



LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
L.T. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

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

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2009

Monday, March 16, 2009
2:15 p.m.

**TESTIMONY ON SENATE BILL NO. 34, S.D. 1 – RELATING TO THE MORTGAGE
RESCUE FRAUD PREVENTION ACT.**

TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify in support of Senate Bill No. 34, S.D. 1, Relating to the Mortgage Rescue Fraud Prevention Act. My name is Stephen Levins, and I am the Executive Director of the Department's Office of Consumer Protection ("OCP").

This bill seeks to correct an unintended consequence of the Mortgage Rescue Fraud Prevention Act ("Act"), chapter 480E, Hawaii Revised Statutes. The Act, which became law on July 1, 2008, was designed to protect Hawaii consumers from

scammers who prey on homeowners facing foreclosure, by requiring that mortgage rescue contracts contain clear disclosures, right to cancel provisions, and fee limitations. Soon after the Act became law, it became apparent that the Act's fee limitations were creating a disincentive for licensed real estate brokers and salespersons to facilitate the implementation of "short sales". A short sale occurs when the bank or mortgage lender agrees to discount a loan balance due to an economic or financial hardship on the part of the mortgagor. It is typically executed to prevent a home foreclosure. Often a bank will allow a short sale if they believe that it will result in a smaller financial loss than foreclosing. For the home owner, advantages include avoidance of a foreclosure on their credit history and partial control of the monetary deficiency.

This bill seeks to correct this undesirable result by specifically excluding licensed real estate brokers and salespersons who are engaged in the act of real estate brokering or sales from the Act's definition of "distressed property consultant".

Although the vast majority of brokers and agents are honorable, the OCP has had some mortgage rescue fraud cases in which licensed brokers and agents have become involved. To address this exigency an amendment is being proposed to the governing licensing statute, chapter 467, Hawaii Revised Statutes, which would prohibit a licensed real estate broker or agent from obtaining an interest in a distressed property for which the licensee has or had a listing agreement for at least 365 days. This

Testimony on S.B. No. 34, S.D. 1
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provision is important because the OCP has observed instances in which licensees have obtained title to the homeowner's home through fraud, usually within a short period of time after the rescue contract has been executed. The required waiting period will allow the licensee to acquire an interest in a distressed property only after a sufficient period of time has elapsed.

Thank you for this opportunity to testify on Senate Bill No. 34, S.D. 1. I will be happy to answer any questions that the members of the Committee may have.



SB 34, SD1 Relating to the Mortgage Rescue Fraud Prevention Act

Committee on Consumer Protection & Commerce

March 16, 2009
325

2:15 p.m.

Room

The Office of Hawaiian Affairs opposes the purpose and intent of SB 34, SD1 to exclude licensed real estate brokers and salespersons from the definition of distressed property consultants in the Mortgage Foreclosure Rescue Fraud Prevention Act.

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

Section 467-14, Hawaii Revised Statutes, details in great length "causes" for revocation, suspension, and fine of any registration or certificate authorized by law. It is obvious for this need to make clear the unacceptable actions. The need to keep transactions at "arms length" is particularly crucial when commissions earned are part of the transaction.

Real estate brokers and salespersons commissions are negotiated in loss mitigation transactions, therefore, the "arms length" will be compromised if they are able to act as the distressed property consultant.

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

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

Hearing : Monday, March 16, 2009, 2:15 p.m.
State Capitol, Conference Room 325

IN OPPOSITION TO SB 34 SD 1

Chair and Members of the Committee:

My name is Ryker Wada, representing the Legal Aid Society of Hawaii ("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 opposition to SB 34 SD 1 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.

SB 34 SD 1 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. 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.

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 SB 34 SD 1 and its efforts to exempt real estate brokers and salespersons from Act 137. We do not believe this is the appropriate means to protect the consumers in the State of Hawaii.

Conclusion:

We appreciate these committees' recognition of the need to protect consumers in the State of Hawaii. SB 34 SD 1 attempts to weaken protections for consumers. We oppose SB 34 SD 1 but are more than willing to work with the industry to find the most suitable way to ease the challenges of Act 137 while protecting the interests of the consumers in the State of Hawaii. Thank you for the opportunity to testify.



The REALTOR® Building
1136 12th Avenue, Suite 220
Honolulu, Hawaii 96816

Phone: (808) 733-7060
Fax: (808) 737-4977
Neighbor Islands: (888) 737-9070
Email: har@hawaiiirealtors.com

March 14, 2009

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

RE: S.B. 34, S.D.1 Relating to the Mortgage Rescue Fraud Prevention Act

HEARING DATE: Monday, March 16, 2009 at 2:15 p.m.

Aloha Chair Herkes and Members of the Committee:

I am Gary Slovin of Goodwill Anderson Quinn & Stifel, here to testify on behalf of the Hawai'i Association of REALTORS® (HAR) and its 9,600 members in Hawai'i. HAR **strongly supports** S.B. 34, S.D. 1, which excludes licensed real estate brokers and salespersons from the definition of distressed property consultants in the Mortgage Foreclosure Rescue Fraud Prevention Act, and prohibits certain conduct relating to the acquisition of an ownership interest in distressed property by licensed real estate brokers and salespersons.

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.



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Honolulu, Hawaii 96816

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Fax: (808) 737-4977
Neighbor Islands: (888) 737-9070
Email: har@hawaii Realtors.com

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.

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 real estate licensees 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 S.B. 34, S.D. 1 in its present form. We urge your support.

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.



