

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 26, 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
Jeff Gilbreath, Member
Francis P. Hogan, Esq., Member
Gary Y. Kawamoto, Member
Bruce B. Kim, Member
John Morris, Member
Kevin Oda, Member
Jane Sugimura, Member
Joan Takano, Member
Julia H. Verbrugge, Member
Madeleine Young, substitute member for Ryker J. Wada
James C. Paige, Deputy Attorney General
Napaporn Lam, Secretary

Excused: Iris K.I. Catalani, Member
Steven Guttman, Esq., Member
Lorrin Hirano, Member
Steven Tam, Member
Colin A. Yost, Member
George J. Zweibel, Member

Guests: Al Denys, Task Force Committee Member of Condominium and Planned Unit Development Subcommittee Group
Gary Fujitani, Hawaii Bankers Association
Becky Gardner, Office of Representative Robert N. Herkes
Christine Karamatsu, Goodwill Anderson Quinn & Stifel LLP
Mary James, Division of Financial Institutions, DCCA
Nanea Kalani, Civil Beat.com
Stefanie Sakamoto, Hawaii Credit Union League
Terrence Lee, Legislative Reference Bureau ("LRB")
Charlotte Carter-Yamauchi, Legislative Reference Bureau ("LRB")
Kelli-Rose Hooser, Office of Senator Rosalyn H. Baker

Call to Order: There being a quorum present, the meeting was called to order by Chairperson Kaneshige at 9:36 a.m.

Approval of the Minutes of the October 26, 2011 Meeting: It was moved by Mr. Dang, seconded by Mr. Morris, and unanimously carried to approve the meeting minutes of the October 26, 2011 meeting.

Mr. Morris wanted to follow-up regarding page 3 of the minutes under Report of Chairperson, third paragraph concerning two emails from Senator Roz Baker. Mr. Morris asked Chairperson Kaneshige if he had forwarded the e-mails to Investigative Group 2 (Condominium and Planned Unit Development) members.

Chairperson Kaneshige stated that he will ask Ms. Lam, Secretary, to forward the e-mails from Senator Baker to Investigative Group 1 (Act 48) and Investigative Group 2 (Condominium and Planned Unit Development).

Additions to the Agenda: None.

Report of Chairperson: Chairperson Kaneshige noted that the staff from the LRB was present at the meeting to answer questions regarding the materials that was sent to them, their expectation of the timing, and the format of the draft bill.

Chairperson Kaneshige said that he will get back to Mr. Gilbreath by the next task force meeting regarding the question about the vacancy he filled as a task force member.

Judiciary Report
on Foreclosure
Statistics:

Chairperson Kaneshige invited Ms. Verbrugge to report on the foreclosure statistics from the Judiciary.

Ms. Verbrugge indicated that the statistics she has are based on reported data as of October 24, 2011. She also noted that because the statistics reflect an approximate three week period for October, 2011, it may be difficult to compare with the numbers from the last task force meeting which reflected the entire month of September, 2011.

Based on recorded data generated on the morning of October 24, 2011, there were 8 conversions petitions (to convert non-judicial foreclosures to judicial foreclosures) filed in all circuit courts since Act 48 was signed into law.

Ms. Verbrugge reported that based on reported data generated on the morning of October 24, 2011, the number of new judicial foreclosure actions filed in all circuit courts in October, 2011 was 204.

Mr. Hogan asked Ms. Verbrugge what the dispositions are of the conversion petitions that were filed in all circuit courts.

Ms. Verbrugge answered that she doesn't know that information, but stated that some of the conversions petitions might have been granted and some of them might have been dismissed.

Mr. Hogan asked Ms. Verbrugge if the Ho'ohiki website can identify or show this information.

Ms. Verbrugge stated that she doesn't think so but she believes that the information is requestable by the public, and that hopefully, it should not take too long to get it.

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. The drafts would then be submitted to the LRB to draft a bill that the task force will review and vote on at a later meeting. By voting on these motions, the task force will only be voting to submit the drafts to the LRB and not approving the substantive language itself. The task force will be voting at a later meeting to approve the substantive language.

Chairperson Kaneshige asked that the presentations by the investigative groups be in the same order that the drafts were submitted for today's task force meeting.

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 redlined draft documents with comments on different sections of §421J and §514B and gave an overview.

It was moved by Mr. Morris, and seconded by Mr. Hogan, to submit two redlined draft documents of Investigative Group 2 (Condominium and Planned Unit Development) to the LRB for drafting.

It was then moved by Mr. Hogan, and seconded by Ms. Catalani, to amend the motion to discuss the draft document provision in §421J(2) which would change the expiration date of the lien from two years to five years.

Mr. Kim noted the change in the expiration date of the lien from two years to five years was apparently made at the suggestion of Mr. Guttman who is not a member of Investigative Group 2.

Mr. Kim indicated that the original draft submitted by Investigative Group 2 contained a two year expiration date for the lien and there was no agreement among Investigative Group 2 members to change the expiration date from two years to five years. He supported the original two year expiration date that the group agreed on and he thinks that two years is a reasonable of period of time.

Mr. Dang asked how the lien expiration would work in the following scenario: Let's assume that the lien expires in two or five years. If before the lien expires, a mortgage lender judicially forecloses on the condominium unit and names the condo association as a party in the foreclosure action because the lien is recorded in the Bureau of Conveyances against the unit. If the lien expires while the foreclosure action is pending, what effect does that the lien expiration has on the condo association in that foreclosure?

Mr. Morris stated that the expiration of the lien of the written document wouldn't necessarily eliminate the debt owed to the condo association.

Mr. Morris suggested that for the purpose of the draft bill prepared by the LRB, the task force should clarify the lien expiration situation.

