

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: November 30, 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
Iris K.I. Catalani, Member
Steven Guttman, Esq., Member
Gary Y. Kawamoto, Member
Bruce B. Kim, Member
John Morris, Member
Kevin Oda, Member
Lorrin Hirano, Member
Jane Sugimura, Member
Joan Takano, Member
Steven Tam, Member
Julia H. Verbrugge, Member
Ryker J. Wada, Member
George J. Zweibel, Member
James C. Paige, Deputy Attorney General
Napaporn Lam, Secretary

Excused: Colin A. Yost, Member

Guests: Charlotte Carter-Yamauchi, Legislative Reference Bureau ("LRB")
Seth Corpuz-Lahne, Mortgage Foreclosure Dispute Resolution
AI Denys, Task Force Committee Member of Condominium
and Planned Unit Development Subcommittee Group
Gary Fujitani, Hawaii Bankers Association
Mihoko Ito, Goodwill Anderson Quinn & Stifel LLP
Mary James, Division of Financial Institutions, DCCA
Sheri Kagimoto, Mortgage Assistance & Mitigation Group
Stafford Kiguchi, Bank of Hawaii
Terrence Lee, Legislative Reference Bureau ("LRB")
Linda Nakamura, Mortgage Bankers Association of Hawaii
Ryan Okahara, Department of Housing and Urban Development
Stefanie Sakamoto, Hawaii Credit Union League

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
November 16,
2011 Meeting: Chairperson Kaneshige said that the approval of the
minutes of the November 16, 2011 meeting will be deferred
to the next meeting.

Additions to the
Agenda: It was moved by Mr. Hogan, and seconded by Mr. Kim, to
add item E: Discussion and action on draft recommendations
to amend HRS §667-60 as prepared by Task Force members
Mr. Hirano and Mr. Zweibel. The motion PASSED unanimously.

It was moved by Vice-Chair Dang, and seconded by Mr.
Hogan, to add item F: Discussion and action on draft
recommendation to amend HRS §667-55 as prepared by Task
Force Vice-Chair Dang. The motion PASSED unanimously.

Report of
Chairperson: Chairperson Kaneshige described for the Task Force
members which handouts were distributed for the meeting.

The first handout was the latest LRB Draft Bill.

The second handout was the set of the road maps
documents which show the location in the LRB Draft Bill of the
provisions from each Investigative Group.

The third handout was from Investigative Group 2 (Condominium and Planned Unit Development) titled "OCP Comments to Association Alternate Power of Sale Foreclosure Process and Suggested Changes for Chapter 421J and 514B Association".

The fourth handout was from the Judiciary showing proposed changes to section 49 on page 108 of the LRB Draft Bill distributed on 11/15/11.

The fifth and sixth handouts were from Mr. Hirano and Mr. Zweibel, respectively. Each handout proposed revisions to §667-60 (§667-AC).

The seventh handout was from Vice-Chair Dang and contained a proposed revision to §667-55.

The eighth handout was from Investigative Group 1 (Act 48) with a proposed revision to §667-41.

Judiciary Report
on Foreclosure
Statistics:

Chairperson Kaneshige asked 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 November 28, 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 as of November 28, 2011, the number of new judicial foreclosure actions filed in all circuit courts in November, 2011 was 257.

Vice-Chair Dang told Ms. Verbrugge that it will be helpful if the Judiciary either put the conversion and new filing statistics on the Judiciary's website, or if the Judiciary sent that information to the Department of Commerce & Consumer Affairs to publicize.

Ms. Verbrugge answered that the Judiciary usually runs the statistics on monthly basis then provides it to the public.

Vice-Chair Dang asked Ms. Verbrugge if there is a particular section on the Judiciary website that shows these statistics.

Ms. Verbrugge answered that she didn't know.

Mr. Hogan asked Ms. Verbrugge if the monthly statistics were sent out via email or as hard copy.

Ms. Verbrugge answered that she will check and get back at the next meeting.

Vice-Chair Dang asked Ms. Verbrugge if the Judiciary could put on the Judiciary website a comparison of the monthly statistics for the current year with the monthly statistics for the previous year.

Ms. Verbrugge answered that she will check and get back at the next meeting.

Mr. Hogan asked Ms. Verbrugge if there is a report of the outcome of the conversions petitions that were filed.

Ms. Verbrugge answered that she doesn't have it.

A member of the public, Mr. Fujitani, asked Ms. Verbrugge for the number of new judicial foreclosure actions that were filed in November, 2010.

Ms. Verbrugge answered that the number of new judicial foreclosure actions filed in all circuit courts in November 2010 was 112.

Investigative
Groups Reports
to the Task Force:

Chairperson Kaneshige stated he wants to have the Task Force members go through the LRB Draft Bill today page by page and to review the proposed changes in each section. If there are no amendments to the proposed changes in that section, the members will move to the next section. If there are proposed amendments to the wording in a section, there needs to be a motion to amend.

Chairperson Kaneshige said that after the members get through the entire LRB Draft Bill, there will need to be a motion to approve the document as amended by any changes made. He said that once that is completed, the members will need to address any changes proposed by the Investigative Groups or by individual members.

Chairperson Kaneshige noted that the LRB Draft Bill has the proposed changes organized in sections based on the Investigative Group that is recommending the changes. The Investigative Group 1 section was in the beginning, the Investigative Group 2 section was in the middle, and the Investigative Group 3 section was at the end. He said that once the document is approved by the members, the LRB will put revisions in the proper order in the next draft.

Mr. Wada stated that the LRB report to the legislature should show the voting record so the legislature will see the positions on the various provisions.

Ms. Catalani arrived at 10:02 a.m.

Vice-Chair Dang suggested that the Task Force can also attach to the LRB report to the legislature the minutes for today's meeting and for the December 14 meeting. The minutes would show the discussion and the votes.

Chairperson Kaneshige stated that the voting today will be by a voice vote if it appears that the vote will be unanimous for a particular motion. However, if it appears that a vote will not be unanimous, then there will be a roll call vote.

Chairperson Kaneshige began the process of reviewing the LRB Draft Bill. The Task Force offered comments and motions regarding the proposed changes as follows:

It was moved by Mr. Hogan and seconded by Mr. Oda to change the wording of the definition of "mailed" on page 5, line 14 from "and by" to "or by". After extensive discussion, Mr. Hogan withdrew the motion.

It was moved by Mr. Hogan, seconded by Mr. Oda, to delete the phrase "under Part II" in §667-1 on page 7, line 6, LRB Draft Bill, as follows:

" "Power of Sale" or "power of sale foreclosure" means a nonjudicial foreclosure [~~under part II~~]"

Chairperson Kaneshige called the question. The motion PASSED, with 1 Abstention(s): Ms. Verbrugge.

It was moved by Mr. Hogan, seconded by Mr. Oda, to add the phrase "under part ___" after the word "negotiation" in §667-1 on page 5, line 5, LRB Draft Bill, as follows:

" "Dispute resolution" means a facilitated negotiation under part ___"

Chairperson Kaneshige called the question. The motion PASSED, with 1 Abstention(s): Ms. Verbrugge.

Mr. Oda suggested that there should be consistency in the terminology of the definition of "dispute resolution" and the description of the dispute resolution program.

Chairperson Kaneshige asked Ms. Carter-Yamauchi, of LRB, to clean up that definition in the LRB Draft Bill.

Chairperson Kaneshige suggested to defer any motions on the changes to §454M-10 on page 8, line 13 because there will be substantive changes from Group 1.

Ms. Verbrugge questioned the reference to "division of the district court" on page 15, line 5 for the notice of nonjudicial foreclosure and sale. Ms. Verbrugge, Mr. Guttman and Mr. Zweibel discussed the district court boundaries.

Mr. Guttman left the meeting at 10:44 a.m.

Chairperson Kaneshige stated that the Task Force would now consider the proposed amendments to §667-58, from page 35, line 16 to page 36, line 4.

Vice-Chair Dang asked why the word "legal counsel" is used on page 35, line 16 rather than the word "attorney" which is used elsewhere in the statute and in the LRB Draft Bill.

Chairperson Kaneshige asked Ms. Charter-Yamauchi, of LRB, to conform the word "legal counsel" to references to "attorney" in the next draft.

It was moved by Mr. Oda, seconded by Mr. Hogan, to add a more descriptive name to the title of §667-58, on page 34, line 16 of the LRB Draft Bill, which currently reads "[] §667-58 [] **Valid notice**". The changes would be located as follows:

""[] §667-58 []" **Valid notice**; _____ ..."

Chairperson Kaneshige called the question. The motion PASSED, with 1 Abstention(s): Ms. Verbrugge.

It was moved by Ms. Takano, and seconded, to restore the deletion to §667-74 on page 37, lines 4 through 6 of the LRB Draft Bill, which currently reads as follows:

~~"resolution program under this part [to attempt to negotiate an agreement that avoids foreclosure or mitigates damages in cases where foreclosure is unavoidable]."~~

And to restore the deletion to §667-75 on page 37, lines 14 through 15 of the LRB Draft Bill, which currently reads as follows:

~~"resolution program pursuant to this part [to attempt to avoid foreclosure or to mitigate damages where foreclosure is unavoidable]."~~

After discussion, Chairperson Kaneshige called a roll call vote. The motion FAILED to get 10 votes, with the votes as follows: 6 Aye(s): Mr. Gilbreath, Mr. Kim, Ms. Takano, Mr. Tam, Mr. Wada and Mr. Zweibel; 8 No(es): Vice-Chair Dang, Ms. Catalani, Mr. Hirano, Mr. Hogan, Mr. Kawamoto, Mr. Morris, Mr. Oda and Ms. Sugimura ; 2 Abstention(s): Chairperson Kaneshige, Ms. Verbrugge; and 2 Excused: Mr. Yost and Mr. Guttman.

The meeting was recessed at 11:24 a.m.

The meeting was reconvened at 11:34 a.m.

Vice-Chair Dang stated that during the recess he discussed with Ms. Carter-Yamauchi, of LRB, the definition of "record" and "recorded" in §667-1, on page 7, line 15. He said that LRB will delete the word "recorded" and only use the word "record".

Vice-Chair Dang stated that he had a similar discussion with Ms. Carter-Yamauchi, of LRB, concerning the definition of "served" in §667-1, on page 7, line 21. He said LRB will change the word "served" to "serve".

It was moved by Mr. Kim, and seconded by Mr. Wada, to restore the deletion in §667-85, on page 45, from line 20 to page 46, line 3, of the LRB Draft Bill, which currently reads as follows:

~~"[A neutral shall not be a necessary party to, called as a witness in, or subject to any subpoena duces tecum for the production of documents in any arbitral, judicial, or administrative proceeding that arises from or relates to the mortgage foreclosure dispute resolution program.]"~~

Ms. Catalani returned to the meeting at 11:40 a.m.

Mr. Hirano returned to the meeting at 11:44 a.m.

After extensive discussion, Chairperson Kaneshige called a

roll call vote. The motion FAILED to receive 10 votes, with the votes as follows: 8 Aye(s): Mr. Kaneshige, Ms. Catalani, Mr. Gilbreath, Mr. Kim, Ms. Takano, Mr. Tam, Mr. Wada and Mr. Zweibel ; 7 No(es): Vice-Chair Dang, Mr. Hirano, Mr. Hogan, Mr. Kawamoto, Mr. Morris, Mr. Oda and Ms. Sugimura ; 1 Abstention(s): Ms. Verbrugge; and 2 Excused: Mr. Yost and Mr. Guttman.

Ms. Takano left the meeting at 12:03 p.m.

It was moved by Mr. Wada, seconded by Mr. Gilbreath, to delete §667-78(a)(4), on page 100, lines 10 through 14, of the LRB Draft Bill, which currently reads as follows:

“(4) Confirmation that if the owner-occupant's property is located in a project with a condominium or other homeowner association, the owner-occupant has notified the association of the owner-occupant's election to participate in the program.”

Chairperson Kaneshige called the question. The motion PASSED, with 1 Abstention(s): Ms. Verbrugge.

At this point, Chairperson Kaneshige suggested that the Task Force should recess the meeting today and reconvene on Monday, December 5, 2011 at 9:30 a.m. The meeting will take place at Queen Liliuokalani Conference Room, King Kalakaua Building, 1st Floor, 335 Merchant Street, Honolulu, Hawaii 96813.

There being no objection, the meeting was recessed at 1:08 p.m. until Monday, December 5, 2011 at 9:30 a.m.

Mortgage Foreclosure Task Force
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Date: December 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
Jeff Gilbreath, Member
Francis P. Hogan, Esq., Member
Iris K.I. Catalani, Member
Steven Guttman, Esq., Member
Gary Y. Kawamoto, Member
Bruce B. Kim, Member
John Morris, Member
Kevin Oda, Member
Lorrin Hirano, Member
Jane Sugimura, Member
Joan Takano, Member
Steven Tam, Member
Julia H. Verbrugge, Member
Ryker J. Wada, Member
George J. Zweibel, Member
James C. Paige, Deputy Attorney General
Napaporn Lam, Secretary

Excused: Colin A. Yost, Member

Guests: Charlotte Carter-Yamauchi, Legislative Reference Bureau ("LRB")
Seth Corpuz-Lahne, Mortgage Foreclosure Dispute Resolution
AI Denys, Task Force Committee Member of Condominium
and Planned Unit Development Subcommittee Group
Gary Fujitani, Hawaii Bankers Association
Mary James, Division of Financial Institutions, DCCA
Terrence Lee, Legislative Reference Bureau ("LRB")
Peggy Mierzwa, Office Senator Baker
Linda Nakamura, Mortgage Bankers Association of Hawaii

Stefanie Sakamoto, Hawaii Credit Union League
Jenny Wooton, Office of Senator Inouye

There being a quorum present on December 5, 2011 at 9:30 a.m., Chairperson Kaneshige reconvened the Mortgage Foreclosure Task Force from its recess of November 30, 2011.

Chairperson Kaneshige noted that since the November 30, 2011 session, a procedural issue regarding two votes taken by the Task Force had been identified, and requested that Mr. Paige explain the nature of the issue and the means to resolve it.

Mr. Paige stated that the vote to restore language deleted from HRS §667-85 by Investigative Group 1 (Act 48) was framed improperly. Because the Task Force had not accepted by vote any of the amendments proposed by any Investigative Group, the language was not officially part of the LRB Draft Bill. The failure of the motion made by Ms. Takano to amend Investigative Group 1's proposed amendment did not, by virtue of its failure, ratify Group 1's proposed amendment. He further stated that, according to the process agreed to by the Task Force, a second vote would be required to officially include it in the LRB Draft Bill.

Mr. Hogan expressed concern that the Task Force was being made to vote on each line of the LRB Draft, and that he was under the impression that since the motion to amend the amendment had failed, the amendment had been accepted by the Task Force for inclusion in the LRB Draft.

Mr. Paige replied that there were certain amendments voted on by the Task Force at the November 30, 2011 session that the Task Force had agreed, substantively, to have LRB include in the LRB Draft Bill, and that the two votes at issue never had a Task Force vote to confirm inclusion.

Chairperson Kaneshige confirmed Mr. Paige's opinion, and reiterated that the purpose of the read-through during the November 30, 2011 session was to identify those amendments

submitted by the Investigative Group about which there were substantive concerns, and that at the end of the read-through, those amendments for which there were no substantive concerns would be ratified by the Task Force by a single vote. He noted that for those amendments for which there were substantive concerns, there should have been a motion from the Investigative Group to approve the amendment from the Investigative Group, rather than a motion to amend the amendment. The amendments involved in the two contested votes were never ratified by the Task Force, thus they were not officially part of the LRB Draft Bill. He suggested that the issue be dealt with by revisiting the two amendments voted on during the November 30, 2011 session.

Mr. Oda proposed to make a motion to revisit every amendment covered thus far by the Task Force, as he believed that because of the controversial two amendments, all prior amendments accepted by voice vote were thrown into question.

Chairperson Kaneshige stated that because the amendments cited by Mr. Oda had no substantive objections raised against their inclusion in the LRB Draft Bill, there was already agreement within the Task Force regarding their inclusion. He noted that there would be another chance to vote on the noncontroversial amendments when the LRB Draft Bill is voted on as a whole by the Task Force, and that if Mr. Oda has any further concerns regarding those amendments already included, that he will be allowed to raise them at the end of the process before the final approval vote.

Vice-Chair Dang noted that based on the December 15, 2010 meeting minutes, the Task Force's process in 2010 for approving the proposed amendments was different from the process being used in 2011.

Chairperson Kaneshige stated that he could not comment on the previous year's process as he was not Chairperson at the time, and that it was his belief that the current process was

the best suited to allow Task Force members to individually review the various proposed amendments, but that he was open to another method if the Task Force so wished. He noted that this meeting was the last meeting where the Task Force would be able to alter the LRB Draft Bill. He suggested that today's session start by revisiting the amendments suggested by Group 1 in sections 20, 21, and 26 of the LRB Draft Bill, and afterward the Task Force would consider the remainder of the LRB Draft Bill, then vote on the LRB Draft Bill as a whole with the exception of those amendments for which there had been a vote taken already, and then any further individual Task Force member amendments.

Mr. Hogan moved to accept Group 1's amendments to Sections 20 and 21 of the LRB Draft Bill regarding HRS §667-74 and §667-75, seconded by Mr. Guttman.

Chairperson Kaneshige called for a roll-call vote. The motion FAILED to receive 10 aye votes, with the votes as follows: 8 Aye(s): Vice-Chair Dang, Mr. Guttman, Mr. Hirano, Mr. Hogan, Mr. Kawamoto, Mr. Morris, Mr. Oda, and Ms. Sugimura; 7 No(es): Ms. Catalani, Mr. Gilbreath, Mr. Kim, Ms. Takano, Mr. Tam, Mr. Wada, Mr. Zweibel; 2 Abstention(s): Chairperson Kaneshige, Ms. Verbrugge; and 1 Excused: Mr. Yost.

Mr. Guttman moved to accept Group 1's amendments to Section 26 of the LRB Draft Bill, regarding HRS §667-85, seconded by Mr. Hogan

Chairperson Kaneshige called for a roll call vote. The motion FAILED to receive 10 aye votes, with the votes as follows: 8 Aye(s): Vice-Chair Dang, Mr. Guttman, Mr. Hirano, Mr. Hogan, Mr. Kawamoto, Mr. Morris, Mr. Oda, Ms. Sugimura; 8 No(es): Chairperson Kaneshige, Ms. Catalani, Mr. Gilbreath, Mr. Kim, Ms. Takano, Mr. Tam, Mr. Wada, Mr. Zweibel; 1 Abstention(s): Ms. Verbrugge; and 1 Excused: Mr. Yost.

Chairperson Kaneshige indicated that the Task Force would resume consideration LRB Draft Bill at the point at which it had left off in the prior session, on page 105, line 1, pertaining to

allowing owner-occupants to elect participation in the dispute resolution process via a website maintained by the DCCA. Hearing no objections to its inclusion, he stated that the Task Force would move on to the next amendment.

Mr. Zweibel stated that he objected to the deletion of the reference to the Federal Deposit Insurance Corporation Loan Modification Program Guide in Section 48 of the LRB Draft Bill, pertaining to HRS §667-80.

Chairperson Kaneshige responded that the Task Force was considering Investigative Group 3's (Counseling) proposed amendment in page 106, line 6 of Section 47 of the LRB Draft Bill, pertaining to HRS §667-79, and would address the amendment Mr. Zweibel was commenting on, next.

Vice-Chair Dang asked Mr. Hogan whether the proposed amendment under consideration was one where Mr. Hogan had wanted to change the numbers "forty" and "seventy" from multiples of ten to multiples of seven so as to hedge against the possibility of scheduling dispute resolution on a non-business day.

Mr. Hogan responded in the negative, and stated that the time period(s) he was concerned with were elsewhere in the LRB Draft Bill.

Mr. Oda inquired as to the reason for changing the scheduling window from thirty to sixty days, to forty to seventy days from the date of notification of case opening.

Chairperson Kaneshige indicated that the proposed amendment originated with DCCA, and referred Mr. Oda's inquiry to Mr. Corpuz-Lahne, DCCA's Program Specialist for the Mortgage Foreclosure Dispute Resolution ("MFDR") Program.

Mr. Corpuz-Lahne stated that if the DCCA were to schedule a dispute resolution session as early as legally possible, the owner-occupant would be presented with an impossible

counseling deadline, and that the proposed amendment was intended to prevent this from happening.

Chairperson Kaneshige requested questions and comments from the Task Force and members of the public. Hearing none, the Task Force moved on to the next proposed amendment. Chairperson Kaneshige noted that this amendment was the one Mr. Zweibel expressed concern about.

Mr. Zweibel restated that that he objected to the deletion of the reference to the Federal Deposit Insurance Corporation Loan Modification Program Guide (FDIC Guide) in Section 48 of the LRB Draft Bill, pertaining to HRS §667-80. In his view the inclusion of the FDIC Guide was a real game changer for the dispute resolution program, and that removing it from the statute would strike a mortal blow to the dispute resolution program. He further stated that its inclusion required the use of a publicly available loan modification formula that allows for objective verification by the homeowner and the neutral that the loan modification is being done properly. He noted that Hawaii is not the first state to include it in its statute, and that it was included the Maine, Washington, and the District of Columbia foreclosure laws. He said that the proposed deletion removes transparency and objectivity.

Chairperson Kaneshige stated that as there was a substantive objection to the amendment, he would request that Group 3 make a motion to approve the amendment.

Mr. Wada made a motion to approve Investigative Group 3's proposed amendment to HRS §667-80 on pages 106-108, section 48, starting at line 12 of the LRB Draft Bill, seconded by Mr. Gilbreath.

Chairperson Kaneshige requested that Group 3 explain their reasons for the recommendation.

Mr. Wada stated that he agreed with Mr. Zweibel, but that the reason Group 3 made the recommendation was that not all lenders, particularly local lenders, use the FDIC Guide

when deciding whether or not to authorize a loan modification. To address this issue Group 3 drafted a "laundry list" with the idea in mind that, as this was a dispute resolution process, the neutral would be able to go through the list and make sure that the lender had considered each possible workout option.

Mr. Zweibel replied that the vast majority of nonjudicial foreclosures in the State of Hawaii are done by mainland servicers, not Hawaii lenders. A clear requirement in the statute of the methodology to be used is needed to make the dispute resolution program effective.

Mr. Kawamoto, commenting from a local lender's perspective, stated that one of the things that troubles local lenders is the neutral's ability to require the lender to forgive principal, or forgive debt. He referenced page 107, line 6 of the LRB Draft Bill.

Mr. Zweibel replied that there had never been a principal reduction in any other program, and that it was only listed as being a required consideration, with no mandate for application.

Mr. Kawamoto expressed further concern that principal reduction was included in the list, and that he didn't understand how any outside party could require a lender to forgive debt.

Mr. Guttman stated that lines 6 through 11 on page 107 of the LRB Draft Bill spells out options available to the neutral, but that he understood Mr. Zweibel's concerns. He inquired as to whether Mr. Zweibel would support an amendment to the Group 3 proposal that would retain the reference to the FDIC Guide. He commented regarding Mr. Kawamoto's concern about reduction of principal being part of the list of required considerations, that there was no requirement on behalf of the lender to accept a reduction in principal, just that it be considered.

Mr. Zweibel stated that it was important to realize that the neutral does not have the power to order a lender to follow a certain course on making home affordable. He had no objections to the "laundry list", just to the deletion of the FDIC Guide and the resulting de-emphasis on loan modification.

Mr. Wada noted that there was an error in the proposed amendment, and that sub-section (J) should be separated into (J) and (K), with subsequent sub-sections renumbered appropriately.

Vice-Chair Dang asked Mr. Kawamoto what, from his perspective, should be in the Group 3 proposed amendment.

Mr. Kawamoto stated that the issue was that when Act 48, SLH 2011 had passed, hardly anyone had read the FDIC Guide, as it wasn't used as a standard document by lenders, instead lenders were looking to federally recognized programs such as HAMP, HARP, and the Fannie Mae and Freddie Mac options.

Vice-Chair Dang said that if there weren't any FDIC guidelines to refer to, would Mr. Kawamoto have an issue with the "laundry list" because of the reference to reduction of principal.

Mr. Kawamoto replied that the various things a lender looks at when considering loan modification are all in the "laundry list", with the exception of reduction of principal, which lenders do not consider.

Chairperson Kaneshige proposed to Group 3 that the FDIC Program Guide be included in the "laundry list".

A member of the public, Ms. Nakamura of Mortgage Bankers Association of Hawaii, commented that the FDIC Guide was created for IndyMac, which was in receivership, by the FDIC, and that she did not know of any other lenders who use the FDIC Guide. She commented further that loan servicers do not make the decision regarding HAMP; the US Department of the Treasury does.

Mr. Zweibel stated that Ms. Nakamura's statement is correct, but that the FDIC Guide is the predecessor to HAMP, and that the main difference is that HAMP lacks transparency whereas the FDIC Guide allows the determination to be made in the light of day. He further added that the FDIC Guide could be added to the list proposed by Group 3.

Mr. Gilbreath commented that the language allows for the use of other programs, as agreed upon by the parties.

Chairperson Kaneshige stated that the objective was to make the dispute resolution program more practical, rather than relying on a single program and set of guidelines, thus the "laundry list".

Mr. Zweibel stated that the inclusion of the FDIC Guide in the definition of the dispute resolution process affirmatively stated the goal as facilitating loan modification, with the emphasis on mitigation being secondary.

Chairperson Kaneshige called for a roll call vote. The motion FAILED to receive 10 aye votes, with the votes as follows: 8 Aye(s): Chairperson Kaneshige, Vice-Chair Dang, Mr. Hogan, Mr. Kawamoto, Mr. Morris, Mr. Oda, Ms. Sugimura, Mr. Wada; 8 No(es): Ms. Catalani, Mr. Gilbreath, Mr. Guttman, Mr. Hirano, Mr. Kim, Ms. Takano, Mr. Tam, Mr. Zweibel; 1 Abstention(s): Ms. Verbrugge; and 1 Excused: Mr. Yost.

Chairperson Kaneshige stated that the Task Force would now consider Group 3's proposed amendments in Section 49 of the LRB Draft Bill.

Mr. Zweibel asked Mr. Gilbreath why the requirement to have the settlement document signed in the presence of the neutral was removed in the proposed amendments.

Mr. Gilbreath replied that he would defer to Mr. Corpuz-Lahne regarding why the language was deleted.

Mr. Corpuz-Lahne responded that the requirement to sign in the presence of the neutral would trigger secondary sessions to allow for drafting of the agreement in-between, and it was thought that removing the requirement would streamline the process.

Chairperson Kaneshige noted that there was strong concern from DCCA's partners in the Judiciary, as well as from the neutral groups, that the signature requirement would compel the parties to attend a second session. This was the basis of the DCCA recommendation to Group 3.

Mr. Zweibel asked if there would be any objection to requiring that the signed agreement be sent to the neutral to be attached to the neutral's closing report, as he was concerned that DCCA would have no way of judging the outcomes of dispute resolution. He stated that other states' programs, such as Connecticut and Nevada, had such a requirement.

Chairperson Kaneshige, responding in his role as Deputy Director of the Department of Commerce and Consumer Affairs ("DCCA"), replied that there has never been an expectation from DCCA's standpoint that the department would not be involved, because the department will have to close out the case one way or the other whether there is a settlement document involved or if no agreement is reached at all. He stated that the neutral's closing report will allow DCCA to track the outcomes of dispute resolution, without needing the settlement document attached.

Mr. Corpuz-Lahne added that through the assistance of the Judiciary's Center for Alternate Dispute Resolution ("CADR"), the MFDR Program would be performing follow up surveys of participants to determine the degree of follow-through by the parties after dispute resolution has concluded.

Mr. Zweibel thanked Chairperson Kaneshige and Mr. Corpuz-Lahne for addressing his concern.

Mr. Kim commented that in mediation, in the interest of an abundance of caution, the mediator would memorialize the agreement, signed by both parties, subject to drafting the final settlement because of the risk of settlements falling apart due to parties failing to remember the substance of their agreement.

Ms. Verbrugge stated that one of the concerns from Director Elizabeth Kent of CADR was that the neutrals are not paid extra for second sessions.

Chairperson Kaneshige added that it was never contemplated that the neutrals should draft the settlement agreement, and that it was the responsibility of the parties.

Mr. Hogan said that was the reason he thought no one wanted to refer to the neutrals as "mediators" is the agreements drafted by mediators were never well done, are hand-written, done without reflection, miss points, contain mistakes, and create ambiguities that neither party intended. He stated that the neutral's closing report with the salient details of the agreement, as the report is not privileged, would serve to resolve any subsequent disputes between the parties.

Chairperson Kaneshige inquired whether there was sufficient disagreement to consider a roll call vote for the amendments in Section 49 of the LRB Draft Bill. He suggested that one motion by Group 3 to approve all amendments in Section 49 would be appropriate.

Ms. Catalani asked if the department receives the documents after the documents are drafted and recorded.

Chairperson Kaneshige replied that the department does not under these proposed amendments, and that the settlement agreement would constitute a contract between the parties that would be implemented by modifying the loan agreements per the settlement agreement.

A member of the public, Mr. Fujitani of the Hawaii Bankers Association, asked who reviews the neutral's report to make sure what is in the agreement is correct from the perspectives of both the lender and the borrower.

Chairperson Kaneshige stated that the intent of the department was to review the neutral's report, code it, and close the case, but that he was willing to consider working together with the parties, subject to confidentiality concerns.

Mr. Zweibel expressed a concern that most borrowers will not have an attorney present, and that the lender or lender's counsel would generally be the party drafting the agreement. He was concerned about what check is in place to ensure that the lender's draft complies with the substance of the agreement between the two parties.

Mr. Hogan asked if a copy of the neutral's report is sent to both the borrower and lender.

Mr. Corpuz-Lahne replied in the affirmative.

Mr. Hogan stated that the neutral's report would help to ensure compliance.

Vice-Chair Dang asked if the neutral's report would essentially be a public record.

Chairperson Kaneshige replied that while it would not be recorded, it could be reviewed by an interested party.

Mr. Zweibel noted that the neutral's report would not contain all the specific terms agreed to, and that it worried him.

Mr. Guttman expressed concern that the settlement agreement had a recording requirement because in the event of a modification there would still need to be a modified mortgage agreement recorded.

Mr. Corpuz-Lahne stated that while training the neutrals, the MFDR Program was working on a form document that lists all the possible workout options and outcomes that could be filled out quickly and signed by the parties, and that the idea of the proposed amendment was to make it so that the neutral did not have to submit the signed agreement along with the neutral's report, since the report may be public record and thus could be requested by the public. If a detailed agreement were attached it might contain substantial amounts of privileged information.

Mr. Guttman expressed concern that if the parties participate remotely, there would need to be some oversight to ensure the agreement is followed through.

Mr. Kim agreed that recording the agreement would be undesirable.

Chairperson Kaneshige noted that he was reviewing the text on page 108, Section 49, lines 16 through 19 of the LRB Draft Bill, and inquired as to whether the Task Force was interpreting it to require recordation of the settlement document.

Mr. Guttman replied that while that may not have been the intent, the clause seemed to imply that recordation was required.

Chairperson Kaneshige stated that as there were some potential amendments to consider, he recommended that, if it were so inclined, Group 3 should make a motion to accept its proposed amendments, and then amend the proposed amendments to address the concerns.

Mr. Guttman suggested that the Task Force address the amendments on a per-sentence basis, rather than by the entire Section.

Chairperson Kaneshige agreed, and requested that Group 3 move to accept their amendments on a per-sentence basis.

Ms. Takano moved to accept the Group 3 proposed amendment on page 108, Section 49, lines 7 through 10, HRS §667-81, of the LRB Draft Bill, seconded by Mr. Gilbreath:

~~"[If the parties or their authorized representatives participate in the dispute resolution session in person, the settlement document shall be signed in the presence of the neutral.]"~~

Chairperson Kaneshige called the question. The motion PASSED unanimously.

Ms. Takano moved to accept the Group 3 proposed amendment on page 108, Section 49, lines 10 through 16, HRS §667-81(c), of the LRB Draft Bill, seconded by Mr. Gilbreath:

~~"[If any of the parties or their authorized representatives participate in the dispute resolution through telephone, videoconference, or other immediately available contemporaneous telecommunications medium, the settlement document shall be signed and returned to the neutral no later than ten days after the conclusion of the dispute resolution session.]"~~

Chairperson Kaneshige called for a roll call vote. The motion PASSED with the votes as follows: 12 Aye(s): Chairperson Kaneshige, Vice-Chair Dang, Mr. Gilbreath, Mr. Hogan, Mr. Kawamoto, Mr. Morris, Mr. Oda, Ms. Sugimura, Ms. Takano, Mr. Tam, Ms. Verbrugge, Mr. Wada; 5 No(es): Ms. Catalani, Mr. Guttman, Mr. Hirano, Mr. Kim, Mr. Zweibel; 0 Abstention(s); and 1 Excused: Mr. Yost.

Chairperson Kaneshige indicated that the Task Force would now consider Group 3's proposed amendment to HRS §667-81(c) on page 108, Section 49, lines 17 and 18:

"The parties shall be responsible for drafting any agreement reached, and for filing or recording the settlement document with the land court or the bureau

of conveyances, as appropriate, and enforcing the settlement document."

Mr. Guttman suggested that instead of the proposed amendment, that the text from lines 17 through 21 be deleted to read as follows:

"The parties shall be responsible for drafting any agreement reached. [~~and for filing or recording the settlement document with the land court or bureau of conveyances, as appropriate, and enforcing the settlement document. The neutral shall file the settlement document with the neutral's closing report.~~]"

Mr. Hogan raised a question as to whether or not at some point in the dispute resolution process a document is filed with the land court or bureau of conveyances indicating that the property undergoing foreclosure is in the dispute resolution process.

