

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: October 5, 2011

Time: 9:30 a.m.

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

Present: Everett S. Kaneshige, Chairperson
Marvin S.C. Dang, Esq., Vice Chairperson
Iris K.I. Catalani, Member
Jeff Gilbreath, Member
Steven Guttman, Esq., Member
Lorrin Hirano, Member
Francis P. Hogan, Esq., Member
Gary Y. Kawamoto, Member
Bruce B. Kim, Member
John Morris, Member
Rick Murphy, substitute member for Kevin Oda
Jane Sugimura, Member
Joan Takano, Member
Steven Tam, Member
Julia H. Verbrugge, Member
Ryker J. Wada, Member
James C. Paige, Deputy Attorney General
Faith Nishimura, Secretary
Napaporn Lam, Secretary

Excused: Colin A. Yost, Member
George J. Zweibel, Member

Guests: Seth Corpuz-Lahne, Office of Administrative Hearings, DCCA
Al Denys, Task Force Committee Member of Condominium
and Planned Unit Development Subcommittee Group
Gary Fujitani, Hawaii Bankers Association
Becky Gardner, Representative Robert N. Herkes's Office
Mihoko Ito, Goodsill Anderson Quinn & Stifel LLP
Mary James, Division of Financial Institutions, DCCA
Sheri A. Kagimoto, Mortgage Assistance & Mitigation Group
Nanea Kalani, Civil Beat.com
Chris Karamatsu, Goodsill Anderson Quinn & Stifel LLP
Stafford Kiguchi, Bank of Hawaii
Terrence Lee, Legislative Reference Bureau ("LRB")
Peggy Mierzwa, Office of Senator Rosalyn Baker
Madeleine Young, Legal Aid Society of Hawaii
Malia Zimmerman, Hawaii Reporter

Call to Order: There being a quorum present, the meeting was called to
order by Chairperson Kaneshige at 9:34 a.m.

Approval of the
Minutes of the
September 14,
2011 Meeting: It was moved by Mr. Dang, seconded by Mr. Morris, and
unanimously carried to approve the meeting minutes of the
September 14, 2011 meeting with the following amendments.

On page 3, under informational briefings for the Task Force,
the sixth paragraph should read as follows:
Up to including August 31, 2011, the number of new judicial
foreclosure actions filed in all circuits was 1,266.

Additions to the
Agenda: None.

Report of
Chairperson: Chairperson Kaneshige asked the new successors to submit
a letter to indicate which member they succeeded. The
change will effective from the first 2011 task force meeting on
August 2, 2011.

Effective with the August 2, 2011 meeting, Mr. Oda replaced
Neal Okabayashi from the Hawaii Bankers Association.

Effective with the August 2, 2011 meeting, Mr. Kawamoto replaced Linda Nakamura from the Mortgage Bankers Association of Hawaii.

For today's meeting, Rick Murphy is the substitute for Mr. Oda.

Mr. Yost and Mr. Zweibel were excused from the meeting.

Mr. Guttman and Ms. Catalani will be late for the meeting.

Chairperson Kaneshige stated that he received two emails from Senator Rosalyn Baker.

The first email raised the issue with respect to specific obligation of the Home Owner Association to maintain the property while the property is in foreclosure. Chairperson Kaneshige will forward this email to Investigative Group 2 (Condominium and Planned Unit Development) to review.

The second email was from the Senator Baker's constituent in Hilo regarding the conversion of foreclosure. Chair Kaneshige will refer this email to Investigative Group 1 (Act 48) to review.

Chairperson Kaneshige as DCCA representative stated that the Mortgage Foreclosure Dispute Resolution (MFDR) Program was officially launched on Monday, October 3, 2011. A lender can now submit the notice of non-judicial foreclosure electronically via DCCA online filing portal.

Mr. Dang asked if any lender has submitted the notice of non-judicial foreclosure to the MFDR program.

Chairperson Kaneshige invited Mr. Corpuz-Lahne to answer.

Mr. Corpuz-Lahne stated that as of 9:30am on October 5, 2011, no lender has filed a notice of default and intent to foreclose.

Mr. Guttman arrived at 9:45 am.