March 15, 2009

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

Members of the House Committee on Consumer Protection and Commerce

Re: **SB 34, SD 1** – Relating to Mortgage Fraud Rescue Prevention Act

Monday March 16, 2009 2:15P.M., Room 325

I am Greg Ravelo, President of the Hawaii Association of Mortgage Brokers. The Hawaii Association of Mortgage Brokers (HAMB), a 200+ member organization, actively works to improve the mortgage broker industry since its charter in 1992.

HAMB supports passage of SB 34, SD1, with an amendment that would exempt Hawaii licensed Mortgage Brokers and Mortgage Solicitors from being classified as “distressed property consultants” when they are working to obtaining financing for a third party purchase of a distressed property.

An unintended consequence of Act 137 (Chapter 481E HRS) is that Realtors and Mortgage Brokers and Solicitors who are involved in facilitating a short sale of a "distressed property" can be broadly classified as “distressed property consultants” under the Act as passed in 2008. This creates a significant degree of disincentive to have any involvement with any part of a transaction involving a sale of a “distressed property”

This is distinctly different from the consumer protection that was intended by the Act as offered in foreclosures rescue scenarios. Scams involving mortgage foreclosure rescues have been documented and deserve the degree of scrutiny that is incorporated in the Act.

As mortgage brokers provide 50-60% of mortgage financing in Hawaii, it does not make sense to effectively rule out use of these professionals by purchasers of properties that are classified as distressed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg Ravelo', is written above the typed name.

Greg Ravelo
President of HAMB
808-225-7846



Mortgage Associates of Hawaii

March 15, 2009

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

Members of the House Committee on Consumer Protection and Commerce

Re: SB 34, SD 1 – Relating to Mortgage Fraud Rescue Prevention Act

Monday March 16, 2009 2:15 P.M., Room 325

I am Tiare Fullerton, Broker of Mortgage Associates of Hawaii

I support passage of SB 34, SD1, with an amendment that would exempt Hawaii licensed Mortgage Brokers and Mortgage Solicitors from being classified as “distressed property consultants” when they are working to obtaining financing for a third party purchase of a distressed property.

An unintended consequence of Act 137 (Chapter 481E HRS) is that Realtors and Mortgage Brokers and Solicitors who are involved in facilitating a short sale of a “distressed property” can be broadly classified as “distressed property consultants” under the Act as passed in 2008. This creates a significant degree of disincentive to have any involvement with any part of a transaction involving a sale of a “distressed property”

This is distinctly different from the consumer protection that was intended by the Act as offered in foreclosures rescue scenarios. Scams involving mortgage foreclosure rescues have been documented and deserve the degree of scrutiny that is incorporated in the Act.

As mortgage brokers provide 50-60% of mortgage financing in Hawaii, it does not make sense to effectively rule out use of these professionals by purchasers of properties that are classified as distressed.

Sincerely,

Tiare Fullerton
808 (347-1028)

25 Kaneohe Bay Drive, Suite 109
Kailua, Hawaii 96734
Phone: (808) 254-3300
Fax: (808) 237-5786

March 15, 2009

To: Honorable Rosalyn Baker, and Members of the Committee
Senate Committee and Consumer Protection
State Capital Room 229
Honolulu, HI 96813

Re: S.B.34 Relating to Mortgage Rescue Prevention Act

Honorable Rosalyn Baker, and Members of the Committee:

In 2008 the Legislature passed Act 137 to protect financially strapped homeowners from foreclosure rescue scams and other equity stripping schemes. I believe S.B. 34 will make the law clearer as the Act 137 is much too ambiguous and broad and leaves too many questions unanswered.

I believe S.B 34 needs to include Mortgage Brokers as exempt because in the many instances we are involved in the financing for the Buyers in these "distressed or short sales" transactions and could become an innocent and unintended victim of the transaction. In every other State that passed similar legislation, Mortgage Brokers and Realtors were included with the exempt status with the exception of Hawaii as we were not included. Mortgage Brokers need to be exempt and our role made perfectly clear as only providing the financing for the transaction and not forced to become distressed property consultants. Our services provide a "win-win" conclusion to assist the Buyer complete the transaction that will benefit the Seller and Lender by saving them from the higher costs of foreclosure and bankruptcy.

As a Mortgage Broker for over 30 years, I have been reluctant to answer or assist in helping my former customers, their family or friends when asked for information or to comment regarding a current financial situation because of the way Act 137 is written. I have also been very cautious when providing financing for the Buyer of these types of transactions for fear of violating Act 137 as passed in 2008. In many cases these are customers (Consumers) that deserve to be represented in the transaction as Buyers (consumer) and have no intent of harming the Seller (Consumer) and want the services of an experienced Mortgage Broker (Consumer). In these tight economic times, all parties need to be allowed to provide all consumers the best possible representation and not be denied of our services.

I am in support of S.B. 34 but please amend the S.B.34 to exempt Mortgage Brokers and Realtors as other States have done that have passed similar legislation.

Respectfully submitted by:

Stephen Higa
Sr. Executive Loan Officer
Point Financial
1999 & 2008 HAMB* Mortgage Broker of the Year

*Hawaii Association Of Mortgage Brokers

Sharon Sagayadoro

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 15, 2009 12:07 PM
To: CPCtestimony
Cc: donald.lau@hawaiiantel.net
Subject: Testimony for SB34 on 3/16/2009 2:15:00 PM

Testimony for CPC 3/16/2009 2:15:00 PM SB34

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Donald Lau
Organization: Individual
Address: 535 Paikau Street Honolulu, HI
Phone: 808 732-8893
E-mail: donald.lau@hawaiiantel.net
Submitted on: 3/15/2009

Comments: