

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: December 14, 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
Colin A. Yost, Member
George J. Zweibel, Member
James C. Paige, Deputy Attorney General
Napaporn Lam, Secretary

Guests: Charlotte Carter-Yamauchi, Legislative Reference Bureau ("LRB")
Seth Corpuz-Lahne, Mortgage Foreclosure Dispute Resolution
Becky Gardner, Office of Representative Robert N. Herkes
Gary Fujitani, Hawaii Bankers Association
Sheri Kagimoto, Mortgage Assistance & Mitigation Group
Stafford Kiguchi, Bank of Hawaii
Terrence Lee, Legislative Reference Bureau ("LRB")
Stefanie Sakamoto, Hawaii Credit Union League

Call to Order: There being a quorum present, the meeting was called to order by Chairperson Kaneshige at 9:42 a.m.

Chairperson Kaneshige proposed to members to take a break to review all the handouts that were distributed at the meeting.

The meeting was recessed at 9:45 a.m.

The meeting was reconvened at 9:58 a.m.

Approval of the Minutes of the November 16, 2011 Meeting: It was moved by Vice-Chair Dang, seconded by Mr. Morris, and unanimously carried to approve the minutes of the November 16, 2011 meeting with the following amendments:

On page 8, under Investigative Groups Reports to the Task Force: the third paragraph should read as follows:

"Ms. Verbrugge proposed that upon the repeal of the judicial conversion section, HRS 607-5 would revert back to its original language."

On page 7, under Investigative Groups Reports to the Task Force: the eighth paragraph should read as follows:

"Ms. Verbrugge posed a question regarding the possibility of confusion to the public when referring to district court divisions in reference to nonjudicial foreclosures."

On page 12, under Investigative Groups Reports to the Task Force: the third paragraph should read as follows:

"Ms. Catalani raised concerns that language in the LRB draft related to **mortgage servicer penalty** may not be related to "Real Property".

On page 1, under Present: Mr. Hogan requested to add Ms. Aiwohi as the substitute member for him that should read as follows:

"Tracy Aiwohi, substitute member for Francis P. Hogan"

On page 4, under Investigative Groups Reports to the Task Force: the fourth paragraph should read as follows:

"Ms. Verbrugge confirmed that Judiciary oversight of **counseling** is the matter of concern."

Approval of the Minutes of the November 30, 2011 Meeting:

It was moved by Vice-Chair Dang, seconded by Mr. Morris, and unanimously carried to approve the minutes of the November 30, 2011 meeting with the following amendments:

Chairperson Kaneshige clarified to the members that the meeting minutes of Dec 5, 2011 was included in the meeting minutes of November 30, 2011 because the Task Force meeting was recessed on November 30 at 1:08 p.m. and the meeting was reconvened again on December 5 at 9:30 a.m.

On page 4, under Judiciary Report on Foreclosure Statistics: the eighth paragraph should read as follows:

"Ms. Verbrugge answered that she did not think so."

On page 7, under Investigative Groups Reports to the Task Force: the fourth paragraph should read as follows:

""[] §667-58 []" **Valid notice real estate**"

On page 17, under Investigative Groups Reports to the Task Force: the first paragraph should read as follows:

“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.”

On page 17, under Investigative Groups Reports to the Task Force: after the first paragraph, added a new paragraph to read as follows:

“Mr. Zweibel also stated that, regarding the “laundry list”, he objected to the resulting de-emphasis on loan modification.”

On page 18, under Investigative Groups Reports to the Task Force: the fourth paragraph should read as follows:

“Mr. Zweibel stated that the **definition of “dispute resolution”** affirmatively states the goal as facilitating loan modification, with the emphasis on mitigation being secondary.”

On page 33, under Investigative Groups Reports to the Task Force: the second paragraph should read as follows:

“Mr. Zweibel indicated that he had serious reservations with Mr. Hogan’s proposed amendment, as most **misrepresentations** made to consumers are oral.”

On page 33, under Investigative Groups Reports to the Task Force: the fifth paragraph should read as follows:

“Mr. Zweibel replied that the important issue was whether a foreclosing mortgagee is bound **by** 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.

On page 33, under Investigative Groups Reports to the Task Force: the fourth paragraph should read as follows:

"Mr. Hogan replied that in cases where a representation had been made orally and if that representation constituted fraud, it would still be fraud. He stated that his concern is 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."

On page 35, under Investigative Groups Reports to the Task Force: the seventh paragraph should read as follows:

"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 **HRS §667-60** would be a mistake."