Follow up on
Questions to
the Judiciary:

Chairperson Kaneshige invited Ms. Verbrugge to answer the questions that task force members had asked at the last task force meeting.

Ms. Verbrugge stated that the first question was from Mr. Hogan. The question is whether the Supreme Court Staff Attorney could provide an informational briefing about having the conversion petition proceeding as a limited proceeding.

Ms. Verbrugge stated that she spoke with one of the Supreme Court Staff Attorneys and he respectfully declined.

Second question was whether the seven conversion petitions filed were non-judicial foreclosure under Part I or under Part II.

Ms. Verbrugge stated that the court application services branch doesn't distinguish between a Part I or a Part II non-judicial foreclosure. Ms. Verbrugge suggested that whether one could tell if the non-judicial foreclosure was brought under Part I or under Part II may also depend on the information provided by the parties in the files. If anybody would like to pursue, please feel free to contact Ms. Verbrugge.

Based on recorded data as of October 3, 2011, there were no conversions petitions filed in September 2011.

Ms. Verbrugge reported that based on reported data as of October 4, 2011, the number of new judicial foreclosure actions filed in September 2011 was 291 compared with 107 in September 2010.

Mr. Dang asked Ms. Verbrugge how many judicial foreclosure filings there were in all circuit courts in August 2011.

Ms. Verbrugge reported that based on reported data as of October 4, 2011, the number of new judicial foreclosure actions filed in all circuit courts in August 2011 was 321 filings.

Investigative Groups Reports to the Task Force: Chairperson Kaneshige stated that each investigative group should have a draft of potential language documents for members to review and approve at this meeting to submit to the LRB to begin drafting a bill for the task force to later review and vote on.

Investigative Group 2 (Condominium and Planned Unit Development) already sent out two drafts to the members for their review. Investigative Group 1 (Act 48) and Investigative Group 3 (Counseling and Dispute Resolution) just submitted a draft to members at today's meeting.

Chairperson Kaneshige asked each investigative group for their presentations to the members in the order that the drafts were submitted to the task force.

The first group to present was Investigative Group 2 (Condominium and Planned Unit Development). Mr. Morris addressed members on behalf of Investigative Group 2. The group distributed two draft documents with comments on different sections of Chapter 421J and 514B and gave an overview.

It was moved by Mr. Morris, and seconded by Ms. Sugimura, to refer the draft documents of Investigative Group 2 to the LRB for drafting.

Ms. Catalani arrived at 10:00 a.m.

Mr. Wada offered negative comments of the draft documents regarding the payment plan for the consumer.

Mr. Wada also questioned why the proposal eliminated subpart of 421J(c) including the right to mediate and arbitrate.

Mr. Morris asked Chairperson Kaneshige to explain the procedure of the review and approval of the draft document to the LRB.

Chairperson Kaneshige stated that the task force has to vote to approve the draft document and submit to the LRB. The LRB will prepare and circulate a draft of a bill to the task force for approval. There will be at least this one more opportunity to change the language.

Mr. Kim stated that he sent written comments to Mr. Morris on September 29, 2011 echoing the concerns raised by Mr. Wada including questions and suggested additional language to the effect that if the homeowner demonstrates that the amount of the payment under the proposed payment plan constitutes all the owner's discretionary income then the payment plan could be extended beyond 12 months.

Mr. Kim stated that some language on the original draft is already considered ready and with the respect of 421J(c). Mr. Kim suggested that it include the right of the owner protection of all fair debt collection laws mandated under federal and state law.

Mr. Kim suggested that the task force should look at the draft document from Investigative Group 2 (Condominium and Planned Unit Development) at the next meeting.

Mr. Morris gave an overview of the "reasonable payment" issue and Chapter 421-J(c).

Chairperson Kaneshige suggested that Mr. Morris withdraw the motion and bring the amended draft back to the next meeting.

Mr. Morris asked whether withdrawing the motion would slow down the process to submit the draft document to the LRB.

Mr. Dang stated that the task force needs to submit the draft document to the LRB before November 1, 2011. He said that there is sufficient time for the task force to review another draft from Investigative Group 2 before then.

Mr. Paige advised that the task force should defer action on the motion rather than withdraw the motion.

It was moved by Mr. Morris, seconded by Ms. Sugimura, and unanimously carried to defer the draft documents of Investigative Group 2 (Condominium and Planned Unit Development) to the next meeting.

The second group to present was Investigative Group 1 (Act 48). Mr. Guttman addressed members on behalf of Investigative Group 1. A draft document was distributed with comments and overview on different sections of Chapter 667.

It was moved by Mr. Guttman, seconded by Mr. Wada, and unanimously carried to refer the draft documents of Investigative Group 1 (Act 48) to the LRB for drafting.

Mr. Dang noted that the draft that was circulated was not a redlined version. A redlined version would have brackets to show proposed deletions from the existing law and would have underscoring to show proposed additions to the existing law. He said that without seeing a redlined version, it is difficult to know where and what the changes are in the draft.

Mr. Guttman stated that the draft document distributed at today's meeting was not the redlined draft document.

Mr. Dang stated that the redlined version of the draft document from Investigative Group 1 should be distributed to the task force members at today's meeting and the redlined version should be the one that is submitted to the LRB.

Mr. Kim stated that he had a copy of the redlined draft document.

Mr. Dang indicated that the task force should distribute the redlined draft document from Mr. Kim at today's meeting so that the task force can vote on submitting the redline version to the LRB for drafting.

Terrence Lee of the LRB appeared before the task force to answer any questions the members might have.

Chairperson Kaneshige asked Mr. Lee for advice regarding the draft documents from task force to the LRB.

Mr. Lee stated that the LRB will have to consolidate every single definition in the chapter and compare with the original statute to make sure the consolidated definition is appropriate. It will be helpful if the task force were to submit the definition language for the draft legislation document. He also said it will be helpful for the LRB if it received redlined drafts from the task force.

Mr. Guttman agreed to distribute the redlined document from Investigative Group 1 to members.

The motion to refer the redlined version of the draft document from Investigative Group 1 to the LRB for drafting was unanimously carried.

The third group to present was Investigative Group 3 (Counseling and Dispute Resolution). Mr. Gilbreath addressed members on behalf of Investigative Group 3. A draft document was distributed to the task force members with comments and overview.

It was moved by Mr. Gilbreath, and seconded by Mr. Tam, to submit the draft document of Investigative Group 3 (Counseling and Dispute Resolution) to the LRB.

After discussion, the motion was unanimously carried.

The meeting was recessed at 11:05am.

The meeting was reconvened at 11:15am.

Status of
Investigative
Groups Formed
In 2010

Mr. Dang stated that in 2010 the task force created 3 Investigative Groups. It was unclear if the issues they were created to address have been resolved. In 2011, the task force created an additional 3 Investigative groups. It's unclear how many Investigative groups the task force has now.

Mr. Paige stated that these types of groups are created in the specific section of the Sunshine Law that created specific purpose. They're not subject to the Sunshine Law. Once they complete their purpose, they basically cease to exist. This is the special way that the members can communicate without violating the Sunshine Law. Extending those groups will create problems.

Mr. Paige suggested that the task force should only keep the groups that were created on August 2, 2011.

Mr. Hogan commented in negative and suggested that task force should still recognize the groups that were created in 2010.

Mr. Paige again stated that if the groups that were created already completed the assignment, then they cease to exist. If there is any specific task that needs to be considered, then the task force needs to assign it to the existing groups.

Review and
Reporting
Requirements
Under Act 162

Mr. Dang commented on Act 162 which created the task force. A copy was circulated for the meeting. He pointed out the 9 items in Section 2 of the Act which the task force is specifically required to address in its report to the legislature.

Chairperson Kaneshige asked the task force members if the task force is still on track compared with what was set out last year 2010.

Mr. Hirano answered in positive and stated that Act 162 is the guideline that the task force needs to follow.

Mr. Dang stated that for the report to Legislature which the task force will submit at the end of this year, the task force needs to ensure that all 9 required items are addressed.

Scheduling of October 26, 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
Chairperson Kaneshige, seconded by Mr. Dang, and
unanimously carried to adjourn the meeting at 11:53 a.m.

Taken and recorded by:



Napaporn Lam
Secretary

Reviewed and approved by:



Everett S. Kaneshige
Chairperson

10/26/11

Minutes approved as is.

Minutes approved with changes. See Minutes of _____.