legislative Reference Bureau

Call to Order: There being a quorum present, the meeting was called to order by Acting Chairperson Dang at 9:35 a.m.

Introduction of Task Force Members: Members introduced themselves in their individual capacities.

Approval of the Minutes of the December 7, 2010 and It was moved by Ms. Takano, seconded by Mr. Hirano, and unanimously carried to approve the meeting minutes of the December 7, 2010 meeting as circulated.

December 15, 2010 Meetings: It was moved by Mr. Yost, seconded by Ms. Takano, and unanimously carried to approve the meeting minutes of the December 15, 2010 meeting as circulated.

Ms. Sugimura arrived at 9:45 a.m.

Additions to the Agenda: None.

Overview of Open Meetings Law (Sunshine Law): James Paige, Deputy Attorney General, introduced himself to the new members and guests as counsel for the task force.

Mr. Paige discussed Chapter 92, HRS (the Sunshine Law) which is administered by the Office of Information Practices.

He advised members that agendas are prepared by staff and the Chairperson. Agendas may include other information received from other parties.

Members of the public are entitled to participate on any item of the agenda that is filed.

The members have the right not allow discussion of items that are not on the agenda.

He also advised that the agenda focuses on what the meeting is going to entail.

The task force member's interactions with each other are also governed under the Sunshine Law. Any Board business should be discussed at a scheduled meeting.

One option the task force has under the current rule is that only two members may discuss board business.

Mr. Paige advised members that another option would be to have the task force set up investigative committees which would be comprised of less than a quorum of the task force members. There would be nine or less members on each committee.

At the board meeting these committees can be assigned to investigate a particular issue. These committees can meet outside of the sunshine law to discuss the issue and bring back what was discussed at the next board meeting and present that discussion to the full board and members of the public. The task force would then vote and take action at the next scheduled task force meeting.

Mr. Paige indicated that due to the timelines the members were under to get information to the Legislature, it was not feasible to have all issues required by the task force discussed at an open meeting.

Another option the task force has is the ability to discuss issues in executive session to seek advice and counsel from the board's attorney on issues relating to the duties and privileges of the board.

Executive
Session:

At 9:50 a.m., it was moved by Mr. Wada, seconded by Mr. Zweibel, and unanimously carried to enter into Executive Session pursuant to HRS sections 92-4 and 92-5(a)(4), to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities.

EXECUTIVE SESSION

At 10:13 a.m., it was moved by Mr. Yost, seconded by Mr. Guttman, and unanimously carried to return to open session. The room was reopened to the public.

Report of Vice
Chairperson &
Acting
Chairperson:

Mr. Dang stated that as Vice Chairperson and Acting Chairperson, he presented testimony on June 29, 2011 to the House Committee on Consumer Protection and Commerce and the Senate Committee on Commerce and Consumer Protection informational briefing regarding Act 48.

Mr. Dang indicated that in his testimony, he informed the committees that he had appointed Mr. Morris and Mr. Kaneshige as additional members of the task force to maintain a balanced representation of interests on the task force. This appointment was done at his discretion as Acting Chairperson of the taskforce.

Election of
Chairperson:

The floor was opened for nominations for the office of Chairperson.

Mr. Kim nominated Mr. Kaneshige as Chairperson. The nomination was seconded by Mr. Morris. There were no other nominations for Chairperson. Mr. Kaneshige was elected Chairperson by a majority, with Mr. Yost abstaining.

Discussion about
Ethics
Commission
Memorandum
dated May 26,
2011:

Mr. Dang invited Leslie H. Kondo, Executive Director and General Counsel of the Hawaii State Ethics Commission ("Commission") to the meeting to provide guidance to the task force members.

Mr. Zweibel asked Mr. Kondo whether his staff's opinion in the Commission's Memorandum of May 26, 2011 has changed after receiving Mr. Dang's response letter dated July 18, 2011 and the July 15, 2011 memorandum to Senator Baker from the Senate Majority Research Office.

Mr. Kondo responded in the negative.

Mr. Wada asked Mr. Kondo whether the organizations appointed by Act 162 are excluded from presenting or lobbying at the legislature on matters relating to mortgages.

Mr. Kondo responded in the negative and informed members that the ethics code applies to the individual and not the organization.

Mr. Guttman asked Mr. Kondo whether a member of the task force can testify in favor of the task force's recommendations.

Mr. Kondo responded as follows:

- A member may testify in support of or in opposition to a bill if they are testifying on behalf of the task force.
- A member may not testify in support of or in opposition to a bill if they are being paid to testify.

Mr. Wada asked Mr. Kondo as to the Commission's process of a potential violation.

