

STAND. COM. REP. NO. 802

Honolulu, Hawaii

March 6, 2009

RE: H.B. No. 1071

H.D. 3

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Finance, to which was referred H.B. No. 1071, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO MORTGAGE SERVICERS,"

begs leave to report as follows:

The purpose of this bill is to establish within the Department of Commerce and Consumer Affairs (DCCA) a system of licensure and regulation of mortgage servicers of residential mortgage loans secured by real property located in Hawaii.

DCCA and the Hawaii Financial Services Association submitted comments.

Your Committee has amended this bill by:

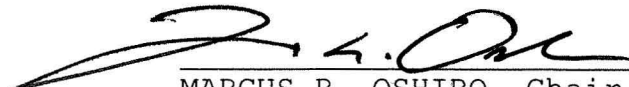
- (1) Clarifying that passage of this bill will not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date;
- (2) Changing the effective date to July 1, 2020, to encourage further discussion; and
- (3) Making technical, nonsubstantive changes for clarity, consistency, and style.

HB1071 HD3 HSCR FIN HMS 2009-2873



As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1071, H.D. 2, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1071, H.D. 3.

Respectfully submitted on
behalf of the members of the
Committee on Finance,



MARCUS R. OSHIRO, Chair



Record of Votes of the Committee on Finance

Bill/Resolution No.: HB 1071, HD2	Committee Referral: HSG, CPC, FIN	Date: March 2, 2009		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
FIN Members	Ayes	Ayes (WR)	Nays	Excused
1. OSHIRO, Marcus R. (C)	✓			
2. LEE, Marilyn B. (VC)	✓			
3. AQUINO, Henry J.C.	✓			
4. AWANA, Karen Leinani	✓			
5. BROWER, Tom	✓			
6. CHOY, Isaac W.	✓			
7. COFFMAN, Denny	✓			
8. HAR, Sharon E.	✓			
9. KEITH-AGARAN, Gilbert S.C.	✓			
10. LEE, Chris	✓			
11. NISHIMOTO, Scott Y.	✓			
12. SAGUM, Roland D., III	✓			
13. TOKIOKA, James Kunane	✓			
14. WOOLEY, Jessica	✓			
15. YAMASHITA, Kyle T.	✓			
16. PINE, Kymberly Marcos	✓			
17. WARD, Gene				✓
TOTAL (17)	16	0	0	1
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature: <u>Marilyn B. Lee</u>				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				

A BILL FOR AN ACT

RELATING TO MORTGAGE SERVICERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **MORTGAGE SERVICERS**

6 § -1 **Definitions.** In this chapter, unless the context
7 or subject matter otherwise requires:

8 "Applicant" means a person applying for a license under
9 this chapter.

10 "Borrower" means the obligor, maker, cosigner, or guarantor
11 under a mortgage agreement.

12 "Department" means the department of commerce and consumer
13 affairs.

14 "Director" means the director of commerce and consumer
15 affairs.

16 "License" means a license issued under this chapter.



1 "Licensee" means a person licensed or required to be
2 licensed under this chapter.

3 "Mortgage servicer" means the person responsible for
4 receiving any scheduled periodic payments from a borrower
5 pursuant to the terms of any residential mortgage loan,
6 including amounts for escrow accounts under Section 10 of the
7 Real Estate Settlement Procedures Act, 12 United States Code
8 Section 2609, and making the payments to the owner of the loan
9 or other third parties of principal and interest and such other
10 payments with respect to the amounts received from the borrower
11 as may be required pursuant to the terms of the mortgage
12 servicing loan documents or servicing contract. In the case of
13 a home equity conversion mortgage or reverse mortgage as
14 referenced in this chapter, servicing includes making payments
15 to the borrower.

16 "Person" means an individual, partnership, corporation,
17 association, or other organization.

18 "Residential mortgage loan" means a mortgage loan, home
19 equity loan, or reverse mortgage loan, that is secured by a
20 first or subordinate lien on residential real property located
21 in Hawaii, including a refinancing of any secured loan on
22 residential real property located in Hawaii, upon which:



1 (1) There is or will be constructed a structure or
2 structures designed principally for occupancy by one
3 to four families, including individual units of
4 condominiums and cooperatives; or

5 (2) A manufactured home is located or will be placed on
6 the real property, using proceeds of the loan.

