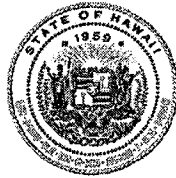


SB 35



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

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

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2009

Wednesday, February 4, 2009
9:30 a.m.

TESTIMONY ON SENATE BILL NO. 35 – RELATING TO MORTGAGES.

TO THE HONORABLE ROSALYN H. BAKER, 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, 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 481E, HRS. 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

Testimony on S.B. No. 35
February 4, 2009
Page 2

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 licensed accountants who are engaged in the act of public accountancy or certified public accountancy under chapter 466 from the Act's definition of "distressed property consultant".

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

Testimony of Hawaii Society of Certified Public Accountants

900 Fort Street Mall, Suite 850
Honolulu HI 96813

phone 537-9475 fax 537-3520
e-mail info@hscpa.org

Before the Senate Committee on Commerce & Consumer Protection

Wednesday, February 4, 2009

9:30 am

Conference Room 229

Re: SB 35

Mortgages/Certified Public Accountants

Chair Baker, Vice Chair Ige, and Committee members:

Thank you for the opportunity to testify in support of Senate Bill 35. 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 CPAs, 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 the Mortgage Fraud Prevention 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.

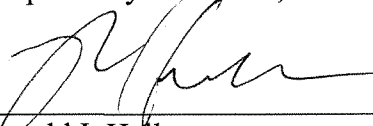
It is therefore unnecessary, and potentially creates conflicting interpretations of the law, to include CPAs within the definition of "distressed property consultants" under the Mortgage Fraud Prevention Act.

We do not believe that the Legislature ever actually intended to include licensed Certified Public Accountants, practicing under the laws and rule 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 SB 35 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 for your attention to this matter.

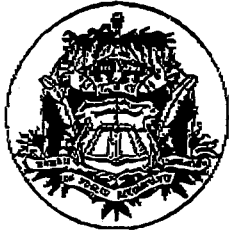
Respectfully submitted,



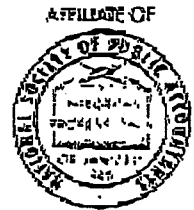
Ronald I. Heller

for the Hawaii Society of CPAs
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**HAWAII ASSOCIATION OF PUBLIC ACCOUNTANTS**

Organized August 7, 1943
P.O. BOX 61043
HONOLULU, HAWAII 96839

**Before the Committee on Commerce and Consumer Protection**

Wednesday, February 4, 2009 at 9:30 a.m.
Conference Room 229

Re: Support for SB 35

Relating to Public Accountancy

Testimony of Gregg M. Taketa

Chair Baker, Vice Chair Ige, and committee members:

I support SB 35. I am the State President of the Hawaii Association of Public Accountants and a certified public accountant with over 30 years of public accounting experience.

I support SB 35 to exclude public accountants from the scope of the Mortgage Rescue Fraud Prevention Act for the following reasons:

- Subjecting public accountants to the Mortgage Rescue Fraud Prevention Act is unnecessary because public accountants are already regulated by the Hawaii State Board of Public Accountancy. Consumers are able to file complaints directly with the Board.
- The Mortgage Rescue Fraud Prevention Act places undue burdens on Hawaii's Public Accountants in their day-to-day practice of public accounting. For example, the Act requires a distressed property consultant contract be prepared and signed by all parties involved in a distressed property consulting engagement. The AICPA professional standards address the need to obtain an understanding of the terms and objectives of services provided by certified public accountants. The Hawaii State Board of Public Accountancy requires that all licensed certified public accountants and public accountants abide by the AICPA professional standards.

Please support SB 35 for the reasons stated above. Thank you for this opportunity to testify.

Respectfully submitted,

Handwritten signature of Gregg M. Taketa in cursive.

Gregg M. Taketa, CPA

State President

Hawaii Association of Public Accountants

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

Hearing : Wednesday, February 4, 2009, 9:30 a.m.
State Capitol, Conference Room 229

WITH COMMENTS ON SB 35

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 with comments to SB 35 as it relates to 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 35 seeks to amend Act 137, the Mortgage Foreclosure Rescue Fraud Prevention Act, to, among other things, exempt certified public accountants 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.

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 would caution this committee in making wholesale changes to Act 137. LASH opposes any efforts to weaken protections for consumers in the State of Hawaii.

Conclusion:

We appreciate these committees' recognition of the need to protect consumers in the State of Hawaii. We offer comments on SB 35 and urge this committee to amend Act 137 sparingly and protect the interests of the consumers in the State of Hawaii. Thank you for the opportunity to testify.

N I W A O
&
R O B E R T S

Certified Public Accountants, A Professional Corporation

Before the Committee on Commerce and Consumer Protection

Wednesday, February 4, 2009 at 9:30 a.m.

**Conference Room 229
State Capitol**

**Re: Support for SB 35, with amendment
Relating to Public Accountancy**

Testimony of Marilyn M. Niwao, J.D., CPA

Chair Baker, Vice Chair Ige and committee members:

I am a CPA and attorney, practicing public accounting as a principal of Niwao & Roberts, CPAs, a P.C., a CPA firm on Maui. I am a past state president, current board member and legislative committee co-chairperson for the Hawaii Association of Public Accountants (HAPA), an association that represents local public accounting practitioners (primarily CPA firm owners and staff) throughout the State of Hawaii. I am the National Society of Accountants Governor of District XI, serving on the national governing board of this organization. I am also a member and past director of the HSCPA and a member of the AICPA.

Our firm supports SB 35 which excludes certified public accountants (CPAs) from the scope of Hawaii's Mortgage Rescue Fraud Prevention Act. CPAs should not be considered "distressed property consultants" because, like attorneys (who are already excluded from the definition of distressed property consultants), CPAs are regulated and licensed professionals who are subject to strict ethical responsibilities to their clients.

Please note that I further suggest that SB 35, Section 2 (5) be amended as follows to correct and clarify the exemption under the Mortgage Rescue Fraud Prevention Act (note changes in bold):

"Distressed property consultant" shall not include any of the following: ...

(5) Certified public accountants and public accountants licensed under chapter 466, persons holding a permit of public accountancy to practice public accountancy in the State of Hawaii, and persons holding a valid certified public accountant license issued under the

laws of another state or territory, who are lawfully practicing in the State of Hawaii with a temporary permit to practice pursuant to rules established by the board of public accountancy and who are subject to regulation by the board of public accountancy while engaged in the practice of public accountancy;

Although a diminishing class, public accountants are also licensed to practice public accountancy under chapter 466. Moreover, those from another state or territory may practice in Hawaii with a temporary permit to practice.

Thank you for this opportunity to testify. If you have any questions regarding the above, please do not hesitate to contact me at (808) 242-4600, ext. 224.

Respectfully submitted,



Marilyn M. Niwao, J.D., CPA
Principal