



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. 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. 35, S.D. 1 – RELATING TO MORTGAGES.

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. 35, S.D. 1, Relating to Mortgages.

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 certified public accountants from representing clients before tax authorities whose distressed properties were being subject to tax liens.

This bill seeks to correct this undesirable result by specifically excluding from the definition of "distressed property consultant" certified public accountants licensed and regulated pursuant to chapter 466, Hawaii Revised Statutes, as well as out-of-state public accountants and certified public accountants operating legally under a temporary permit issued by the board of accountancy pursuant to chapter 466, Hawaii Revised Statutes.

Thank you for this opportunity to testify on Senate Bill No. 35, S.D. 1. I will be happy to answer any questions that the members of the Committee may have.



THE LEGISLATIVE CENTER

820 MILILANI STREET, SUITE 810
HONOLULU, HAWAII 96813-2938
PHONE: (808) 537-4308 • FAX: (808)533-2739

March 16, 2009

Testimony To: House Committee on Consumer Protection & Commerce
Representative Robert N. Herkes, Chair

Presented By: Tim Lyons, Legislative Liaison
Hawaii Society of Certified Public Accountants

Subject: S.B. 35, SD 1 – RELATING TO MORTGAGES

Chair Herkes and Members of the Committee:

I am Tim Lyons, Legislative Liaison for the Hawaii Society of Certified Public Accounts and we support this bill.

We believe this bill is needed to clarify the intent of the Mortgage Rescue Fraud Prevention Act passed last year. Basically, this bill would exempt CPA's who are already regulated by the State Board of Accountancy from the provisions of the Mortgage Rescue Fraud Prevention Act.

The Mortgage Rescue Fraud Prevention Act was intended to protect the public from so-called "consultants" who promised to help property owners avoid foreclosure, obtain the release of liens, and/or restructure debt, but who often promised much more than they could deliver. Before this Act was passed anyone could call himself or herself a consultant and some unethical and/or incompetent

consultants were preying upon desperate homeowners. Thus, the Act was passed in the 2008 legislative session.

The problem is that the Act defines the term "distressed property consultant" in a way that could include many CPAs. For example, a CPA assisting a taxpayer in trying to get an IRS lien released would be within the definition. A CPA advising a client about refinancing of debt could be within the definition. CPAs often perform these types of tax and financial planning services. Unlike other consultants however, CPAs are already subject to licensing and regulation and potentially subject to disciplinary action by the State Board of Accountancy.

It is therefore unnecessary and potentially creates conflicting interpretations of the law, to include CPAs within the definition of "distressed property consultants" under the Mortgage Fraud Prevention Act.

We do not believe the Legislature ever actually intended to include licensed certified public accounts, practicing under the laws and rules that govern CPAs to be covered by the Mortgage Fraud Prevention Act. We think that this question simply did not come to the attention of the legislature last year.

We urge you to pass S.B. 35, SD 1 and eliminate the potential confusion allowing CPAs to be regulated by the State Board of Accountancy, under the laws and rules that exist for that purpose.

Thank you.

wakai1-Karen

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 13, 2009 11:20 AM
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Cc: rheller@torkildson.com
Subject: Testimony for SB35 on 3/16/2009 2:15:00 PM

Testimony for CPC 3/16/2009 2:15:00 PM SB35

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Ronald I. Heller
Organization: Individual
Address: 700 Bishop Street, Suite 1500 Honolulu, HI
Phone: 523-6000
E-mail: rheller@torkildson.com
Submitted on: 3/13/2009

Comments: