



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

February 27, 2024

The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice Chair
Members of the House Committee on Judiciary

Hearing Date: February 28, 2024
Hearing Time: 10:00am
Hearing Place: State Capitol Room 16

Re: SB 2227 SD1

I am Linda Nakamura, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. The members of the MBAH originate and service, or support the origination and servicing, of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation or rules, it is related only to mortgage lending and servicing.

The MBAH is in opposition of SB 2227 SD1 and offers the following comments.

SB 2227 SD1 authorizes the Governor to suspend the mortgage foreclosure provisions of chapter 667, HRS, for properties having substantial damage from a Governor declared state of emergency.

SB 2227 SD 1 is susceptible to legal challenges because the broad suspension of chapter 667 for an extended period impermissibly impairs the rights and duties of existing contracts pursuant to the Contract Clause of the U.S. Constitution. See Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 242 (1978). The Contract Clause prohibits states from enacting laws that diminish the duties of a contractual obligor. In the context of a state declared emergency, any economic relief afforded to mortgage debtors must be appropriate to the specific emergency and only granted upon reasonable conditions. See Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 444 (1934). However, the broad suspension of chapter 667 for an extended period is not reasonable to mortgage servicers and may not be appropriate depending on the circumstances of the state declared emergency.

MBAH also notes that SB 2227 SD 1, in its current form, does not provide a definition for properties that have incurred substantial damage resulting from a state declared emergency. The term substantial damage is very vague and susceptible to legal challenges due to ambiguous and arbitrary interpretations.

Mortgage servicers are required to follow the guidelines set forth by the investors the mortgage lender sold the mortgage loan to. Fannie Mae and Freddie Mac are the largest purchasers of mortgage loans. Per their guidelines, mortgage servicers are already required to not initiate or complete foreclosure proceedings on a property that has been affected by a natural disaster.

SB 2227 as written will have an impact on a mortgage lender's lending policy and safety and soundness requirements. If a mortgage is rendered uncollectible, mortgage lenders will be required to curb their lending, raise qualification requirements, charge higher rates and fees to mitigate potential losses to ensure the safety and soundness of their institutions.

Thank you for the opportunity to present this testimony.

Linda Nakamura
Mortgage Bankers Association of Hawaii