On page 36, under Investigative Groups Reports to the Task Force: the eighth paragraph should read as follows:

"Mr. Zweibel described his proposed draft of HRS §667-60 as a compromise between lenders and consumer advocates, where only the most serious violations of chapter 667 would be appropriate for **HRS §480-12 relief**. He stated that if a compromise is reached on everything, Mr. Hirano's proposed draft of HRS §667-60 would be acceptable to him, but that he had some other serious concerns about Mr. Hirano's draft."

On page 36, under Investigative Groups Reports to the Task Force: the first paragraph should read as follows:

" Mr. Hirano stated the HRS §667-60 UDAP section, specifically the implications of HRS §480-2 and HRS

§480-12, makes it **difficult** to provide title insurance for nonjudicial foreclosures."

On page 38, under Investigative Groups Reports to the Task Force: the fourth paragraph should read as follows:

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

Mr. Hogan asked which page of the meeting minutes stated the date and time of the meeting on December 5, 2011.

Ms. Lam, secretary answered that starting on page 10 is the reconvened meeting minutes of the December 5, 2011 meeting.

Additions to the Agenda:

None

Report of Chairperson:

Chairperson Kaneshige stated that Ms. Takano will be in the meeting at 11 a.m. Mr. Morris will leave the meeting at 11:15 a.m. Mr. Guttman and Mr. Tam will leave the meeting at 12:15 p.m.

Judiciary Report on Foreclosure Statistics:

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

Ms. Verbrugge indicated that based upon reported data as of December 12, 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 December 12, 2011, for the month of November 2011, the number of judicial foreclosure actions filed in all circuit courts was 390.

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

Vice-Chair Dang mentioned that the number of new judicial foreclosures actions filed in all circuit courts as of November 30, 2011 jumped a lot from the earlier reported data as of November 28, 2011. The number over that two day period rose from 257 to 390.

Ms. Verbrugge indicated that generally, the Judiciary runs the numbers for a particular month, some time after the 20th of the following month, which allows for more complete information. Because she has been running special "partial" reports specifically for the Task Force earlier than when they are usually run, the numbers had to be updated. The numbers she is sharing today are also from a report run earlier than usual so those may be updated at a later time.

Mr. Zweibel asked if Ms. Verbrugge if there is the breakdown number between Oahu and neighbor islands.

Ms. Verbrugge stated that there is a breakdown indicating in which circuit the judicial foreclosures were filed, which she can email to the Task Force members.

Mr. Paige stated that Ms. Verbrugge should email the number to Chairperson Kaneshige for the circulation to the members.

Ms. Verbrugge indicated that she would do so.

Ms. Takano arrived at 10:26 a.m.

Action on
Reports and
Recommendations
of Investigative
Groups

Chairperson Kaneshige stated that there were two handouts from Investigative Group 1 (Act 48) that were passed out to the task force members at the meeting.

Mr. Oda addressed members on behalf of Investigative Group 1 and stated that the redlined handout was from the handout that was distributed on the MFTF meeting on

November 30, 2011.

Executive
Session:

At 10:29 a.m., it was moved by Vice-Chair Dang, seconded by Mr. Hogan, and unanimously carried to enter into Executive Session pursuant to HRS sections 92-4 and 92-5(a)(4), to consult with the board's attorney on questions and issues of the handout from Investigative Group 1.

EXECUTIVE SESSION

At 10:35 a.m., it was moved by Mr. Yost, seconded by Mr. Guttman, and unanimously carried to return to open session. The room was reopened to the public.

Mr. Oda clarified that the matters presented in the redlined handout that was distributed at the today's meeting was on the MFTF meeting agenda for November 30, 2011 and was presented to the Task Force as a whole. The Investigative Group 1 wanted to re-submit it again to the LRB so the document could be included in the LRB Draft Bill.

It was moved by Mr. Oda, and seconded by Mr. Hogan, to the Task Force to accept the redlined revision document of Investigative Group 1 (Act 48) and approve it for submission to the LRB for drafting in the LRB Draft Bill.

Mr. Oda clarified that only items that were underlined in red color were under consideration. He gave an overview of the handout.

Mr. Hogan stated that there was one recommendation from the LRB to delete the words "from and", and also to change the date from "September 1, 2012" to August 31, 2012" in HRS §667-41, Page 107, line 6-7, of the redlined revision document by Investigative Group 1 (Act 48), which currently reads as follows:

“(c) The requirements of this Section 667-41 shall apply only to written loan applications submitted, or to loans

were residential property is required to be used as security, from and after September 1, 2012."

Vice-Chair Dang suggested changing the word "were" to "where" in §667-41, Page 107, line 5, of the redlined revision document of Investigative Group 1 (Act 48), which currently reads as follows:

"(c) The requirements of this Section 667-41 shall apply only to written loan applications submitted, or to loans were residential property is required to be used as security, from and after September 1, 2012."

Ms. Carter-Yamauchi, of the LRB, said that the LRB will have to restore the deletion in Section 54, page 141, line 16-17, of the redlined revision document of Investigative Group 1 (Act 48) which currently reads as follows:

"~~[(3) Section 24 of this Act shall take effect on September 1, 2012.]~~"

After extensive discussion, the motion PASSED, with 1 Abstention(s): Ms. Verbrugge.

Discussion
And Action on
Recommendations
by Individual Task
Force Members

Chairperson Kaneshige stated that there were some handouts from individual Task Force members. The first handout was a proposed revision to §667-60 [§667-AC] for consideration from Mr. Hirano and Mr. Zweibel. The second handout was regarding 667-G (d) proposed by the Judiciary.

Chairperson Kaneshige invited Mr. Hirano and Mr. Zweibel to give an overview of the handout to the Task Force.

Mr. Hirano and Mr. Zweibel gave an overview of the handout to the Task Force.

It was moved by Mr. Hirano, and seconded by Mr. Zweibel, to approve inclusion of the handout from Mr. Hirano and Mr.

Zweibel, as circulated at the meeting, in the LRB Draft Bill and the LRB MFTF Draft Report.

Mr. Yost questioned and expressed his concern on subsection (b), page 3. Mr. Yost, Mr. Hirano, Mr. Hogan, and Chairperson Kaneshige had a discussion on the definition of "substantial and material".

Vice-Chair Dang raised questions and made comments in opposition to subsection (a). Vice-Chair Dang, Mr. Hirano, Mr. Zweibel, and Mr. Guttman discussed §667-60 [§667-AC].

After extensive discussion, Chairperson Kaneshige called a roll call vote. The motion PASSED, with the votes as follows: 13 Aye(s): Chairperson Kaneshige, Ms. Catalani, Mr. Gilbreath, Mr. Guttman, Mr. Hirano, Mr. Kim, Mr. Morris, Ms. Sugimura, Ms. Takano, Mr. Tam, Mr. Wada, Mr. Yost and Mr. Zweibel; 4 No(es): Vice-Chair Dang, Mr. Hogan, Mr. Kawamoto, and Mr. Oda; and 1 Abstention(s): Ms. Verbrugge.

Mr. Morris left the meeting at 11:25 a.m.

Mr. Yost left the meeting at 11:28 a.m.

Chairperson Kaneshige invited Ms. Verbrugge to give an overview of the 667-G (d) handout proposed by the Judiciary to the Task Force.

Ms. Verbrugge gave an overview of the 667-G(d) handout proposed by the Judiciary to the Task Force, indicating that the reason for her proposal was that she would prefer that the reference to district court divisions be deleted. She indicated that referring to district court divisions when discussing nonjudicial foreclosures may be confusing to the public. She had suggested using language referring to "tax zones" instead of district court divisions. She understood that this language was further revised by one or other members of the Task Force

It was moved by Ms. Verbrugge, and seconded by Vice-Chair Dang to approve submitting to the LRB the 667-G (d)

handout proposed by the Judiciary to be incorporated in the LRB Draft Bill.

Mr. Hirano and Chairperson Kaneshige discussed the property tax zones maps.

Vice-Chair Dang suggested to change the words "the foreclosing mortgagee" to "association" in the 667-G(d) handout proposed by the Judiciary, on page 1, line 1.

After extensive discussion, the motion with the change PASSED unanimously.

Discussion
And Action on
final LRB Draft
of Task Force
Recommendations
to the 2012
Legislature

Vice-Chair Dang stated that there will be another updated draft bill from the LRB before the final version is submitted to the Legislature.

Discussion
And Action on
LRB Draft of Task
Force Report to
The 2012
Legislature

Chairperson Kaneshige said that the draft of the Final Report of the MFTF to the Legislature was sent to members to review. The handout that was distributed today only has the first 15 pages because the rest is the LRB Draft Bill that was distributed at today's meeting.

Chairperson Kaneshige gave an overview to the members of the draft of the Final Report of the MFTF to the Legislature.

It was moved by Vice-Chair Dang, and seconded by Ms. Catalani, that the Task Force approve the Final Report of the MFTF to the Legislature including seven recommendations (two recommendations from Mr. Zweibel, one proposed revision to HRS §667-60 [§667-AC] from Mr. Zweibel and Mr. Hirano, one recommendation from Hawaii Financial Services Association (HFSA), one recommendation from Hawaii Bankers Association (HBA), one recommendation from Hawaii Credit Union League (HCUL), and one recommendation from the LRB) that was distributed at the meeting.