Mr. Corpuz-Lahne answered that the Notice of Election that is mailed to both parties is also a stay of foreclosure, and that it can be filed or recorded, as appropriate, with the land court or bureau of conveyances.

Chairperson Kaneshige clarified that the filing is not mandatory.

Chairperson Kaneshige asked Group 3 if they would be amenable to amending their proposed recommendation per Mr. Guttman's suggestion.

Mr. Morris asked if Mr. Guttman's proposed amendment would remove the parties' responsibility to enforce the settlement document.

Mr. Guttman stated that it would not.

Chairperson Kaneshige replied that with Mr. Guttman's proposed amendment, the phrase "...and enforcing the settlement document" would also be deleted.

Mr. Guttman amended his proposal to leave "...and enforcing the settlement document." The amendment now reads:

"The parties shall be responsible for drafting any agreement reached, ~~[and for filing or recording the settlement document with the land court or bureau of conveyances, as appropriate,]~~ and enforcing the settlement document. ~~[The neutral shall file the settlement document with the neutral's closing report.]"~~

Chairperson Kaneshige asked Group 3 if it would make a motion. Ms. Verbrugge moved to accept the amendment. Mr. Wada seconded.

Ms. Verbrugge requested that the motion be split into two motions, as she may have different position on each section to be deleted.

Chairperson Kaneshige indicated that this method would be acceptable.

Mr. Oda stated that he would like to make a further motion to amend the proposed text for HRS §667-81(c) on page 109 of Section 49, line 5, to replace "settlement document" with "neutral's closing report".

Mr. Hogan noted that he believed that HRS §667-81(b) already allowed for the neutral's closing report to be filed or recorded, as appropriate, with the bureau of conveyances or land court.

Mr. Oda stated that HRS §667-81(b) addressed an outcome where no agreement was reached, and that the filing or recording was not mandatory, whereas the filing or recording in HRS §667-81(c), is mandatory.

Mr. Guttman elaborated that a settlement document in a case where an agreement is reached would probably contain privileged information and would be inappropriate for filing or recording.

Mr. Oda stated that a memorandum could be recorded that would not include privileged information.

Mr. Guttman replied that his primary concern was that a settlement document that emerges from a dispute resolution process where agreement is reached would contain confidential information, and its recordation or filing would be inappropriate.

Chairperson Kaneshige stated that Mr. Guttman's concerns might be the appropriate course. He restated Mr. Guttman's motion to amend Group 3's recommendation to amend HRS §667-81(c) on page 108, lines 16 through 21 to the following text:

"The parties shall be responsible for drafting any agreement reached, [~~and for filing or recording the settlement document with the land court or bureau of conveyances, as appropriate,~~] and enforcing the settlement document."

Chairperson Kaneshige called the question. The motion PASSED, with 1 Abstention(s): Ms. Verbrugge.

Ms. Verbrugge moved to accept Group 3's recommendation that HRS §667-81(c) be amended per page 108, lines 20 and 21, to delete the requirement for a neutral to file the settlement document with the closing report, seconded by Mr. Wada.

Chairperson Kaneshige asked for further discussion, hearing none, he called the question. The motion PASSED, unanimously.

Chairperson Kaneshige stated that the Task Force would now consider amending HRS §667-81(c) on page 109, Section 49, line 5 of the LRB Draft Bill.

Mr. Guttman noted that the issues addressed earlier regarding recordation could be resolved if "document" was deleted to change the text to:

"If the settlement document allows for foreclosure or other transfer of the subject property, the stay of the foreclosure under section 667-83 shall be released upon filing or recording the settlement [~~document~~] with the land court or bureau of conveyances, as appropriate."

Mr. Oda stated that this would not effectively address the issue as it would be one more type of document that needed to be filed, and suggested instead that "settlement document" be replaced with "neutral's closing report", changing the text to:

"If the settlement document allows for foreclosure or other transfer of the subject property, the stay of the foreclosure under section 667-83 shall be released upon filing or recording the [~~settlement document~~] neutral's closing report with the land court or bureau of conveyances, as appropriate."

Chairperson Kaneshige asked Group 3 if it was permissible for Mr. Oda to make the motion to amend HRS §667-81(c) on page 109, Section 49, line 5 of the LRB Draft Bill, per his suggestion.

Mr. Gilbreath of Group 3 replied in the affirmative.

Mr. Oda moved to amend page 109, Section 49, line 5, of the LRB Draft Bill to read:

"If the settlement document allows for foreclosure or other transfer of the subject property, the stay of the foreclosure under section 667-83 shall be released upon filing or recording the [~~settlement document~~] neutral's closing report with the land court or bureau of conveyances, as appropriate."

The motion was seconded. Chairperson Kaneshige called the question, motion PASSED, with 2 Abstention(s): Mr. Wada, Ms. Verbrugge.

Chairperson Kaneshige stated that the Task Force would now consider Group 3's proposed amendment to HRS §667-81(d) on page 109, Section 49, lines 18 through 20 of the LRB Draft Bill. He requested discussion. Hearing none, he called the question. The motion PASSED, unanimously.

Chairperson Kaneshige stated that the Task Force would now consider whether or not to accept all noncontroversial amendments agreed to by voice vote in the LRB Draft Bill, and invited Task Force members to make any final amendments to the proposed amendments in question at this time.

Mr. Oda moved to amend Group 2's proposal to amend page 4, Section 3, line 14 of the LRB Draft Bill to delete "and 421J-2" from the definition of "Association". He said that its inclusion represented a very substantive change in the law that would allow a new class of associations to foreclose on liens, seconded by Mr. Wada.

Mr. Morris stated that he had never seen an association that could not foreclose, and he did not understand why an association under 421J should not be allowed to foreclose more economically via the nonjudicial HRS 667 process.

Mr. Oda replied that his primary objection was that a new class of associations would be allowed to foreclose on owners for liens, and that such an expansion of the law might be outside the scope of the Task Force.

Chairperson Kaneshige noted that the Task Force's charter was to look at nonjudicial foreclosures, and was not limited to nonjudicial foreclosures on record.

Vice-Chair Dang further noted that the Legislature's Conference Committee Report from Act 48, SLH 2011 stated "[t]he special situation of association lien foreclosures and the

interests of all association members in timely collection of assessments for common expenses merits special consideration by the Task Force in its recommendations to the Legislature." (Conference Cmte. Report 133, 2011, SB651 SD2 HD2 CD1)

Chairperson Kaneshige called for a roll call vote. The motion FAILED to receive 10 aye votes, with the votes as follows: 1 Aye(s): Mr. Oda; 8 No(es): Chairperson Kaneshige, Vice-Chair Dang, Ms. Catalani, Mr. Hogan, Mr. Kim, Mr. Morris, Ms. Sugimura, Mr. Tam; 8 Abstention(s): Mr. Gilbreath, Mr. Guttman, Mr. Hirano, Mr. Kawamoto, Ms. Takano, Ms. Verbrugge, Mr. Wada, Mr. Zweibel; and 1 Excused: Mr. Yost.

Chairperson Kaneshige requested a motion to approve all items in the LRB Draft Bill that have not been rejected or amended by individual motions made by the Task Force.

Mr. Oda made the motion, seconded by Mr. Hogan.

Chairperson Kaneshige called the question. The motion PASSED, with 1 Abstention(s): Ms. Verbrugge.

Chairperson Kaneshige asked if Group 3 had any further recommendations to amend the LRB Draft Bill.

Mr. Gilbreath, speaking for Group 3, reported that Group 3 had no such further recommendations.

Chairperson Kaneshige asked if Group 2 had any further recommendations to amend the LRB Draft Bill.

Mr. Morris, speaking for Group 2, reported that Group 2 had the following recommendations to amend the LRB Draft Bill, per the following handouts: "2011-12-05 - MFTF Investigative Group 2 - Response to Bruce's Comments re Alternate NJF Foreclosure Process (11-30-11)" & "2011-12-05 - MFTF Investigative Group 2 - PROPOSED REVISION TO 667-L"

Mr. Morris moved to accept Group 2's proposed amendments to the LRB Draft Bill per the Group 2 handouts, seconded by Ms. Sugimura.

Mr. Wada noted that the changes not specifically related to the "reasonable" payment plan are better than the language currently in the LRB Draft Bill, but that due to the language pertaining to the payment plan he would have to vote "no".

Vice-Chair Dang noted that the proposed changes to §667-L were in a section pertaining to the affidavit, and that the language as amended by Group 2 proposal was inappropriate for an affidavit. He proposed to amend Group 2's proposed amendment to §667-L(b)(3) to the following text:

"The power of sale foreclosure is of an association lien⁷.
If the lien was recorded, the lien was dated
_____, and recorded in the _____
(bureau of conveyances or office of the assistant
registrar of the land court) as _____
(recordation information).

