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TO THE
HOUSE COMMITTEE ON FINANCE

THE TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2009

Monday, March 2, 2009
1:30 p.m.

TESTIMONY ON H.B. NO. 1071, H.D.2 - RELATING TO MORTGAGE SERVICERS

THE HONORABLE MARCUS R. OSHIRO, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nick Griffin, Commissioner of Financial Institutions ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). With requested amendments, the Department strongly supports this Administration bill relating to mortgage servicers.

The purpose of the bill is to establish a State system of licensure and regulation to ensure that servicers of residential mortgage loans secured by real property located in the State of Hawaii conduct those activities responsibly and with requisite accountability to borrowers.

Servicers that engage in servicing residential mortgage loans are frequently a borrower's only contact for information regarding the borrower's loan, and the only party to which the borrower may turn to address and resolve matters that can arise during the course of making payments on that loan, including but not limited to issues relating to required reserves for the payment of property tax and required hazard insurance on the property that secures a borrower's loan. A number of other states have robust mortgage servicer related regulatory and supervisory provisions in their statutes. However, in the absence of any regulation of these residential mortgage servicers by the State of Hawaii, a borrower who owns property in Hawaii securing a residential mortgage loan may discover that the borrower may have little, if any, recourse apart from costly litigation if a mortgage servicer mishandles its servicing responsibilities, or otherwise neglects or refuses to address problems, errors, or other concerns that may arise for the borrower during the term of the loan.

The present wave of foreclosures that is particularly impacting borrowers who obtained subprime and non-traditional mortgage loans has highlighted the fact that many servicers are unable or disinclined to assist borrowers in distress since the servicers may lack adequate staffing or the financial incentive to do so. In many instances, assisting a borrower by negotiating a modification or workout of a delinquent loan may be more costly to the servicer than the alternative of allowing the mortgaged

property to be sold in foreclosure, which transfers the financial loss and other ensuing consequences onto the borrower and lender rather than the servicer.

A prior law regulating the activities of real estate collection servicing agents, Chapter 454D, HRS, was repealed by Act 254, Session Laws of Hawaii, 1999, upon the Legislature's finding that regulation of these servicers was "unnecessary" as it "does not serve to protect the public health, safety, and welfare." However, the foreclosure crisis currently being experienced by millions of homeowners nationwide and many here in Hawaii has focused attention on the fact that borrowers are now losing their homes as the result of foreclosure actions that are being initiated, in most instances, by mainland servicers unregulated in Hawaii.

This measure does not require that servicers agree to loan modifications, but rather provides, more generally, for the licensure and regulation of those residential mortgage servicers that service loans secured by property located in Hawaii, many of which presently may not be otherwise regulated or subject to existing State laws. One outcome will be that a borrower who owns property in Hawaii securing a residential mortgage loan will have the enhanced consumer protection afforded by an available local complaint process and the statutory enforcement powers conferred upon a Hawaii regulatory agency to compel servicer accountability to such borrowers. Presently, such borrowers find themselves at the mercy of regulatory agencies in other states that can

and do decline to assist a borrower if the property securing the loan in question is not also located in the state where the servicer is licensed.

As originally proposed, this measure (the "Act"):

- defines key terms, including "mortgage servicer";
- mandates the licensing of non-exempt mortgage servicers;
- exempts specified persons including insured depository financial institutions and their operating subsidiaries from the application of the Act;
- establishes an initial license application fee of \$500 and an annual license renewal fee of \$250;
- specifies duties of, and required disclosures to be made by, mortgage servicers;
- authorizes sanctions including the suspension, revocation and denial of a license for violations of the Act;
- confers and delineates the powers and authority of the Commissioner to carry out the purposes of the Act;
- acknowledges a private right of action by any person damaged as a result of a violation of the Act;
- provides for an administrative penalty of not more than \$5,000 for each violation of the Act; and

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- provides that all fees and fines collected by the Commissioner under the Act are to be deposited in the compliance resolution fund established pursuant to Section 26-9(o), HRS.

At its recent hearing by the House Committee on Housing, this measure was amended to transfer proposed regulatory responsibility under the Act from the Commissioner to the Director of the Department. Stand. Com. Rep. No. 229 of the Committee on Housing indicates that that committee amended the measure in that fashion to place responsibility for licensing mortgage servicers with the Department's Professional and Vocational Licensing Division, instead of the Division of Financial Institutions ("DFI"). We respectfully request that your committee amend the measure to restore proposed regulatory responsibility under the Act to the Commissioner, since DFI is, in the Department's view, a more suitable and appropriate division to oversee this program, because DFI is staffed with experienced financial institution examiners who are already quite familiar with the issues currently presented by the delinquencies and foreclosures in the local residential real estate lending arena. DFI's examiners have the expertise to assist consumers who encounter problems when attempting to discuss their concerns with non-responsive servicers.

At a subsequent hearing by the House Committee on Consumer Protection and Commerce, the measure was further amended by that committee, as H.D.2, by blanking out the amount of the license application and renewal fees, which were originally

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established at \$500 and \$250, respectively, in the measure, as introduced. Because the Department has determined that application and license renewal fees in those amounts are required to operate the proposed program on a fully self-funded basis, we respectfully request that both fee amounts be reinstated without alteration.

With the requested changes, the Department strongly supports this bill and asks for your favorable consideration. Thank you for the opportunity to testify. I would be happy to respond to any questions you may have.

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March 2, 2009

Representative Marcus R. Oshiro, Chair
and members of the House Committee on Finance
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 1071, HD 2 (Mortgage Servicers)**
Hearing Date/Time: Monday, March 2, 2009, 1:30 P.M.

I am the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is the trade association for Hawaii's financial services loan companies which are regulated by the Hawaii Commissioner of Financial Institutions under the Code of Financial Institutions (Chapter 412, Article 9 of the Hawaii Revised Statutes).

The HFSA **supports the intent** of this Bill.

The purpose of this Bill is to enact a new chapter of the Hawaii Revised Statutes to provide for licensing and regulation of mortgage servicers that service residential mortgage loans secured by real property located in the state of Hawaii.

Problems periodically occur for Hawaii residents who have mortgage loans and who have to deal with mainland mortgage servicers who are not responsive to inquiries and requests. It is necessary that there be some form of registration or licensing of mortgage servicers.

Thank you for considering our testimony.



MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association

(MSCD/hfsa)