7 § -2 **License required.** (a) No person except those
8 exempted under this chapter shall engage in the business of
9 mortgage servicing without a license as provided in this
10 chapter.

11 (b) A person is engaged in the business of mortgage
12 servicing if the person provides those services in this state
13 even if the person providing services has no physical presence
14 in the state.

15 § -3 **Exemptions.** This chapter shall not apply to the
16 following:

17 (1) Any persons chartered or authorized under the laws of
18 any state or federal law to engage in the activity of
19 an insured depository institution as defined in Title
20 12 United States Code Section 1813(c)(2), including
21 banks or savings associations, and operating
22 subsidiaries of an insured depository institution;



- 1 (2) Trust companies, credit unions, insurance companies,
2 and financial service loan companies licensed by this
3 state;
- 4 (3) The Federal Deposit Insurance Corporation, in
5 connection with assets acquired, assigned, sold, or
6 transferred pursuant to Section 13(c) of the Federal
7 Deposit Insurance Act or as receiver or conservator of
8 an insured depository institution;
- 9 (4) The Federal National Mortgage Association; the Federal
10 Home Loan Mortgage Corporation; the Federal Deposit
11 Insurance Corporation; the United States Department of
12 Housing and Urban Development, including the
13 Government National Mortgage Association and the
14 Federal Housing Administration, including cases in
15 which a mortgage insured under the National Housing
16 Act (12 United States Code Section 1701 et seq.) is
17 assigned to the United States Department of Housing
18 and Urban Development; the National Credit Union
19 Administration; the Farmers Home Administration or its
20 successor agency under Public Law 103-354; and the
21 Department of Veterans Affairs, in any case in which
22 the assignment, sale, or transfer of the servicing of



1 the mortgage loan is preceded by termination of the
2 contract for servicing the loan for cause,
3 commencement of proceedings for bankruptcy of the
4 servicer, or commencement of proceedings by the
5 Federal Deposit Insurance Corporation for
6 conservatorship or receivership of the servicer or an
7 entity by which the servicer is owned or controlled;
8 and

- 9 (5) Any person making or acquiring contemporaneously no
10 more than five residential mortgage loans with that
11 person's own funds for that person's own investment.

12 § -4 **License; fees; renewals.** (a) An applicant for
13 licensure shall file an application on a form prescribed by the
14 director and shall pay an application fee of \$. Each license
15 shall expire on June 30 of each calendar year. A license may be
16 renewed by filing a renewal statement on a form prescribed by
17 the director and paying a renewal fee of \$, on or before July
18 1 for licensure for the following year.

19 (b) The applicant shall submit any other information that
20 the department may require, including:

- 21 (1) The applicant's form and place of organization;
22 (2) The applicant's tax identification number; and



1 (3) The applicant's proposed method of doing business.

2 The applicant shall disclose whether the applicant or any
3 of its officers, directors, employees, managers, agents,
4 partners, or members has ever been issued or been the subject of
5 an injunction or administrative order pertaining to any aspect
6 of the lending business, has ever been convicted of a
7 misdemeanor involving the lending industry or any aspect of the
8 lending business, or has ever been convicted of any felony.

9 § -5 **Duties of a mortgage servicer; disclosures; good**
10 **faith.** (a) A mortgage servicer licensed or acting under this
11 chapter, in addition to duties imposed by law, shall:

12 (1) Safeguard and account for any money handled for the
13 borrower;

14 (2) Act with reasonable skill, care, timeliness,
15 promptness, and diligence;

16 (3) Disclose to the department in the application and
17 yearly renewal a complete, current schedule of the
18 ranges of costs and fees it charges borrowers for its
19 servicing-related activities; and

20 (4) File with the department upon request a report in a
21 form and format acceptable to the director detailing
22 the servicer's activities in this state, including:



- 1 (A) The number of mortgage loans the servicer is
- 2 servicing;
- 3 (B) The type and characteristics of such loans in
- 4 this state;
- 5 (C) The number of serviced loans in default, along
- 6 with a breakdown of thirty-, sixty-, and ninety-
- 7 day delinquencies;
- 8 (D) Information on loss mitigation activities,
- 9 including details on workout arrangements
- 10 undertaken;
- 11 (E) Information on foreclosures commenced in this
- 12 state; and
- 13 (F) Any other information that the department may
- 14 require.

