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February 3, 2009

LATE TESTIMONY

The Honorable Robert N. Herkes, Chair
House Committee on Consumer Protection & Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 1695 Relating to Mortgages

HEARING DATE: Wednesday, February 4, 2009 at 2:00 p.m.

Aloha Chair Herkes and Members of the Committee on Consumer Protection & Commerce,

On behalf of our 9,600 members in Hawai'i, the Hawai'i Association of REALTORS® (HAR) **opposes** H.B. 1695 and instead, urges your support on H.B. 233, which is scheduled for decision making later today.

In 2008 the Legislature passed the Mortgage Rescue Fraud Prevention Act as Act 137, Session Laws of Hawai'i (SLH) 2008. This law was primarily intended to protect financially strapped homeowners from equity skimming and foreclosure rescue scams.

After the passage of Act 137, HAR and others became aware of the broader implications of the law for consumers and the real estate industry. Specifically, Act 137 has created very real concerns for licensees engaged in bona fide real estate services by creating the potential for licensees to unwittingly become distressed property consultants and face liability for violating the law.

Prior to Act 137, real estate licensees could help homeowners avoid foreclosure by contacting and negotiating with lenders and representing homeowners in short sale transactions. Relying on their professional training in lending and finance, the real estate licensees would negotiate with the lender, and, if a lender agreed to accept a reduced payment for a property, the short sale of the property would result. Prior to Act 137, real estate licensees regularly received calls from homeowners in distress. With their experience and training, licensees have helped distressed homeowners to, in many instances, avoid the negative consequences of foreclosure.

The language of Act 137, however, made it uncertain whether real estate licensees could continue the practice of representing owners in short sale transactions and negotiating with lenders on behalf of distressed homeowners. Under Act 137, a licensee who assists a homeowner with a distressed property would likely fall under the category of a "distressed property consultant" under the Act. Once deemed a distressed property consultant, the licensee would be subject to onerous requirements and penalties under the law.

Because of the ambiguity resulting from Act 137, real estate firms and licensees have shied away from representing existing or potential distressed homeowners for fear of the potential legal consequences. In these tough economic times, it has been the consumer who has ultimately suffered by being denied the valuable services of real estate licensees.



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HAR has worked with the Department of Commerce and Consumer Affairs (DCCA) since the passage of the Act. Together, HAR and DCCA have agreed upon amendments to Act 137 that will exempt realtors from the requirements of the Act, and impose additional requirements under the real estate licensing regulations, Hawai'i Revised Statutes Chapter 467. The result of this collaborative effort is H.B. 233.

HAR opposes H.B. 1695 because it would, in effect, take away the real estate licensee's ability to negotiate with the lender. As noted above, homeowners historically have turned to real estate professionals for assistance in their times of distress. While HAR appreciates that H.B. 1695 revises some of the provisions of Act 137, HAR believes that H.B. 233 provides a simple and effective solution that will prevent unintended consequences for distressed homeowners.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.

Pacific Rim Financial Inc.

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LATE TESTIMONY

Testimony of Courtney Brown

Before the House Committee on Consumer Protection & Commerce
February 4, 2009 Room 325

On
¹⁶⁹⁵
HB #~~233~~ Relating to the Mortgage Fraud and Protection Act

Chair Herkes, Vice Chair Wakai & and Members of the Committee:

Thank you for hearing my testimony. I support this bill.

This bill was originally introduced to protect homeowners from people who charge fees or commissions to do loan modifications, forbearances, work outs and/or short sales that would result in them either being able to keep their home or dispose of the home without having a foreclosure on their credit record. A foreclosure on your credit record is, today, a big deal. It stays on your credit record for seven years and the new Fannie Mae rules are that you cannot purchase a new home through them for five years.

The unintended consequence of Act 137 was to further hamper homeowners who are in distress because some of those who might help them would not because of the requirements and liability imposed in Act 137.

Bill 1695 attempts to correct those places where Act 137 is unreasonable, while still preserving the original objective of Act 137.

I would be glad to answer questions on any of the specific changes.

Thank you.

The Honorable Robert N. Herkes, Chair
The Honorable Glenn Wakai, Vice Chair
House Committee on Consumer Protection and Commerce

Hearing : Wednesday, February 4, 2009, 2:00 p.m.
State Capitol, Conference Room 325

LATE TESTIMONY

IN STRONG OPPOSITION TO HB 1695

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 strong opposition to HB 1695 as it would weaken 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.

HB 1695 seeks to absolutely weaken consumer protections and completely change the meaning behind Act 137. HB 1695 seeks to amend Act 137, the Mortgage Foreclosure Rescue Fraud Prevention Act, to, among other things, exempt real estate brokers and sales persons from the definition of distressed property consultants. HB 1695, also seeks to take away consumer protections created by Act 137, by requiring less disclosure and giving a much shorter amount of time for consumers to review transactions covered under the Act. HB 1695 would also allow those covered under the Act to acquire a direct interest in the property, directly in opposition to the intent of the Act. HB 1695 seeks to wipe out provisions of the law which protect homeowners equity, via mandatory percentages of fair market values. This would allow scam artists to purchase a distressed homeowner's property for little to nothing in return.

Act 137 was designed 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 home’s equity.

While LASH appreciates the challenges for real estate brokers and salespersons due to the enactment of Act 137, we do not believe a wholesale exemption of the industry is the appropriate avenue to make the process smoother while still protecting the rights of the consumer. This very issue is being dealt with in several other pieces of legislation this session, much more appropriate than HB 1695.

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 opposes HB 1695 and its efforts to shrink protections for homeowners granted under Act 137. We believe this will only hurt consumers in the State of Hawaii.

Conclusion:

We appreciate these committees’ recognition of the need to protect consumers in the State of Hawaii. HB 1695 attempts to greatly weaken protections for consumers. We strongly oppose HB 1695. Thank you for the opportunity to testify.