Mr. Morris concurred with Vice-Chair Dang and amended his motion to incorporate Vice-Chair Dang's proposed amendment to the Group 2 proposed amendment to the LRB Draft Bill.

Mr. Oda also noted that the text at the end of §667-L(3):

"which shall include the certificate of title or transfer
certificate of title number if within the jurisdiction of the
land court."

was inconsistent with text changes elsewhere in the LRB Draft Bill, and that to make it consistent it should be changed to the following text:

"which shall include the certificate of title or transfer
certificate of title number if [~~within the jurisdiction of~~]
registered with the land court."

Ms. Verbrugge indicated that Mr. Oda's proposed change would be acceptable to the Judiciary.

Ms. Sugimura stated that Mr. Oda's change would be acceptable to Group 2.

Chairperson Kaneshige called the question, the motion PASSED, with 1 No(es): Mr. Wada; and 1 Abstention(s): Ms. Verbrugge (except pertaining to Mr. Oda's proposed amendment to Group 2's motion, where she voted "yes").

Chairperson Kaneshige stated that the Task Force would now consider any further amendments to the LRB Draft Bill proposed by Group 1.

Mr. Guttman stated that Group 1 had proposed amendments to the LRB Draft Bill per the following handout: "2011-12-05 - MFTF Investigative Group 1 - 667-41 proposed amendment to last task force version 12-4-11".

Mr. Guttman moved to accept the Group 1's proposed amendments, seconded by Vice-Chair Dang.

Chairperson Kaneshige noted that in the original LRB Draft Bill, there was an effective date included.

Mr. Guttman replied that the date was still there, but that it had moved to §667-41 (c) in order to conform to best drafting practices.

Chairperson Kaneshige called the question. The motion PASSED, with 1 Abstention(s): Ms. Verbrugge.

Chairperson Kaneshige indicated that the Task Force would now consider agenda item VIII: Action on Recommendations by Individual Task Force Members. The first subitem, VIII-A, proposed by Judiciary representative Ms. Verbrugge, would be the first considered.

Ms. Verbrugge stated that her proposed changes would amend Section 49, Page 108, of the LRB Draft Bill per the text in the following handout: "2011-11 Nov-30 - Ms. Verbrugge - Proposed Languages - Section 49--amended (2)66".

Ms. Verbrugge moved to accept the Judiciary's proposed amendments to the LRB Draft Bill, seconded by Mr. Morris.

Mr. Zweibel noted that as the LRB Draft Bill under consideration by the Task Force had been amended after Ms. Verbrugge had submitted her handout to the Task Force, and that the amendments she proposed were now addressing Section 52, Page 110, of the most current LRB Draft Bill. He expressed concern that, within Group 1, there was consensus that the ability for homeowners to convert nonjudicial foreclosures into judicial foreclosures should not be abridged so long as nonjudicial foreclosures were legal in Hawaii. He stated the proposed amendment to the sunset-date within Ms. Verbrugge's handout would impact the conversion process.

Chairperson Kaneshige indicated that the section in question would only take effect in the event of repeal, but that in light of the controversy, he recommended that action on Ms. Verbrugge's motion be deferred.

Ms. Verbrugge stated that this would be acceptable.

Chairperson Kaneshige stated that agenda item VIII-A would be deferred.

Chairperson Kaneshige indicated that the next item for consideration would be VIII-B.

Mr. Hogan moved to amend §667-59 on page 36, Section 19, line 10 of the LRB Draft Bill to the following text:

"A foreclosing mortgagee shall be bound by all agreements, obligations, representations, or

inducements, which are made in writing to the mortgagor, on its behalf by its agents..."

Seconded by Mr. Guttman.

Mr. Zweibel indicated that he had serious reservations with Mr. Hogan's proposed amendment, as most representations made to consumers are oral and difficult to prove.

Mr. Wada concurred with Mr. Zweibel's concerns.

Mr. Hogan replied that in cases where a representation had been made orally and if that representation constituted fraud, it would still be fraud, but the foreclosing mortgagee would not be bound to that representation. He stated that his concern that off-hand comments should not be the basis for a change to the obligations that are in the written contract between the lender and the homeowner.

Mr. Zweibel replied that the important issue was whether a foreclosing mortgagee is bound what its employees or agents say. He cited examples from his practice in which large lenders made oral representations to induce a party to sign, and that the foreclosing mortgagee should be bound to honor those promises.

Ms. Sugimura and Vice-Chair Dang expressed support for Mr. Hogan's position.

Chairperson Kaneshige called a roll call vote. The motion FAILED to receive 10 aye votes, with the votes as follows: 9 Aye(s): Vice-Chair Dang, Ms. Catalani, Mr. Guttman, Mr. Hirano, Mr. Hogan, Mr. Kawamoto, Mr. Morris, Mr. Oda, Ms. Sugimura; 7 No(es): Chairperson Kaneshige, Mr. Gilbreath, Mr. Kim, Ms. Takano, Mr. Tam, Mr. Wada, Mr. Zweibel; 1 Abstention(s): Ms. Verbrugge; and 1 Excused: Mr. Yost.

Mr. Hogan moved to amend HRS §667-80(a)(1) to change the text to:

“A representative of the mortgagee who participates in the dispute resolution shall be authorized to negotiate a loan modification on behalf of the mortgagee or shall have, at all stages of the dispute resolution process, direct access by telephone, videoconference, or other immediately available contemporaneous telecommunications medium to a person who is so authorized, provided that, if an owner-occupant brings in new information not disclosed prior to the dispute resolution session, that the mortgagee shall have fifteen days to evaluate that information and respond to any proposed modification based on the new information;”

And to amend HRS §667-80(c) to change the text to:

“The parties shall comply with all information requests from the department or neutral. No less than [~~fifteen~~] thirty days prior to the first day of the scheduled dispute resolution session:”

Seconded by Mr. Morris.

Mr. Zweibel expressed concerns that Mr. Hogan's proposed amendment was being made to HRS §667-80(a)(1). He said that this subsection pertains to who is representing the mortgagee, and it doesn't pertain to deadlines.

Mr. Oda replied that the subsection does talk about having access to someone who shall have the authority to negotiate a loan modification.

Mr. Hogan qualified Mr. Oda's statement by stating that he wished to allow for a lender to evaluate late-submitted information that may alter the owner-occupant's situation for the lender to consider whether or not to grant a loan modification. The lender would be unable to make a decision with so little time to evaluate the new information.

Mr. Zweibel inquired as to whether changing §667-80(c) would apply to adjust other MFDR deadlines accordingly.

Mr. Hogan responded that he wanted to give mortgagees more time to consider the owner-occupant's required documents, and that he was considering proposing an amendment to §667-79 to adjust those deadlines accordingly.

Mr. Corpuz-Lahne expressed concern that by changing the submission deadline from fifteen to thirty days prior to the first day of the scheduled dispute resolution session, there is a possibility that an owner-occupant attending counseling at thirty days prior to dispute resolution may not have assembled all the required documents at that point in time.

Mr. Guttman replied that that was what Mr. Hogan's amendment was attempting to address.

Chairperson Kaneshige called a roll call vote. The motion FAILED to receive 10 aye votes, with the votes as follows: 9 Aye(s): Vice-Chair Dang, Ms. Catalani, Mr. Guttman, Mr. Hirano, Mr. Hogan, Mr. Kawamoto, Mr. Morris, Mr. Oda, Ms. Sugimura; 5 No(es): Chairperson Kaneshige, Mr. Gilbreath, Mr. Kim, Mr. Tam, Mr. Zweibel; 3 Abstention(s): Ms. Takano, Mr. Wada, Ms. Verbrugge; and 1 Excused: Mr. Yost.

Mr. Hogan moved to repeal HRS §667-60, otherwise known as Act 48, SLH 2011, §667-AC. Seconded by Mr. Guttman.

Mr. Zweibel stated that Group 1 was divided regarding HRS §667-60, and that private enforcement via the unfair or deceptive acts or practices (UDAP) statute was an effective means of ensuring compliance, and provides a remedy for injured consumers. He elaborated that Group 1 had endeavored to create safe harbors for foreclosing mortgagees where possible, and that removing the §667-60 would be a mistake.

Mr. Hirano stated the §667-60 UDAP section, specifically the implications of HRS §480-2 and §480-12, makes it impossible to provide title insurance for nonjudicial foreclosures.

Chairperson Kaneshige noted that Mr. Hirano also had a proposed amendment to HRS §667-60 that would address the title insurance companies' concerns.

Mr. Zweibel stated that there were two alternate versions of §667-60 besides Mr. Hogan's proposed amendment.

