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**PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION
TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
AND
THE HOUSE COMMITTEE ON JUDICIARY**

**TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012**

**Wednesday, January 25, 2012
2:00 p.m.**

TESTIMONY ON HOUSE BILL NO. 2033, RELATING TO MORTGAGE COLLECTIONS.

**TO THE HONORABLE ROBERT N. HERKES, CHAIR
TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
AND MEMBERS OF THE COMMITTEES:**

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on H.B. No. 2033, Relating to Mortgage Collections. My name is Bruce B. Kim and I am the Executive Director of the Department's Office of Consumer Protection ("OCP"). OCP offers the following comments on the bill.

In 2010, the Legislature created the Mortgage Foreclosure Task Force ("Task Force") under Act 162. The Task Force met over the course of the past two years and

submitted two separate reports to the Legislature. The reports addressed many of the issues surrounding the foreclosure crisis affecting the State and proposed legislation addressing this complex subject. The first report leads to the adoption of Act 48 which sought to reform the foreclosure process and enact significant consumer protections especially in the area of nonjudicial foreclosures. This year the Task Force through its various working groups devoted a significant amount of time and effort in attempting to strengthen Act 48. Ultimately, the Task Force's working groups came up with a number of recommendations intended to provide clarity and certainty to both lenders and borrowers in the foreclosure process. It is OCP's sincere hope that the measures submitted by the Task Force this year will lead to further implementation of Act 48, particularly utilization of the DCCA's alternate dispute resolution program created back in October under Act 48.

Servicing issues remain a problem for homeowners trapped in the mortgage foreclosure system. Unfortunately, there are many legitimate concerns over the lack of consistent and uniform mortgage servicing standards. This lack of consistent standards has caused undue problems for homeowners seeking to remain in their homes. These servicing problems are not unique to our State particularly in regards to the national servicing companies who dominate this industry.

The Task Force this year did not address mortgage servicing issues directly. However, various federal agencies, including the newly created Consumer Financial Protection Bureau, are actively looking into adopting nationwide servicing standards to

eliminate potential fraud and abuse in the servicing industry. The ongoing mortgage multistate investigation is also seeking important reforms to the servicing industry as part of the settlement with the nation's five largest servicers. These reforms include the elimination of practices such as robo-signing and the use of faulty documentation against homeowners in the foreclosure process. It is hoped that most of these issues will be addressed and resolved through these ongoing initiatives.

Moreover, H.R.S. §§ 667-56(6) and (7) now prohibit the completion of nonjudicial foreclosure proceedings "during bona fide loan modification negotiations with the mortgagor" or completing nonjudicial foreclosure proceedings "against a mortgagor who has been accepted or is being evaluated for consideration for entry into a federal loan modification program before obtaining a certificate or other documentation confirming that the mortgagor is no longer eligible or an active participant of that federal program."

In view of the foregoing information, the OCP respectfully defers to the Task Force as to H.B. No. 2033 at this time.

Thank you for the opportunity to testify on H.B. No. 2033. I will be happy to answer any questions that the Committee members may have.

Testimony for HB2033 on 1/25/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, January 23, 2012 6:38 PM

To: CPCtestimony

Cc: jade@steadfastpt.com

Testimony for CPC/JUD 1/25/2012 2:00:00 PM HB2033

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Jadine L Brown
Organization: Individual
E-mail: jade@steadfastpt.com
Submitted on: 1/23/2012

Comments:

Thank you for hearing the People and creating Act 48 to protect Hawaii homeowners from unfair practices by financial institutions and to ensure mandatory and transparent mediation/modification as well as ensuring due process during foreclosures. Mainland banks are attempting to bypass our law by filing judicial foreclosures. Despite copious evidence of fraud by the banks, it appears that the Hawaii judiciary is not yet compelled to rule in favor of Hawaiian homeowners, or even hear their arguments in court. We need stronger laws. Please pass HB2033, HB2018, HB2019, HB2020, and HB1875. Thank you again for hearing your People.



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President, Board of Directors

M. Nalani Fujimori Kaina, Esq.
Executive Director

The Honorable Robert N. Herkes, Chair
The Honorable Ryan I. Yamane, Vice Chair
House Committee on Consumer Protection and Commerce

The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Karl Rhoads, Vice-Chair
House Committee on Judiciary

Hearing : Wednesday, January 25, 2012, 2:00 p.m.
State Capitol, Conference Room 325

In Support of HB 2033 Relating to Mortgage Collections

Chair and Members of the Committees:

My name is Madeleine Young, 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 and families facing default and foreclosure on their homes. I provide bankruptcy services as a staff attorney in the Consumer Unit at the Legal Aid Society of Hawai'i. Specifically, I teach a clinic to show individual consumer debtors how to prepare and file their own petition for chapter 7 bankruptcy relief, as well as provide full representation to Legal Aid clients in bankruptcy matters. I give counsel and advice to clients on protected income sources, exempt assets, and settlement options regarding their consumer debts. I also provide legal services to clients regarding mortgage default and foreclosure matters, wage garnishment avoidance, fair debt collection practices, debt collection defense, as well as student loan, tax debt, and other consumer debt problems.

We are testifying in support of the intent of HB 2033 as it would strengthen protections for consumers in the State of Hawai'i.

HB 2033 would prohibit mortgage collection firms from engaging in certain acts, such as knowingly breaching a bona fide mortgage modification agreement, and provide penalties for violations.

