



February 10, 2020

VIA WEB TRANSMITTAL

Hearing Date: Wednesday, February 12, 2020

Time: 2:05 p.m.

Place: Conference Room 329

Committee on Consumer Protection & Commerce
House of Representatives, the 30th Legislature
Regular Session of 2020

Re: Community Associations Institute's **Testimony in support of HB 1840**

Dear Chair Takumi, Vice Chair Ichiyama and Committee members:

I am a member of the Hawaii Chapter of the Community Associations Institute Legislative Action Committee ("CAI"). We represent the condominium and community association industry and submit this testimony in support to HB 1840.

Our support is based on the need to quickly identify those persons to whom notice of nuisances occurring within the foreclosed property may be given so as to ensure prompt nuisance abatement.

Based on the foregoing, we respectfully submit that HB 1840 should be passed out of Committee. Thank you for your time and consideration.

Sincerely yours,

/s/ R. Laree McGuire

R Laree McGuire

CAI LAC Hawaii

HB-1840

Submitted on: 2/11/2020 11:38:53 AM

Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Anne Anderson	Individual	Oppose	No

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

I support the intent of H.B. 1840, but believe that it must be amended before it is adopted.

The intent of this measure is to promote nuisance abatement in connection with foreclosures of real property by requiring a foreclosing mortgagee to record a Writ of Possession. However, this measure contains ambiguities and it is not clear how a recorded Writ of Possession will effectively promote nuisance abatement.

Requiring the recording of a Writ of Possession may not be the most effective mechanism to identify the person or entity with authority over the premises to which notice of a prohibited presence or nuisance activities should be directed. For instance, in many cases, a Writ of Possession will provide for the highest bidder’s “nominee” to take possession. As such, this measure would not necessarily determine the actual title holder. In addition, a Writ of Possession is not a conveyance document (i.e., as Commissioner’s Deed) and actual title generally does not vest unless and until the Commissioner executes a deed conveying the property to the successful bidder or its nominee (or, in some cases, its successor or assign). Furthermore, this provision would not necessarily resolve similar issues which might arise in nonjudicial foreclosures, because no Writ of Possession will be issued unless the foreclosing party or successful bidder obtains a Writ of Possession through the Courts.

Section 1 of H.B. 1840 refers to a “foreclosing party” recording a Commissioner’s Deed, while other sections of the measure refer to ‘mortgagees,’ and as such, Section 1 of this measure is broader than the proposed amendments to Hawaii Revised Statutes. That said, the amendments to Hawaii Revised Statutes which are set forth in this measure appear to apply only to judicial mortgage foreclosures.

This measure is also vague with respect to the deadline to record a Writ of Possession. The imposed deadline to record the Writ of Possession-- “as soon as is practicable”— is vague and would therefore be difficult to enforce. In addition, the requirement that the Writ of Possession be recorded “as soon as practicable,” will not result in faster foreclosures or faster nuisance abatement. There are many steps leading up to a party

obtaining a writ of possession in connection with a mortgage foreclosure, which are more likely to be the source of perceived delays. That said, it is common practice for Hawaii Courts to require that the closing of a sale occur within 35 days. As such, if a Court has entered an order confirming a sale and a writ of possession, any delay in complying with the Court's order would have been taken up with the Court.

In summary, it is unlikely that the recording of a Writ of Possession upon foreclosure would resolve the issues identified in Section 1 of this measure and for that reason, I oppose the bill as drafted. If it is adopted, it should be amended.

Respectfully submitted,

M. Anne Anderson

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

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The intent of this measure is to promote nuisance abatement in connection with foreclosures of real property by requiring a foreclosing mortgagee to record a Writ of Possession. However, this measure contains ambiguities and it is not clear how a recorded Writ of Possession will effectively promote nuisance abatement.

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In summary, it is unlikely that the recording of a Writ of Possession upon foreclosure would resolve the issues identified in Section 1 of this measure and for that reason, I oppose the bill as drafted. If it is adopted, it should be amended.

Respectfully submitted,

Thomas Tabacco

HB-1840

Submitted on: 2/11/2020 12:49:01 PM

Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bradford Lee Hair	Individual	Support	No

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

I support the intent of H.B. 1840, but believe that it must be amended before it is adopted.

The intent of this measure is to promote nuisance abatement in connection with foreclosures of real property by requiring a foreclosing mortgagee to record a Writ of Possession. However, this measure contains ambiguities and it is not clear how a recorded Writ of Possession will effectively promote nuisance abatement.

Requiring the recording of a Writ of Possession may not be the most effective mechanism to identify the person or entity with authority over the premises to which notice of a prohibited presence or nuisance activities should be directed. For instance, in many cases, a Writ of Possession will provide for the highest bidder's "nominee" to take possession. As such, this measure would not necessarily determine the actual title holder. In addition, a Writ of Possession is not a conveyance document (i.e., as Commissioner's Deed) and actual title generally does not vest unless and until the Commissioner executes a deed conveying the property to the successful bidder or its nominee (or, in some cases, its successor or assign). Furthermore, this provision would not necessarily resolve similar issues which might arise in nonjudicial foreclosures, because no Writ of Possession will be issued unless the foreclosing party or successful bidder obtains a Writ of Possession through the Courts.

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said, the amendments to Hawaii Revised Statutes which are set forth in this measure appear to apply only to judicial mortgage foreclosures.

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In summary, it is unlikely that the recording of a Writ of Possession upon foreclosure would resolve the issues identified in Section 1 of this measure and for that reason, I oppose the bill as drafted. If it is adopted, it should be amended.