Chairperson Kaneshige called for a roll call vote. The motion FAILED to receive 10 aye votes, with the votes as follows: 6 Aye(s): Vice-Chair Dang, Mr. Guttman, Mr. Hirano, Mr. Hogan, Mr. Kawamoto, Mr. Oda; 10 No(es): Chairperson Kaneshige, Ms. Catalani, Mr. Gilbreath, Mr. Kim, Mr. Morris, Ms. Sugimura, Ms. Takano, Mr. Tam, Mr. Wada, Mr. Zweibel; 1 Abstention(s): Ms. Verbrugge; and 1 Excused: Mr. Yost.

Chairperson Kaneshige indicated that the Task Force would now consider agenda item VIII-D.

Vice-Chair Dang said that because the subject of the §667-60 was already under discussion, it might be best to consider agenda item VIII-E first.

Chairperson Kaneshige stated that he concurred with Vice-Chair Dang, and indicated that the Task Force would defer consideration of agenda item VIII-D until after VIII-E had been considered.

Mr. Zweibel described his proposed draft of HRS §667-60 as a compromise between lenders and consumer advocates, where those acts or practices that would be appropriate for a UDAP violation. He stated that if a compromise is reached on everything, Mr. Hirano's proposed draft of §667-60 would be acceptable to him, but that he had some other serious concerns about Mr. Hirano's draft.

Mr. Hirano described his proposed draft of HRS §667-60 as a reaction to Mr. Zweibel's draft, and that a greater amount of certainty was required in order to make title insurance possible. He further elaborated that title insurance companies look at information that is verifiable and obtainable, and that it was those items that were unverifiable that were making nonjudicial foreclosures uninsurable. He stated that his draft took out items that he felt were too broad or unverifiable. He indicated that subsection b of his draft was loosely modeled on the Nevada statute. He elaborated that in Nevada the title insurance companies were evaluating nonjudicial foreclosures on a case-by-case basis.

Chairperson Kaneshige inquired about the blank space left in Mr. Hirano's proposed draft of HRS §667-60, in subsection (b), and asked if it was his intention to fill that blank in.

Mr. Hirano responded that he wished to leave the time period open to discussion, but that he would prefer a time period of sixty to ninety days.

Chairperson Kaneshige suggested that the blank be filled in before considering a motion on Mr. Hirano's draft.

Mr. Hirano responded that he would prefer a time period of sixty days, and qualified that he was proposing the amendment as a member of the Task Force, and did not necessarily represent the position of the title insurance companies.

Mr. Wada asked specifically what the differences between Mr. Zweibel's draft and Mr. Hirano's draft were.

Mr. Hirano stated that those actions that were post-foreclosure actions, such as subsections (f) and (h), were removed from his draft. He considered subsection (g) to be overly broad, and that he had removed subsections (j)(2), (j)(3), (j)(4), (l), and (m).

Mr. Zweibel stated that the main difference between the two drafts was subsection (b), which imposes a time limit within which a deed and nonjudicial foreclosure sale could be declared void. He referenced Act 162, SLH 2010, which charged the Task Force with maintaining the current level of consumer protection.

Mr. Zweibel moved to adopt his proposed draft to amend HRS §667-60. Seconded by Mr. Morris.

Mr. Hogan observed that both Mr. Zweibel's and Mr. Hirano's proposed drafts to amend HRS §667-60 retained the chapter-wide scope of the current §667-60, and that many of the credit unions that he represents would be unable to survive a UDAP judgment.

Vice-Chair Dang concurred with Mr. Hogan in his opposition to the chapter-wide scope of §667-60.

Chairperson Kaneshige called for a roll call vote. The motion FAILED to receive 10 aye votes, with the votes as follows: 6 Aye(s): Mr. Gilbreath, Mr. Kim, Ms. Takano, Mr. Tam, Mr. Wada, Mr. Zweibel; 10 No(es): Chairperson Kaneshige, Vice-Chair Dang, Ms. Catalani, Mr. Guttman, Mr. Hirano, Mr. Hogan, Mr. Kawamoto, Mr. Morris, Mr. Oda, Ms. Sugimura; 1 Abstention(s): Ms. Verbrugge; and 1 Excused: Mr. Yost.

Mr. Hirano moved to accept his proposed draft to amend HRS §667-60, seconded by Mr. Guttman.

Mr. Zweibel commented that he had issues with subsection (a) of Mr. Hirano's draft because in nonjudicial foreclosures the purchaser and mortgagee are often the same party. He also had objections to the requirement in subsection (a) that violations be "substantial and material" as he felt the burden was excessive.

Chairperson Kaneshige inquired with Mr. Hirano as to why those two clauses had been added.

Mr. Hirano responded that the sections cited by Mr. Zweibel at the beginning of subsection (a) and subsection (b) were taken from the Nevada statute.

Chairperson Kaneshige commented that the HRS §667-60 UDAP issue was one of the most, if not the most, contentious issues under consideration by the Task Force, and that he thought that all the Task Force members, but especially Group 1 had made tremendous strides to find agreement. He indicated that he would support Mr. Hirano's draft, as he believed it to be a viable solution.

Chairperson Kaneshige called a roll call vote. The motion FAILED to receive 10 aye votes, with the votes as follows: 9 Aye(s): Chairperson Kaneshige, Ms. Catalani, Mr. Guttman, Mr. Hirano, Mr. Kim, Mr. Morris, Ms. Sugimura, Ms. Takano, Mr. Tam; 7 No(es): Vice-Chair Dang, Mr. Gilbreath, Mr. Hogan, Mr. Kawamoto, Mr. Oda, Mr. Wada, Mr. Zweibel; 1 Abstention(s): Ms. Verbrugge; and 1 Excused: Mr. Yost.

Chairperson Kaneshige indicated that the Task Force would now consider deferred item VIII-D, which would recommend in the Task Force's report to the legislature that mortgagees be allowed to continue initiating nonjudicial foreclosures under HRS §667-5 of Part I, Chapter 667.

Vice-Chair Dang moved that the Task Force recommend to the Legislature that mortgagees be allowed to continue to have the option to initiate nonjudicial foreclosure actions under HRS §667-5 of Part I of HRS Chapter 667 when the moratorium in Act 48 (Section 40) ends on July 1, 2012. Seconded by Mr. Hogan.

Vice-Chair Dang stated that the Task Force's 2010 report to the 2011 Legislature had recommendations to strengthen the consumer protection provisions for Part I nonjudicial foreclosures in Chapter 667. He further stated that those recommendations were included in Act 48 (2011). Act 48 also contains additional consumer protection provisions for Part I nonjudicial foreclosures. He said that Act 48: requires

personal service of foreclosure notices similar to service of civil complaints, requires the notice to be served at least 21 days before the auction, prohibits deficiency judgments against certain owner-occupants, and allows an owner-occupant to either elect to convert a nonjudicial foreclosure to a judicial foreclosure or elect to choose dispute resolution. Vice-Chair Dang said all these changes addressed the concerns that some people had regarding nonjudicial foreclosures initiated under §667-5. He noted that these specific changes strengthened the consumer protection aspect Part I of Chapter 667. For these reasons, Vice-Chair Dang felt that the continuation of Part I would be provide lenders with an alternative to a Part II nonjudicial foreclosure or to a judicial foreclosure.

Mr. Guttman commented that without title insurance, there would be no lender willing to pursue a nonjudicial foreclosure under Part I. He added that Part I was still problematic from a consumer protection standpoint, even with the modifications from Act 48, SLH 2011.

Vice-Chair Dang stated that if the Task Force were to take that position with respect to title insurance, then the Task Force should recommend repealing all nonjudicial foreclosures, including Part II, since there is currently no title insurance for those foreclosures. He added that regardless of how Task Force members think the Legislature might react to specific proposals made by the Task Force, that should not deter the Task Force from offering recommendations which are meritorious. He disagreed that there were remaining defects in Part I of Chapter 667.

Mr. Zweibel noted that if the Task Force did nothing the moratorium would end regardless.

Vice-Chair Dang answered that the Legislature could choose to extend the moratorium or not, and that the purpose of the motion was to inform the Legislature that the Task Force recommended that the moratorium be allowed to expire and that Part I of Chapter 667 should not be repealed.

Mr. Zweibel responded that he disagreed with Vice-Chair Dang, and that he felt that Part II of Chapter 667 was better balanced than Part I.