HB 2033 specifies certain prohibited practices that could unjustly result in the loss by owner-occupants of their homes without due judicial process. In prohibiting practices such as offering false evidence in a residential mortgage foreclosure proceeding under § 667; knowingly breaching a bona fide mortgage modification agreement; or retaking possession without judicial process of residential real property for a foreclosing party when the property has not been abandoned for at least 31 days, HB 2033 provides serious protections for borrowers who have relied upon a loan modification negotiated in good faith with their mortgagor from unfair and deceptive conduct of firms or persons engaged in the collection of a residential mortgage loan debt.

Conclusion:

The Legal Aid Society of Hawai'i supports the intent of HB 2033 and its efforts to protect the consumers in the State of Hawai'i. HB 2033 attempts to strengthen protections for consumers by prohibiting mortgage collection firms from engaging in unfair or deceptive acts in attempting to collect on residential mortgage loan debts. Thank you for the opportunity to testify.



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Presentation of the Committees on Commerce and Consumer Protection and Judiciary
Wednesday, January 25, 2012 at 2:00 p.m.
Testimony on HB 2033 Relating to Mortgage Collections

In Opposition

TO: The Honorable Chairs Robert N. Herkes and Gilbert S.C. Keith-Agaran
The Honorable Vice Chairs Ryan I. Yamane and Karl Rhoads
Members of the Committees

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in opposition to HB 2033. HBA is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii.

This bill prohibits mortgage collection firms from certain acts, such as knowingly breaching a bona fide mortgage modification agreement and provides penalties.

While the intent of this bill is laudable, the proposed section "480D- (3) Notwithstanding any law to the contrary, retake possession, without judicial process, of residential real property for a party filing a mortgage foreclosure action upon the property, unless the property is abandoned for more than thirty days.", creates another delay which will lead to more cost for the homeowner. It also does not account for the situation when the owner hands over the keys to the lender as might happen in cash for keys program.

A loan modification is a written agreement between parties where there may be arguments by either party as to whether the agreement was breached. While it may appear that the use of the word "knowingly" provides a measure of safety, it actually does not because by definition, "knowingly" means you merely intended to do what you did. As in all contracts, there are often disagreements as to whether the contract was breached or not; that does not mean a party acted in bad faith; it only means there was a disagreement as to the meaning of a contractual term.

This bill may encourage more frivolous law suits; creates further uncertainty in an already long and complicated process, which was made even more difficult since the passage of Act 48 in 2011; and may mean more costs for the troubled borrower.

We request that this bill be held.

Thank you for the opportunity to provide our testimony.

A handwritten signature in black ink, appearing to read 'Gary Y. Fujitani', with a horizontal line drawn through the end of the signature.

Gary Y. Fujitani
Executive Director

Testimony for HB2033 on 1/25/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, January 24, 2012 6:23 PM
To: CPCtestimony
Cc: jwalden@lava.net
Attachments: HB 2033 - testimony to CPC~1.pdf (72 KB)

Testimony for CPC/JUD 1/25/2012 2:00:00 PM HB2033

Conference room: 325
Testifier position: Comments Only
Testifier will be present: Yes
Submitted by: Marvin Dang
Organization: Hawaii Financial Services Association
E-mail: jwalden@lava.net
Submitted on: 1/24/2012

Comments:

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

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January 25, 2012

Rep. Robert Herkes, Chair
and members of the House Committee on Consumer Protection & Commerce
Rep. Gilbert Keith-Agaran, Chair
and members of the House Committee on Judiciary
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 2033 (Mortgage Collections)**
Hearing Date/Time: Wednesday, January 25, 2012, 2:00 p.m.

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is a trade association for Hawaii's consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA offers comments on this Bill.

The purposes of this Bill are to: (1) prohibit mortgage collection firms from certain acts, such as knowingly breaching a bona fide mortgage modification agreement, and (2) provide penalties.

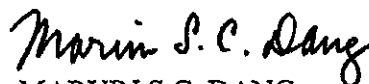
This Bill would add a new section to HRS Chapter 480D relating to Collection Practices. The coverage of this Bill under the definition of "mortgage collection firm" includes attorneys or law firms representing a party filing a residential mortgage foreclosure action. The definition also includes a "person" engaged in debt collection services for a residential mortgage loan.

In HRS Sec. 480D-2, "person" means an individual, partnership, joint venture, corporation, association, business, trust, or any organized group of persons, or any combination thereof.

It is not clear why this Bill is needed in Hawaii. If some of the prohibited acts occurred on the mainland, there is no indication that these acts involved Hawaii foreclosures nor is there evidence of the extent these acts may have occurred in Hawaii.

Separately, there are sufficient sanctions that can be levied under existing laws for any of these prohibited acts. The sanctions can include those that can be imposed in an action for unfair or deceptive acts or practices under HRS Sec. 480-2. Additionally there are sanctions that can be ordered by judges in foreclosure actions. Finally, there are sanctions that can be issued by the Office of Disciplinary Counsel against attorneys.

Thank you for considering our comments.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

Testimony for HB1875 on 1/25/2012 2:00:00 PM

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Sent: Tuesday, January 24, 2012 6:01 PM
To: CPCtestimony
Cc: jwalden@lava.net
Attachments: HB 1875 - testimony to CPC~1.pdf (180 KB)

Testimony for CPC/JUD 1/25/2012 2:00:00 PM HB1875

Conference room: 325
Testifier position: Oppose
Testifier will be present: Yes
Submitted by: Marvin Dang
Organization: Hawaii Financial Services Association
E-mail: jwalden@lava.net
Submitted on: 1/24/2012

Comments: