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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION
AND AFFORDABLE HOUSING

TWENTY-FOURTH STATE LEGISLATURE
REGULAR SESSION OF 2008

Wednesday, March 12, 2008
9:00 a.m.

TESTIMONY ON HOUSE BILL NO. 2326, HD2 – RELATING TO MORTGAGES.

TO THE HONORABLE RUSSELL S. KOKUBUN, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify regarding House Bill No. 2326, HD2, Relating to Mortgages. The Department is in strong support of this bill. My name is Stephen Levins, and I am the Executive Director of the Department's Office of Consumer Protection.

House Bill No. 2326, HD2, proposes to add a new chapter to title 26 of the Hawaii Revised Statutes, designed to protect Hawaii consumers from persons who prey on homeowners facing property foreclosures, liens, or encumbrances. These so-called

mortgage rescuers offer phantom help to homeowners, taking a fee of a few thousand dollars for supposedly negotiating with the homeowners' secured creditors. After collecting the money, many do little or no work and essentially abandon the homeowners. In the most insidious cases, the consultant will persuade families to deed their house to investors for a year. The homeowners supposedly can use that time to clear up their credit and refinance the property, then take back title free and clear. In many cases the homeowners wind up becoming tenants and then being evicted. The Mortgage Rescue Fraud Prevention Act addresses both forms of trickery by requiring the consultants to provide homeowners with a written contract spelling out their services and by giving the homeowners the right to cancel at any time before the services are actually performed.

The bill limits the amount a mortgage rescuer can make if the homeowner is successful in buying back the home to one hundred twenty-five per cent of the amount paid by the rescuer to purchase the property and requires that the mortgage rescuer provide the homeowner with at least eighty-two per cent of the value of their home if the home owner is eventually unable to buy back the home from the mortgage rescuer. These percentages are consistent with similar provisions already enacted into law in other jurisdictions, including Illinois and Minnesota.

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During the past year, several complaints have been filed with the Office of Consumer Protection from people who sought help from mortgage rescuers. Instead of receiving help, several found that they were being forced out of their home. This bill, which is modeled after laws in Minnesota and Illinois, will help homeowners in distress by providing them with important consumer protections.

Thank you for this opportunity to testify on House Bill No. 2326, HD2. I will be happy to answer any questions that the members of the Committee may have.



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March 8, 2008

The Honorable Russell Kokubun, Chair
Senate Committee on Commerce, Consumer Protection,
and Affordable Housing
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: H.B. 2326, HD2 Relating to Mortgages
Hearing Date: Wednesday, March 12, 2008 @ 9:00 a.m., Room 229

Dear Chairs Herkes, Waters and members of the House Committee on Consumer
Protection & Commerce and Judiciary,

On behalf of our 10,000 members in Hawaii, the Hawaii Association of REALTORS®
(HAR) supports H.B. 2326 HD2.

The intent of the measure is admirable as it seeks to protect homeowners from
unscrupulous foreclosure consultants. It establishes the necessary penalties for this
heinous crime. Our only concern is whether the five day rescission period is adequate.
Most homeowners who are considering a business relationship with a foreclosure
consultant are usually in dire straits. HRS 508D-5 allows for a fifteen day rescission
period upon delivery of disclosure documents to the buyer. We would respectfully
suggest a similar period for H.B. 2326, HD2, which is already contained in S.B. 3026,
SD2.

Mahalo for the opportunity to testify.

The Honorable Russell S. Kokubun, Chair
The Honorable David Y. Ige, Vice Chair
Senate Committee on Commerce, Consumer Protection and Affordable Housing

Hearing : Wednesday March 12, 2008, 9:00 a.m.
State Capitol, Conference Room 229

IN SUPPORT OF HB 2326 HD2

Chair and Members of the Committees:

My name is Ryker Wada, representing the Legal Aid Society of Hawai'i ("LASH"). I am advocating for our clients who include the working poor, seniors, citizens with English as a second language, disabled and other low and moderate income families who are consumers. We are testifying in support of HB 2326 HD2 as it would strengthen protections for consumers in the State of Hawaii against foreclosure rescue scams.

I supervise a housing counseling program in the Consumer Unit at the Legal Aid Society of Hawaii. The Homeownership Counseling Project provides advice to individuals and families about homeownership issues. Specifically the project provides information on how to prepare yourself before purchasing a home and what to do if you are in danger of losing your home through foreclosure. In the past Fiscal Year we serviced more than 200 clients in our Project.

HB 2326 HD2 seeks to impose certain restrictions on "foreclosure consultants" by requiring contracts to be in writing, containing full disclosures and a right to cancel. HB 2326 HD2 would help to protect consumers from foreclosure rescue scams and fraudulent distressed property consultants who offer "help" to homeowners who are in arrears or foreclosure. This "help" usually comes in the form of scam artists who take a fee for negotiating with a distressed homeowners mortgage company. Instead the homeowners get little or nothing for their fee and the scam artist has disappeared with the homeowner's money. A more insidious form of the foreclosure rescue scam involves the scammer taking title to the homeowner's property with the homeowner staying in the property as a renter and attempting to buy it back over the next few

years. The terms of these deals usually make it impossible for homeowners to buy back their property, allowing the scammer to walk off with all or most of a homes equity.

LASH anticipates a growing number of foreclosures in the coming years as the so-called exotic mortgage products mature and consumers are not able to keep up with their adjusted mortgage payments or find a suitable refinance. With the growing number of foreclosures, there will only be an increase in the number of foreclosure rescue scams and wronged consumers in the State of Hawaii.

The Legal Aid Society of Hawaii strongly supports HB 2326 HD2, and its efforts to protect the consumers in the State of Hawaii against foreclosure rescue scams and “foreclosure consultants.”

Conclusion:

We appreciate these committees’ recognition of the need to protect consumers in the State of Hawaii. HB 2326 HD2 attempts to strengthen protections for consumers. We strongly support the HB 2326 HD2. Thank you for the opportunity to testify.