Vice-Chair Dang replied that in situations where investor loans and non-residential loans are being foreclosed, the cumbersome provisions and lengthy time-frames that exist in Part II of Chapter 667 should not be there for the aforementioned loan-types. He stated that the purpose of Act 48, SLH 2011 was to protect the owner-occupants. He noted that if investor loans and commercial loans had to go through the Part II nonjudicial process (rather than the Part I process), it would be unnecessarily cumbersome. He cited an example where a borrower is bankrupt, and he asked why a lender should have to go through lengthy process in Part II as opposed to the shortened process in Part I in order to clear the title. He stated that forcing lenders to use Part II was not in the interest of borrowers or lenders.

Chairperson Kaneshige called the question. The motion FAILED to receive 10 aye votes, with the votes as follows: 7 Aye(s): Vice-Chair Dang, Mr. Hirano, Mr. Hogan, Mr. Kawamoto, Mr. Morris, Mr. Oda, Ms. Sugimura; 7 No(es): Ms. Catalani, Mr. Gilbreath, Mr. Guttman, Mr. Kim, Mr. Tam, Mr. Wada, Mr. Zweibel; 3 Abstention(s): Chairperson Kaneshige, Ms. Takano, Ms. Verbrugge; and 1 Excused: Mr. Yost.

Chairperson Kaneshige indicated that the Task Force would now consider agenda item VIII-F.

Vice-Chair Dang stated that this proposed amendment pertained to the notice that must be provided in a Part I or Part II nonjudicial foreclosure, per handout "2011-11 Nov-30 - Mr Dang - Chapter 667-55". The proposal would amend and delete language in the notice in order to make it consistent with both Part I and Part II nonjudicial foreclosure law regarding information about deficiencies.

Vice-Chair Dang moved to approve the amendment proposed in "2011-11 Nov-30 - Mr Dang - Chapter 667-55", seconded by Mr. Oda.

Chairperson Kaneshige clarified that the proposed amendment would only modify the notice, and does not change Part I or Part II nonjudicial foreclosures.

Chairperson Kaneshige called the question. The motion PASSED, with 1 Abstention(s): Ms. Verbrugge.

Mr. Zweibel moved to recommend to the legislature that the repeal of the judicial conversion section in HRS Chapter 667, in Act 48, SLH 2011 be deleted.

Chairperson Kaneshige called a roll call vote. The motion PASSED, with the votes as follows: 12 Aye(s): Vice-Chair Dang, Mr. Gilbreath, Mr. Guttman, Mr. Hirano, Mr. Kim, Mr. Morris, Mr. Oda, Ms. Sugimura, Ms. Takano, Mr. Tam, Mr. Wada, Mr. Zweibel; 2 No(es): Mr. Hogan, Mr. Kawamoto; 2 Abstention(s): Chairperson Kaneshige, Ms. Verbrugge; and 2 Excused: Ms. Catalani, Mr. Yost.

Ms. Verbrugge amended her motion regarding agenda item VIII-A to delete subsection (3).

Chairperson Kaneshige called the question regarding Ms. Verbrugge's amended motion to accept the proposed amendments recommended by the following handout:

2011-11 Nov-30 - Ms. Verbrugge - Proposed Languages - Section 49--amended (2)66". The motion PASSED, unanimously.

Mr. Hogan moved to include an amendment in the LRB Draft Bill to modify HRS §667-15(2) and 667-25(b)(2) to delete "for a public sale of mortgaged property located in the eastern portion of the county of Hawaii" and insert "for a public sale of mortgaged property located in the districts of Hamakua, North Hilo, South Hilo, Waipuna, of the county of Hawaii", and to modify 667-15(3) and 667-25(b)(3), to delete "for a public

sale of mortgaged property located in the western portion of the county of Hawaii", and insert "for a public sale of mortgaged property located in the districts of Ka'u, North Kona, South Kona, North Kohala, or South Kohala, of the county of Hawaii". Seconded by Mr. Guttman.

Chairperson Kaneshige called the question. The motion PASSED, with 1 Abstention(s): Ms Verbrugge.

Mr. Oda moved to include an amendment in the LRB Draft Bill to modify HRS §667-56(5) to the following text:

"Completing nonjudicial foreclosure proceedings during short sale escrows with a bona fide purchaser if the short sale offer is at least [~~five~~] ten per cent greater..."

Seconded by Mr. Guttman.

Chairperson Kaneshige called the question. The motion PASSED, with 1 Abstention(s): Ms. Verbrugge.

Mr. Zweibel moved to include an amendment in the LRB Draft Bill that deletes the repeal of the MFDR Program in Act 48 SLH 2011, Section 45(2):

"Sections[~~1,~~] 13[~~7~~] and 14 shall be repealed on September 30, 2014..."

Chairperson Kaneshige called a roll call vote. The motion FAILED to receive 10 aye votes, with the votes as follows: 7 Aye(s): Mr. Gilbreath, Mr. Guttman, Mr. Kim, Ms. Takano, Mr. Tam, Mr. Wada, Mr. Zweibel; 7 No(es): Vice-Chair Dang, Mr. Hirano, Mr. Hogan, Mr. Kawamoto, Mr. Morris, Mr. Oda, Ms. Sugimura; 2 Abstention(s): Chairperson Kaneshige, Ms. Verbrugge; and 2 Excused: Ms. Catalani, Mr. Yost.

Mr. Hirano moved to amend HRS §667-56(4) to the following text:

“Delaying the delivery of the recorded, conformed copy of the conveyance document to a bona fide purchaser who purchases in good faith for more than ~~[forty five]~~ sixty days after the completion of the public sale;”

Seconded by Mr. Guttman.

Chairperson Kaneshige called the question. The motion PASSED, with 1 Abstention(s): Ms. Verbrugge.

Mr. Zweibel moved to amend HRS §667-80(c)(1) to the include a new subsection with the following text:

“(D) A copy of the pooling and servicing agreements.”

Seconded by Mr. Wada.

Mr. Oda objected to the amendment on the grounds that the agreements are confidential, and providing the agreements would breach that confidentiality.

Mr. Kawamoto concurred with Mr. Oda.

Mr. Zweibel stated that the amendment was intended for national mortgage servicers.

Chairperson Kaneshige called a roll call vote. The motion FAILED to receive 10 aye votes, with the votes as follows: 3 Aye(s): Mr. Gilbreath, Mr. Wada, Mr. Zweibel; 10 No(es): Vice-Chair Dang, Mr. Guttman, Mr. Hirano, Mr. Hogan, Mr. Kawamoto, Mr. Kim, Mr. Morris, Mr. Oda, Ms. Sugimura, Mr. Tam; 3 Abstention(s): Chairperson Kaneshige, Ms. Takano, Ms. Verbrugge; and 2 Excused: Ms. Catalani, Mr. Yost.

Mr. Hogan moved to amend page 5, Section 3, line 5 of the LRB Draft Bill to the following text:

“Dispute resolution” means a facilitated negotiation, under part V, between a mortgagor...”

And page 5, Section 3, lines 13 through 15 of the LRB Draft Bill to the following text:

“”Mailed” means to be sent by regular mail, postage prepaid, [and by certified, registered, or express mail, postage prepaid and return receipt requested] unless otherwise expressly directed in this chapter.”

Seconded by Mr. Guttman.

Chairperson Kaneshige called the question. The motion PASSED, with 1 Abstention(s): Ms. Verbrugge.

Discussion and
and Action on
Task Force Rec-
ommendations
to the Hawaii
Legislature

Vice-Chair Dang stated that the next meeting of the Task Force would be on December 14, 2011 at which time the Task Force would review the report that LRB is preparing. He asked whether the Task Force would include the minutes and “minority reports” from individual Task Force members regarding motions in which their position had not prevailed. He noted that these “minority reports” should be submitted to the Task force in a timely manner.

Chairperson Kaneshige stated that the first item the Task Force would address at the December 14 meeting would be to review the final LRB Draft Bill as amended by the Task Force, with the intent of the review to locate any drafting errors. The second item would be to review the Task Force report, and that if any member feels strongly about issues taken up by the Task Force or not taken up by the Task Force they should prepare notes as soon as possible for submission to LRB. He imposed a one-page limit to the length of any such submitted notes.

Vice-Chair Dang asked whether the deadline for submission should be set at Monday, December 12, 2011.

Chairperson Kaneshige agreed.

Scheduling of
Next Meeting December 14, 2011 at 9:30 a.m.
Queen Liliuokalani Conference Room
King Kalakaua Building, 1st Floor
335 Merchant Street
Honolulu, Hawaii 96813

Adjournment Mr. Hogan moved to adjourn. Seconded by Vice-Chair Dang.
Chairperson Kaneshige called the question. The motion
PASSED, unanimously.

Taken and recorded by:



Napaporn Lam
Secretary

Reviewed and approved by:



Everett S. Kaneshige
Chairperson

12/13/11

Minutes approved as is.

Minutes approved with changes. See Minutes of _____.