Mr. Kondo answered that the first type of potential option would be where the Commission receives an official complaint/charge. After that complaint/charge is received, a letter is sent to the person and will be asked for a response. The Commission would then have an opportunity to do an informal advisory opinion. If the person in question disagrees or the Commission deems that there is a violation, the next step would be a contested case hearing where an opinion or decision will be rendered. The Commission has the ability to assess a fine up to \$500 per violation.

Another option would be an informal complaint received by the Commission or staff. A letter would be sent asking that person to explain to the Commission that what they did was consistent with the statutes. The outcome of this type of complaint since a warning has already been issued, would be at the Commission's discretion.

Task Force
Recommendations to 2011 and
2012 Hawaii
Legislature:

Members reviewed a July 15, 2011 memorandum to Mr. Dang from Stephen Levins regarding LRB correspondence which included a working draft of a table from Dean Sugano of the LRB.

The table provides a link between the items for review mandated under Act 162, the recommendations of the task force in its preliminary report, and relevant amendments to the mortgage foreclosure and related laws made under Act 48, Session Laws of Hawaii 2011.

Mr. Dang indicated that most of the task force recommendations were approved by the legislature.

He also indicated that in regards to the recommendations to the 2012 legislature, the deadline is November 1, 2011 to submit proposals to the LRB for drafting. Under Act 162, the task force needs to submit a report of its findings and recommendations, including any proposed legislation, to the legislature 20 days before the 2012 legislative session convenes.

Charlotte Carter-Yamauchi, Acting Director, LRB, and Dean Sugano, LRB Researcher, appeared before the task force to answer any questions the members may have.

Ms. Carter-Yamauchi asked that the LRB be allowed enough time to put together all the information received from the task force in order to draft a report for the members to review at a task force meeting and then subsequently voted on at the next meeting.

She also indicated that specific and detailed language in recommendations would work well for the LRB in drafting a report.

Mr. Sugano commented that the working draft of the table was a comparison of the task force act, the task force's proposals, and what Act 48 may have done to the proposals.

Informational
Briefings for the
Task Force:

Mr. Dang suggested having an informational briefing on Act 48 for the task force members at a future meeting.

Mr. Guttman indicated that since members have received a summary from the LRB, there is no need for an informational briefing. Mr. Yost agreed.

Mr. Hogan requested that the task force be briefed on the status of how the mortgage foreclosure dispute resolution program is going to be implemented.

He also requested that the Judiciary provide guidance on the how the conversion process will be handled.

Mr. Kaneshige stated that DCCA can do a short briefing on the status of the mortgage foreclosure dispute resolution program can be presented to members by himself, Ms. Catalani, and Mr. Kim.

He requested that Ms. Gochros check with her contacts at the judiciary to have someone do a short briefing on the conversion process and to provide guidance. He also requested that Ms. Gochros provide statistics which would be subject to what she can provide to members.

Mr. Dang asked that the Judiciary provide information monthly regarding the number of judicial foreclosures filed.

Ms. Catalani left the meeting at 11:05 a.m.

Investigative
Groups of the
Task Force:

It was moved by Mr. Kaneshige, seconded by Mr. Dang, and unanimously carried to form three investigative subcommittees. The first investigative committee would deal with Act 48 issues, except for dispute resolution. The second investigative subcommittee would define and discuss condominium and planned unit development issues. The third investigative committee would be dealing with counseling and dispute resolution issues.

The members of the Act 48 subcommittee are as follows:

Iris K.I. Catalani
Marvin S. C. Dang
Steven Guttman
Lorrin Hirano
Francis P. Hogan
Bruce B. Kim
Kevin Oda
Colin Yost
George J. Zweibel

The members of the Condominium and Planned Unit
Development subcommittee are as follows:

Francis Hogan
Everett Kaneshige
Bruce Kim
John Morris
Jane Sugimura

The members of the Counseling and Dispute Resolution
subcommittee are as follows:

Jeff Gilbreath
Everett Kaneshige
Gary Y. Kawamoto
Bruce Kim
John Morris
Joan Takano
Steven Tam
Julia Verbrugge
Ryker J. Wada

Scheduling of September 14, 2011
Next Meeting(s): Queen Liliuokalani Conference Room
King Kalakaua Building, 1st Floor
335 Merchant Street
Honolulu, Hawaii 96813

Adjournment: There being no further business to discuss, it was moved by
Mr. Dang, seconded by Mr. Yost, and unanimously carried to
adjourn the meeting at 11:45 a.m.

Taken and recorded by:



Faith Nishimura
Secretary

Reviewed and approved by:



Everett S. Kaneshige
Chairperson

9/1/11

Minutes approved as is.

Minutes approved with changes. See Minutes of _____.