15 (b) At the time a servicer accepts assignment of servicing

16 rights for a mortgage loan, the servicer shall disclose to the

17 borrower all of the following:

- 18 (1) Any notice required by the Real Estate Settlement
- 19 Procedures Act (12 United States Code Section 2601 et
- 20 seq.) or by regulations promulgated thereunder;
- 21 (2) A schedule of the ranges and categories of its costs
- 22 and fees for its servicing-related activities, which



1 shall comply with this chapter and which shall not
2 exceed those reported to the department; and

3 (3) A notice in a form and content acceptable to the
4 director that the servicer is licensed by the
5 department and that complaints about the servicer may
6 be submitted to the department.

7 (c) In the event of a delinquency or other act of default
8 on the part of the borrower, the servicer shall act in good
9 faith to inform the borrower of the facts concerning the loan
10 and the nature and extent of the delinquency or default, and, if
11 the borrower replies, to negotiate with the borrower, subject to
12 the servicer's duties and obligations under the mortgage
13 servicing contract, if any, to attempt a resolution or workout
14 relating to the delinquency.

15 § -6 License sanctions; suspension, revocation, denial,
16 condition, and refusal to renew, reinstate, or restore. In
17 addition to any other actions authorized by law, the department
18 may suspend, revoke, deny, condition in any manner, or refuse to
19 renew, reinstate, or restore, any license issued under this
20 chapter, or fine any person holding a license issued under this
21 chapter, for any violation of this chapter. All such orders
22 shall be made pursuant to chapter 91.



1 § -7 **Powers of department.** In addition to any other
2 acts or conditions provided by law, the department may:
3 (1) Adopt, amend, or repeal rules, issue declaratory
4 rulings or informal nonbinding interpretations, and
5 investigate and act upon written consumer complaints;
6 (2) Grant, deny, forfeit, renew, reinstate, or restore the
7 license of any mortgage servicer;
8 (3) Revoke, suspend, or otherwise limit the license of any
9 mortgage servicer for any violation of the provisions
10 in this chapter, or any rule or order of, or agreement
11 with the department;
12 (4) Report any violation of this chapter or violation of
13 federal or state law to the United States Department
14 of Housing and Urban Development or other federal
15 agency having jurisdiction over the licensee;
16 (5) Investigate and conduct hearings regarding any
17 violation of this chapter, or any rule or order of or
18 agreement with the department; and
19 (6) Do any and all things necessary or incidental to the
20 exercise of the department's power and duties,
21 including the authority to conduct contested case
22 proceedings under chapter 91.



1 § **-8 Private right of action.** Nothing in this chapter
2 shall be construed to preclude any individual or entity that
3 suffers loss as a result of a violation of this chapter from
4 maintaining a civil action to recover damages and, as provided
5 by statute, attorney's fees.

6 § **-9 Penalty.** Any person who violates any provision of
7 this chapter may be subject to an administrative fine of not
8 more than \$5,000 for each violation.

9 § **-10 Compliance resolution fund.** Any law to the
10 contrary notwithstanding, fees and fines collected by the
11 department shall be deposited into the compliance resolution
12 fund established pursuant to section 26-9(o)."

13 SECTION 2. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 3. This Act shall take effect on July 1, 2020.



Report Title:

Mortgage Servicers; Regulation

Description:

Provides for the licensing and regulation of mortgage servicers that service residential mortgage loans secured by real property located in the State of Hawaii. Effective July 1, 2020.

(HB1071 HD3)





LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

TO THE
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
THE TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2009

Thursday, March 19, 2009
9:00 a.m.

TESTIMONY ON H.B. NO. 1071, H.D. 3 - RELATING TO MORTGAGE SERVICERS

THE HONORABLE ROSALYN H. BAKER, 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, necessary 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. A number of other states have robust mortgage servicer related regulatory and supervisory provisions in their statutes. However, a borrower who currently 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 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
- 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.