Mr. Dang asked Mr. Morris regarding the inconsistency of using the definition of "Owner" and the definition of "Unit Owner" in the Part V draft document.

Mr. Morris recognized the inconsistency and stated that "Owner" is a better word to use for a definition. He gave an overview of §667-21.

Chairperson Kaneshige indicated that the task force should submit the draft to the LRB because the LRB can work on the inconsistency, compare and consolidate the definition, and get back to the task force with the LRB's recommendation.

Ms. Carter-Yamauchi from the LRB asked Mr. Morris to clarify if Investigative Group 2 wants to keep the definitions from §667-21 and add all the additional definitions on page 3 of the draft.

Mr. Morris answered in positive.

Ms. Carter-Yamauchi asked Mr. Morris to clarify regarding the inconsistency of the definition of "Unit Owner" and "Owner".

Mr. Morris stated that "Owner" is a better definition because it covers §421J and §514B.

After discussion, Mr. Hogan and Ms. Catalani withdrew the motion to discuss the draft document provision in §421J (2) to change the expiration date from two years to five years for a lien recorded by an association.

The main motion, to submit the two redlined draft documents of Investigative Group 2 to the LRB for drafting, was unanimously carried.

The second group to present was Investigative Group 1 (Act 48). Mr. Hogan addressed members on behalf of Investigative Group 1 and distributed a redlined draft. Mr. Hogan and others provided comments and an overview of the proposed changes to different sections of §667.

Mr. Oda gave the overview on §667-21(b) regarding the definition of "Hawaii-based" and the United States Department of Housing and Urban Development ("HUD").

Mr. Kim requested deleting the reference to the "Department" in §667-21(b) to the effect that "a link to the HUD website shall be found on website of the Department." He explained that the Department of Consumer and Commerce Affairs ("DCCA") does not approve the list of housing counselors and that this information is readily available on the HUD website.

Mr. Gilbreath suggested taking out the definition of "Hawaii-based" and explained that sometimes the counselors here have to refer a homeowner to a different agency not based in Hawaii. For example, if a family has a language barrier, the Hawaii counselor might have to refer the family to another agency that is not based in Hawaii. In that scenario, the homeowner would be ineligible to attend the program if the agency that they want to consult with is not a "Hawaii-based" agency.

Chairperson Kaneshige asked Investigative Group 3 to work on the definitions of "budget and credit counselor" and "housing counselor" and on the implications of requiring the counselors to be "Hawaii-based".

Mr. Dang asked a question of Chairperson Kaneshige in Chairperson Kaneshige's capacity as the DCCA's Deputy Director. Mr. Dang noted that the Mortgage Foreclosure Dispute Resolution ("MFDR") Program is required under Act 48 to notify the owner-occupant that the owner-occupant needs to consult with an approved housing counselor or an approved budget and credit counselor. Based on this requirement, Mr. Dang asked if the MFDR program will be compiling and providing a list of such counselors to the owner-occupant, and if so, will the list be available for lenders to use.

Chairperson Kaneshige stated that MFDR got the approved housing counselors list from the HUD website, but not all information was available as Mr. Corpuz-Lahne, the MFDR Program Specialist, wasn't at today's task force meeting.

Mr. Kim objected to the deletion of provisions contained in §667-O regarding the neutral's qualifications, status and liability at page 30 of the current draft. He requested that the language in the original version of §667-O of Act 48 be restored.

Chairperson Kaneshige stated that the language in the original draft should not be taken out and asked Investigative Group 1 to look at it again.

Mr. Dang asked Investigative Group 1 to review the proposed language in §667-AA (d) to determine if there is a need to use the words "attorneys" and "legal counsel" in the same sentence.

Ms. Verbrugge commented on §667-U(5).

Mr. Kawamoto left the meeting at 11:05 am.

Mr. Hogan stated that there are some issues that Investigative Group 1 can't reach consensus on and those issues might need to be voted on by the task force members after receiving the draft from the LRB.

After discussion, it was moved by Mr. Hogan and seconded by Mr. Dang to submit the draft from Investigative Group 1 to the LRB for drafting. Mr. Oda indicated that the draft that would be submitted to the LRB will include the revisions discussed at today's meeting.

The motion to submit the draft document of Investigative Group 1 (Act 48) 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.

Mr. Gilbreath stated that Investigative Group 3 did not have further changes than what was contained in the draft document that was presented by Group 3 at the last task force meeting and which has been submitted to the LRB.

Mr. Gilbreath stated that Group 3 will need to meet to work on the definition on the draft document from Investigative Group 1 and the pending issue on the definition of the counselors. Chairperson Kaneshige asked Mr. Gilbreath to update the Task Force on those issues at the next meeting.

Action on Reports and Recommendations of Investigative Groups None

Discussion and Action on Task Force Recommendations To Hawaii Legislature Chairperson Kaneshige asked the chairperson from each Investigative Group to submit a report of any issues that they can't reach consensus on with an explanation to Chairperson Kaneshige and Mr. Dang, and it will be put on the agenda.

Ms. Carter-Yamauchi, of the LRB, said that the LRB needed the definition language from the task force for the draft.

Ms. Carter-Yamauchi suggested that the task force schedule the next meeting on November 16 because the LRB would like to submit a draft to the task force.

Scheduling of Next Meeting(s): November 16, 2011 at 9:30 am
Queen Liliuokalani Conference Room
King Kalakaua Building, 1st Floor
335 Merchant Street
Honolulu, Hawaii 96813

and

November 30, 2011 at 9:30 am
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 11:33 a.m.

Taken and recorded by:



Napaporn Lam
Secretary

Reviewed and approved by:



Everett S. Kaneshige
Chairperson

11/14/11

Minutes approved as is.

Minutes approved with changes. See Minutes of _____.