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PRESENTATION OF THE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
OFFICE OF CONSUMER PROTECTION
TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION
AND COMMERCE

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION 2009

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

TESTIMONY ON HOUSE BILL NO. 1695 -- 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 opposition to House Bill No. 1695, Relating
to Mortgages. The Department opposes this bill because it undermines many of
the consumer protections currently existing in Hawaii's Mortgage Rescue Law. My
name is Stephen Levins, and I am the Executive Director of the Department's

Office of Consumer Protection.

House Bill No. 1695 proposes to eliminate many of the protections currently provided to Hawaii homeowners who are facing foreclosure. Currently, Hawaii Revised Statute Chapter 480E protects Hawaii consumers from persons who prey on homeowners facing property foreclosures, liens, or encumbrances. These so-called mortgage rescuers use the desperation of many Hawaii families to persuade them to deed their home to investors in order to avoid foreclosure. House Bill No. 1695 eliminates many of the provisions that provide a basic and minimum amount of protection to Hawaii families facing foreclosure. In light of the current economic climate, now is not the time to diminish the level of protection provided to Hawaii's homeowners.

H. B. No. 1695 SECTION 5.

Amendment to Haw. Rev. Sec. § 480E-6(g) (elimination of deadline to record conveyance contract).

H. B. No. 1695 eliminates the deadline *before* which a distressed property purchaser must record a distressed property conveyance contract.

The purpose of Haw. Rev. Stat. Chapter 480E is to require full, complete and *timely* disclosure of vital information to make Hawaii's homeowners less susceptible to persons who claim they can stop or prevent foreclosure.

Part of the full and timely disclosure is to make sure that every distressed property conveyance is recorded in the name of the distressed property purchaser.

This creates a public record identifying the distressed property purchaser. The public record can be used to determine whether a distressed property consultant directly or indirectly acquired title in a distressed property.

In addition, the timely public notice generated through recordation will benefit lien holders, tax authorities and other similarly interested persons. Timely recordation will eliminate under-the-table transfers of title and collateral.

H. B. No. 1695 SECTION 7.

Amendment to Haw. Rev. Stat. § 480E-8(a) (elimination of right to cancel conveyance contract up through last day owner can cure default).

Eliminating the cancellation deadline of 5:00 p.m. on the last day on which a distressed property owner can cure a default gives the homeowner fewer rights than provided in his or her mortgage loan agreement.

Eliminating said deadline denies a distressed property owner the opportunity to correct any mortgage delinquency and retain title to his or her home. In other words, the possible rehabilitation of the homeowner will be lost. The current mortgage foreclosure meltdown illustrates the enormity of the consequences when homeowners are denied the opportunity to correct deficiencies.

In addition, Illinois law provides the same opportunity and allows a homeowner to cancel a distressed property conveyance contract up to 5:00 p.m. on the last day on which an owner can cure a default. California gives a homeowner even more time by allowing a distressed property owner to cancel a

distressed property conveyance contract all the way up to the day of the foreclosure sale.

Amendment to Haw. Rev. Stat. § 480E-8(b) (right to cancel conveyance contract starts whether purchaser provides required disclosures or not).

The reason for requiring a distressed property purchaser to comply with all relevant provisions of Haw. Rev. Stat. Chapter 480E (§§ 480E-6 and 7) before the current 15-day initial cancellation period begins is to ensure that all disclosures are made so that Hawaii homeowners can make a knowledgeable decision about canceling a distressed property conveyance contract.

Under the current proposal, homeowners may not have all the information they need to determine whether or not they should go through with the sale of their home to a distressed property purchaser.

The current proposal creates a huge disincentive for distressed property purchasers to provide the required disclosures during the period homeowners can cancel the conveyance contract.

Without requiring distressed property purchasers to provide all necessary disclosures *before* a homeowner loses his or her statutory right to cancel a distressed property conveyance contract will mean that the homeowner will have to resort to more expensive means to cancel a conveyance contract at a time when the homeowner will least likely be able to afford it.

H. B. No. 1695 SECTION 8.

Amendment to Haw. Rev. Stat. § 480E-10(a) (prohibitions relating to a consultant).