The House Committee on Housing amended this measure to transfer regulatory responsibility under the Act from the Commissioner to the Director of the Department. The House Committee on Consumer Protection and Commerce stated that it believes that it

nevertheless remains within the discretion of the DCCA Director to determine the appropriate division under which this program should be placed. We respectfully disagree and request that your committee amend the measure to restore proposed regulatory responsibility under the Act to the Commissioner, since the Commissioner is, in the Department's view, the appropriate authority to oversee this program, given that DFI is staffed with experienced financial institution examiners who are already 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 its 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 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 necessary to operate the proposed program on a fully self-funded, self-sufficient basis, we respectfully request that both fee amounts be reinstated without alteration.

We further note that the House Committee on Finance added the phrase "in this state" to § -2(b), at page 3, line 12 of H.D. 3. We feel that the placement of this phrase is potentially confusing, in light of the existing definition of the terms "mortgage servicer" and

“residential mortgage loan”, which taken together, already clarify that there must be a residential real property located in Hawaii. For the purpose of eliminating potential confusion and to better clarify the intent of the measure, we respectfully request that § -2(b) be amended to read as follows:

“(b) A person is engaged in the business of mortgage servicing in this State even if the person providing those services has no physical presence in the State.”

Finally, we respectfully request that this measure’s effective date be restored to January 1, 2010.

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.



HB 1071, HD 3 Relating to Mortgage Servicers
Senate Committee on Commerce and Consumer Protection

March 19, 2009

9:00 am

Room 229

The Office of Hawaiian Affairs supports the purpose and intent of HB 1071, HD 3.

Consumer protection laws benefit all of Hawaii's residents which include the beneficiaries of the Office of Hawaiian Affairs.

The mortgage industry has changed. The mass production of mortgages that are backed with mortgage securities and passed on to servicers in order to keep the flow of money in real estate has gone on without much regulation. It is unfortunate that the present economy has brought it to the attention of us all that the people of Hawaii have not had protection against inappropriate business practices. Hawaii's consumer oriented/ohana attitude should always prevail.

We recognize that physical solutions by themselves will not solve social and economic problems, but neither can economic vitality, community stability, and environmental health be sustained without a coherent and supportive physical framework like these consumer protection laws.

Mahalo nui loa for the opportunity to provide this testimony and we urge your support.

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

Fax No.: (808) 521-8522

March 19, 2009

Senator Rosalyn H. Baker, Chair
and members of the Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 1071, HD 3 (Mortgage Servicers)**
Hearing Date/Time: Thursday, March 19, 2009, 9:00 A.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)

The Honorable Rosalyn H. Baker, Chair
The Honorable David Y. Ige, Vice Chair
Senate Committee on Commerce and Consumer Protection

Hearing : Thursday, March 19, 2009, 9:00 a.m.
State Capitol, Conference Room 229

IN SUPPORT OF HB 1071 HD 3 WITH AMENDMENTS

Chair and Members of the Committee:

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 1071 HD 3 with amendments as it may strengthen protections for consumers in the State of Hawaii.

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 and more than 70 in the past 2 months.

HB 1071 HD 3 seeks to provide licensing and regulation of the mortgage industry. However LASH offers this suggestion to strengthen the bill:

1. Include a prohibited acts section similar to other mortgage industry regulation bills heard before this committee.
2. Include language cross-referencing HRS Chapter 480 clarifying that a violation of the chapter constitutes an unfair or deceptive act or practice. Clearly a violation of HB 1071 HD3 is both unfair and deceptive and thus should be actionable under HRS Chapter 480. Similar language is contained in related consumer protection statutes. This language might look like:

- a. Any violation of this section shall constitute unfair and deceptive acts or practices in the conduct of any trade or commerce under section 480-2 and shall be subject to a civil penalty as provided in section 480-3.1. Each violation of this section shall constitute a separate violation.

The Legal Aid Society of Hawaii supports the intent of HB 1071 HD 3, would fully support the bill with the proposed amendments, and supports its efforts to protect the consumers in the State of Hawaii. The Legal Aid Society of Hawaii urges the Committees to consider the suggested language.

Conclusion:

We appreciate these committees' recognition of the need to protect consumers in the State of Hawaii. HB 1071 HD 3 attempts to strengthen protections for consumers by regulating the mortgage broker industry, however HB 1071 HD 3 should be amended to create stronger protection for consumers. We support HB 1071 HD 3 with amendments and its attempts to protect homeowners in the State of Hawaii. Thank you for the opportunity to testify.