Mr. Hogan asked Ms. Carter-Yamauchi, of the LRB, if the Final Report of the MFTF to Legislature was going to be revised to reflect the changes from today meeting.

Ms. Carter-Yamauchi, of the LRB, clarified that all changes that were voted on and passed at today's meeting will be in the Final Report of the MFTF to Legislature.

Mr. Hogan noted that in the Final Report of the MFTF to Legislature, in the "Developing Recommendations to the Legislature" section, page 11, comment 11, an update is needed regarding the geography of judicial district court boundaries.

Mr. Guttman stated that in the Final Report of the MFTF to Legislature, on the first page of the report, Executive Summary, last paragraph, that "Act 48" should be deleted.

Ms. Carter-Yamauchi, of the LRB, indicated that she will take out the word "basis" and will modify as appropriate.

Mr. Zweibel requested that a remark be inserted pertaining to the fact that there was only one member on the Task Force from a neighbor island.

After discussion, Mr. Zweibel amended the motion, seconded by Mr. Hogan, to include the recommendation in the Final Report of the MFTF to Legislature to recommend that for future task forces created by the legislature, there should be more than one member on the task force who resides on the neighbor islands.

Mr. Oda also amended the amended motion, seconded by Mr. Guttman, to recommend that future task forces and working groups should be provided with adequate resources by the Legislature to reimburse travel expenses for members from the neighbor islands to attend the meetings.

After discussion, the motion PASSED unanimously.

Mr. Zweibel stated that in the Final Report of the MFTF to Legislature, "Act 48, Session Laws of Hawaii 2011" section, page 6, item (1)(B), the word "action" should be deleted, which currently reads as follows:

(B) Convert the foreclosure action to a judicial foreclosure;

Mr. Zweibel stated that in the Final Report of the MFTF to Legislature, "Act 48, Session Laws of Hawaii 2011" section, page 6, footnote 13, second line, the word "all" should be changed to "reasonable", which currently reads as follows:

"¹³The imposition of fines for every day that a violation is found under section 480-3.1; voiding of the contract or agreement pursuant to section 480-12; and treble damages and **all** attorneys' fee and costs for the claimant in a civil suit brought under section 480-13."

Mr. Zweibel requested that concerns from the borrower standpoint as to why HRS §667-60 is important be added to the last paragraph on the Final Report of the MFTF to Legislature, "Act 48, Session Laws of Hawaii 2011" section, page 6, and continue to the first paragraph of page 7.

Mr. Oda, Chairperson Kaneshige, Vice-Chair Dang, Mr. Gilbreath, Ms. Sugimura, Ms. Takano had a discussion on the borrower standpoint on HRS §667-60.

Chairperson Kaneshige asked Ms. Carter-Yamauchi, of the LRB, if it was appropriate to look at the previous meeting minutes that included discussion of the HRS §667-60 issue in order to add some of the comments from the borrower perspective to the Final Report of the MFTF to Legislature.

Ms. Carter-Yamauchi, of the LRB, stated that she will work on it as appropriate.

Chairperson Kaneshige asked Mr. Zweibel if this was acceptable to him.

Mr. Zweibel agreed.

Mr. Guttman stated that in the Final Report of the MFTF to Legislature, "Act 48, Session Laws of Hawaii 2011" section, page 7, third paragraph, second line, the word "nonjudicial" should be deleted, which currently reads as follows:

"However, by making any violation of chapter 667 an unfair or deceptive act or practice under section 480-2, Act 48 substantially increased the situations under which a nonjudicial foreclosure sale could be voidable under section 480-12..."

Ms. Verbrugge stated that in the Final Report of the MFTF to Legislature, "Act 48, Session Laws of Hawaii 2011" section, page 7, regarding the number of judicial foreclosure complaints filed, for the month of November the number in 2011 should be updated from 257 to 390 judicial foreclosure filings, and from the words "Based on the Judiciary's reported data as of November 28, 2011" should be amended to "Based on the Judiciary's reported data as of December 12, 2011".

Mr. Oda raised questions regarding the "Developing Recommendations to the Legislature" section, page 11, numbers (5) and (6) of the Final Report of the MFTF to Legislature, pertaining to HRS §667-41.

Ms. Carter-Yamauchi, of the LRB, stated that there was an explanation on page 14, (9), regarding HRS §667-41. She stated that this part was the historical section of the report, but that she would work on the language to clarify it.

Vice-Chair Dang commented that in the Final Report of the MFTF to Legislature, "Scope of Study" section, page 5, regarding mandatory items for consideration by the Task Force, that the Task Force had considered many of the items last year and the Task Force considered them again this year.

He suggested that there should be a section in the Report indicating that the Task Force reconsidered these items in 2011.

Vice-Chair Dang also commented regarding mandatory item 8 in the Final Report of the MFTF to Legislature, "Scope of Study" section, page 5, regarding addressing the concerns of mortgagors. He wanted to point out for the record that there has been discussion during the Task Force meetings which have addressed the concerns of mortgagors.

Mr. Guttman left the meeting at 12:21 p.m.

Chairperson Kaneshige and Mr. Gilbreath had a discussion regarding addressing the concerns of mortgagors.

After extensive discussion, the motion PASSED, with 1 Abstention(s): Ms. Verbrugge.

Discussion
And Action on
Individual Task
Force Members'
Additions to the
Task Force
Report to the
2012 Legislature

Chairperson Kaneshige noted that there were reports from Individual Task Force Members: one report from Hawaii Financial Services Association, one report from Hawaii Credit Union League, one report from Hawaii Bankers Association and one report from Mr. Zweibel.

It was moved by Mr. Hogan, seconded by Vice-Chair Dang, to submit to the LRB the reports that were distributed at the meeting so those reports could be included in the Final Report of the MFTF to Legislature in an appendix.

Mr. Oda and Mr. Zweibel stated that they would need to revise their reports based on the meeting today.

It was moved by Vice-Chair Dang, seconded by Mr. Hogan, to amend the motion to require that any revisions of the reports that were distributed today and any additional reports from any Task Force members need to be submitted to Chairperson Kaneshige by Friday, December 16, 2011 before 4 p.m.

Ms. Carter-Yamauchi, of the LRB, said that all the reports from the Task Force members will be inserted in the report "as is".

After discussion, the motion PASSED unanimously.

Scheduling of
Next Meeting(s):

Chairperson Kaneshige said that last year at a Task Force meeting in December 2010, the Task Force members delegated to the Chairperson and the Vice-Chair the authority to review and approve the LRB Draft Bill and the LRB Preliminary Report of the MFTF to 2011 Legislature.

Chairperson Kaneshige asked the Task Force members if they are willing to do it the same way for this year's Report to the 2012 Legislature.

It was moved by Mr. Zweibel, seconded by Mr. Hogan, and unanimously carried that the Task Force members approve delegating to Chairperson Kaneshige and Vice-Chair Dang the authority to review and approve the LRB Draft Bill and the LRB Final Report of the MFTF to the 2012 Legislature.

Ms. Carter-Yamauchi, of the LRB, said that the target date to submit the LRB Draft Bill and the LRB Final Report of the MFTF to the Legislature is December 29, 2011.

Chairperson Kaneshige recognized the public members that came to the Task Force meeting including Ms. Carter-Yamauchi and Mr. Lee, both of the LRB, for their hard work in working with the Task Force on the Draft Bill and the Report of the MFTF to the Legislature.

Chairperson Kaneshige stated that Vice-Chair Dang and he will be testifying before the legislature on the actions of the Task Force. Representative Robert N. Herkes and Senator Rosalyn Baker might want to have a briefing on specific recommendations. If so, Chairperson Kaneshige will contact the leader of each MFTF Investigative Group to participate in the briefing. He stated that all the Task Force members are welcome to testify after bills based on the Task Force recommendations are introduced in the Legislature and are scheduled for hearings.

Chairperson Kaneshige asked the Task Force members and the public members to share some comments and some thoughts.

The Task Force members shared their comments and thoughts.

Mr. Tam left the meeting at 12:40 p.m.

Mr. Wada stated that he is officially resigning from the Task force as of today.

Adjournment: There being no further business to discuss, it was moved by Mr. Hogan, seconded by Mr. Hirano, and unanimously carried to adjourn the meeting at 12:55 p.m.

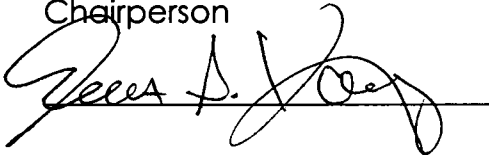
Taken and recorded by:



Napaporn Lam
Secretary

Reviewed and approved by:

Everett S. Kaneshige
Chairperson



Minutes approved as is.

Minutes approved with changes. See Minutes of _____.

AUG 15 2012