1. H. B. No. 1695 eliminates the prohibition against a consultant demanding or collecting any compensation before all consultant services are performed (Haw. Rev. Stat. § 480E-10(a)(6)).

Distressed property owners cannot not afford to pay fees to a distressed property consultant and then be forced to fight for a refund of those fees when a distressed property consultant fails to perform as promised. Distressed property owners have enough to deal with already.

Failure by a distressed property consultant would mean that a distressed property owner is no better off than before contracting with said consultant. In fact the homeowner will be worse off because of the lost time to find any foreclosure remedy. Forcing the distressed property owner to collect a refund from a failed consultant will only increase the burdens on the homeowner.

Real estate agents do not earn their commission until a listed property is sold, including short sales.

2. H. B. No. 1695 eliminates the prohibition against a consultant acquiring title in a distressed property (Haw. Rev. Stat. § 480E-10(a)(10)).

Part of the problem with mortgage foreclosure rescue schemes is that the distressed property consultant who initially contacts the distressed homeowner often purports to wear many hats, making a variety of claims including the promise

to stop the foreclosure, keep the family in their home, help sell the distressed property to avoid foreclosure, or help the homeowner qualify for refinancing.

These various claims are made to mask the consultant's true intent which is to acquire title to the distressed property for themselves.

Prohibiting a distressed property consultant from acquiring an interest in a distressed property will make it more difficult for consultants with dubious intent to victimize distressed homeowners.

On the flip side, persons wishing to purchase a distressed property will simply be required to state their intent clearly and will not be prohibited under the statute from acquiring title.

3. H. B. No. 1695 eliminates the prohibition against taking any power of attorney from a distressed property owner except to inspect documents (Haw. Rev. Stat. § 480E-10(a)(12)).

A distressed property consultant often obtains a power of attorney under the false pretense that it is needed to negotiate with a lien holder. Since negotiating with a lien holder regarding a foreclosure may encompass many issues, said power of attorney might contain broad terms.

A distressed property consultant can then use said power of attorney to execute a distressed property conveyance contract¹ or otherwise encumber the

¹ The Legislature recognized some of the abuse surrounding powers of attorney and real estate when it specifically prohibited the use of a power of attorney to evade real estate licensing requirements. Haw.

distressed property, usually by refinancing the property in the amount of the property's equity.

Allowing a distressed property consultant to obtain a power of attorney only to review documents will allow the legitimate consultant to obtain the information necessary to assist the distressed property owner.

Amendment to Haw. Rev. Stat. § 480E-10(b) (prohibitions relating to a purchaser).

1. H. B. No. 1695 eliminates the required minimum payment due to a distressed property owner (Haw. Rev. Stat. § 480E-10(b)(7)).

Haw. Rev. Stat. § 480E-10(b)(7) provides a minimum amount of protection for a distressed property owner to ensure that the distressed property conveyance does provide the homeowner with some relief against the foreclosure. Without the minimum protection currently provided, there will be no assurance that the distressed property owner receives any benefit of any kind from a distressed property consultant, who is promising to help with the foreclosure, and the distressed property conveyance.

2. H. B. No. 1695 eliminates the prohibition against obtaining a quitclaim deed from a distressed property owner (Haw. Rev. Stat. § 480E10(b)(13)).

Allowing quitclaim deeds to be used, especially for distressed property with significant equity, will enable a distressed property purchaser to take an equity

interest in a distressed property without obligation and with no remedy to the distressed property owner since the homeowner will still be obligated to satisfy the mortgage debt.

3. H. B. No. 1695 eliminates the requirement of a distressed property purchaser to extinguish all liens on the distressed property (Haw. Rev. Stat. § 480E-10(b)(15)).

The purpose of said requirement is to protect the homeowner and ensure that the representations made by a distressed property consultant are realized. Eliminating the requirement that all liens be extinguished at the time of the conveyance means that a distressed property owner may not receive any relief.

Thank you for this opportunity to testify on House Bill No. 1695. I will be happy to answer any questions that the members of the Committee may have.