Respectfully submitted,

Bradford Lee Hair

HB-1840

Submitted on: 2/11/2020 12:31:17 PM

Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Paul A. Ireland Koftinow	Individual	Oppose	No

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

I support the intent of H.B. 1840, but believe that it must be amended before it is adopted.

The intent of this measure is to promote nuisance abatement in connection with foreclosures of real property by requiring a foreclosing mortgagee to record a Writ of Possession. However, this measure contains ambiguities and it is not clear how a recorded Writ of Possession will effectively promote nuisance abatement.

Requiring the recording of a Writ of Possession may not be the most effective mechanism to identify the person or entity with authority over the premises to which notice of a prohibited presence or nuisance activities should be directed. For instance, in many cases, a Writ of Possession will provide for the highest bidder's "nominee" to take possession. As such, this measure would not necessarily determine the actual title holder. In addition, a Writ of Possession is not a conveyance document (i.e., as Commissioner's Deed) and actual title generally does not vest unless and until the Commissioner executes a deed conveying the property to the successful bidder or its nominee (or, in some cases, its successor or assign). Furthermore, this provision would not necessarily resolve similar issues which might arise in nonjudicial foreclosures, because no Writ of Possession will be issued unless the foreclosing party or successful bidder obtains a Writ of Possession through the Courts.

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This measure is also vague with respect to the deadline to record a Writ of Possession. The imposed deadline to record the Writ of Possession-- "as soon as is practicable"— is vague and would therefore be difficult to enforce. In addition, the requirement that the Writ of Possession be recorded "as soon as practicable," will not result in faster

foreclosures or faster nuisance abatement. There are many steps leading up to a party obtaining a writ of possession in connection with a mortgage foreclosure, which are more likely to be the source of perceived delays. That said, it is common practice for Hawaii Courts to require that the closing of a sale occur within 35 days. As such, if a Court has entered an order confirming a sale and a writ of possession, any delay in complying with the Court's order would have to be taken up with the Court.

In summary, it is unlikely that the recording of a Writ of Possession upon foreclosure would resolve the issues identified in Section 1 of this measure and for that reason, I oppose the bill as drafted. If it is adopted, it should be amended.

Respectfully submitted,

Paul A. Ireland Koftinow

HB-1840

Submitted on: 2/11/2020 2:12:28 PM

Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joanna L. Miranda	Makaha Valley Towers	Oppose	No

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

I support the intent of H.B. 1840, but believe that it must be amended before it is adopted.

The intent of this measure is to promote nuisance abatement in connection with foreclosures of real property by requiring a foreclosing mortgagee to record a Writ of Possession. However, this measure contains ambiguities and it is not clear how a recorded Writ of Possession will effectively promote nuisance abatement.

Requiring the recording of a Writ of Possession may not be the most effective mechanism to identify the person or entity with authority over the premises to which notice of a prohibited presence or nuisance activities should be directed. For instance, in many cases, a Writ of Possession will provide for the highest bidder's "nominee" to take possession. As such, this measure would not necessarily determine the actual title holder. In addition, a Writ of Possession is not a conveyance document (i.e., as Commissioner's Deed) and actual title generally does not vest unless and until the Commissioner executes a deed conveying the property to the successful bidder or its nominee (or, in some cases, its successor or assign). Furthermore, this provision would not necessarily resolve similar issues which might arise in nonjudicial foreclosures, because no Writ of Possession will be issued unless the foreclosing party or successful bidder obtains a Writ of Possession through the Courts.

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In summary, it is unlikely that the recording of a Writ of Possession upon foreclosure would resolve the issues identified in Section 1 of this measure and for that reason, I oppose the bill as drafted. If it is adopted, it should be amended.

Respectfully submitted,

Joanna L. Miranda

HB-1840

Submitted on: 2/11/2020 9:04:20 PM

Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
mary freeman	Individual	Oppose	No

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

I believe that this bill must be amended before it is adopted.

The intent of this measure is to promote nuisance abatement in connection with foreclosures of real property by requiring a foreclosing mortgagee to record a Writ of Possession. However, this measure is not clear how a recorded Writ of Possession will effectively promote nuisance abatement. There are too many unanswered issues.

Requiring the recording of a Writ of Possession may not be the most effective mechanism to identify the person or entity with authority over the premises to which notice of a prohibited presence or nuisance activities should be directed. For instance, in many cases, a Writ of Possession will provide for the highest bidder's "nominee" to take possession. As such, this measure would not necessarily determine the actual title holder. In addition, a Writ of Possession is not a conveyance document (i.e., as Commissioner's Deed) and actual title generally does not vest unless and until the Commissioner executes a deed conveying the property to the successful bidder or its nominee (or, in some cases, its successor or assign). Furthermore, this provision would not necessarily resolve similar issues which might arise in nonjudicial foreclosures, because no Writ of Possession will be issued unless the foreclosing party or successful bidder obtains a Writ of Possession through the Courts.

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In summary, it is unlikely that the recording of a Writ of Possession upon foreclosure would resolve the issues identified in Section 1 of this measure and for that reason, I oppose the bill as drafted. If it is adopted, it should be amended.

Respectfully submitted,

Mary S. Freeman

HB-1840

Submitted on: 2/12/2020 9:20:23 AM

Testimony for CPC on 2/12/2020 2:05:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
Mark McKellar	Law Offices of Mark K. McKellar, LLLC	Oppose	No

Comments:

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Respectfully submitted,

Mark McKellar