



NEIL ABERCROMBIE  
GOVERNOR

BRIAN SCHATZ  
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](http://www.hawaii.gov/dcca)

KEALI' S. LOPEZ  
DIRECTOR

PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION  
TO THE HOUSE COMMITTEE ON FINANCE  
THE TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION OF 2012

Wednesday, February 29, 2012  
10:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 2375, RELATING TO THE MORTGAGE RESCUE  
FRAUD PREVENTION ACT.**

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR,  
TO THE HONORABLE MARILYN B. LEE, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("DCCA"), Office of Consumer Protection ("OCP") appreciates the opportunity to appear today and testify on H.B. No. 2375, Relating to the Mortgage Rescue Fraud Prevention Act. My name is Bruce B. Kim and I am the Executive Director of OCP. OCP supports H.B. No. 2375.

House Bill No. 2375 establishes criminal penalties and a mandatory fine for certain violations of HRS Chap. 480E Mortgage Rescue Fraud Prevention Act ("Act"). The purpose of the Act is to protect Hawaii consumers from persons who prey on

homeowners who face property foreclosures, liens, or encumbrances. These so-called mortgage rescuers victimize innocent homeowners by taking their money and/or property which they can ill afford to lose. They carry out their schemes while the homeowners are at their most vulnerable and in desperate financial circumstances.

The sad fact is that many of the services promised by these unscrupulous mortgage rescuers are already available for free by HUD-approved housing counselors here in Hawaii.

While the Act currently provides for civil enforcement of any violation of its provisions as an unfair or deceptive trade practice within the meaning of HRS §480-2, OCP believes the addition of the proposed criminal penalties and mandatory fine would enhance the level of protection given to this particularly vulnerable category of consumers. Additionally, these changes are consistent with similar legislation criminalizing mortgage rescue fraud adopted in a growing number of states, such as California, Colorado, Illinois, Indiana, Maryland, Michigan, Minnesota, Missouri, Nevada, New Hampshire, and Rhode Island. Finally, the proposed criminal penalties and mandatory fine would help ensure that these so-called mortgage rescuers recognize the severity of their actions and are held accountable for the same.

Thank you for the opportunity to testify on H.B. No. 2375. I will be happy to answer any questions that the members of the Committee may have.



The REALTOR® Building  
1136 12<sup>th</sup> Avenue, Suite 220  
Honolulu, Hawaii 96816

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

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February 29, 2012

**The Honorable Marcus R. Oshiro, Chair**  
House Committee on Finance  
State Capitol, Room 308  
Honolulu, Hawaii 96813

**RE: H.B. 2375, Relating to the Mortgage Rescue Fraud Prevention Act**

**HEARING: Wednesday, February 29, 2012, at 10:00 a.m.**

Aloha Chair Oshiro, Vice Chair Lee, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR **supports** H.B. 2375 which establishes criminal penalties and a mandatory fine for certain violations of the Mortgage Rescue Fraud Prevention Act ("MRFPA"). Also, this measure establishes a special fund to enforce the MRFPA and for related public educational activities.

The MRFPA has helped to protect financially strapped homeowners, who are more vulnerable, from equity skimming and foreclosure rescue scams by deterring fraudulent activities. HAR applauds the Committees efforts to further deter these scams and fraudulent behavior by increasing the criminal penalties associated with the MRFPA.

Furthermore, HAR believes it is extremely valuable to use the funds collected towards enforcement, educating the public on the MRFPA, and informing consumers on fraudulent activities that may be committed against homeowners facing property foreclosures, liens or encumbrances. The two-fold approach of increasing the penalties and educating the consumer will serve to better protect homeowners.

Mahalo for the opportunity to testify.



# HAWAII FINANCIAL SERVICES ASSOCIATION

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

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

Fax No.: (808) 521-8522

February 29, 2012

Rep. Marcus R. Oshiro, Chair  
and members of the House Committee on Finance  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **House Bill 2375 (Mortgage Rescue Fraud Prevention Act)**  
**Hearing Date/Time: Wednesday, February 29, 2012, 10:00 a.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 supports the intent of this Bill.**

The purposes of this Bill are to: (a) establish criminal penalties and a mandatory fine for certain violations of the Mortgage Rescue Fraud Prevention Act; and (b) establish a special fund to enforce the Mortgage Rescue Fraud Prevention Act and for related public educational activities.

HRS Chapter 480E is the Mortgage Rescue Fraud Prevention Act which was Act 137 of the 2008 legislature.

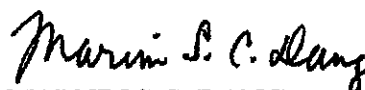
When the legislation which became Act 137 was before the 2008 legislature as H.B. 2326, we testified: "The HFSA believes that this Bill is needed to protect consumers who may be delinquent on their mortgage loans from scammers purporting to be mortgage foreclosure rescuers."

Unfortunately, we understand that these scammers still exist today. They pretend to help consumers who are delinquent on mortgage loans. In reality these perpetrators are nothing but predators who are violating Chapter 480E by committing some of the prohibited actions detailed in HRS Sec. 480E-10.

HRS Sec. 480E-11 provides that the civil penalty for violating the Act is an unfair or deceptive act of practice under HRS Sec. 480-2.

But it seems that a civil penalty is not enough. That's why this Bill proposes to make a violation of HRS Sec. 480E-10 a crime, i.e. a class C felony which has imprisonment and fines. Hopefully these criminal penalties will deter these scammers from victimizing homeowners.

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

(MSCD/hfsa)



1654 South King Street  
Honolulu, Hawaii 96826-2097  
Telephone: (808) 941.0556  
Fax: (808) 945.0019  
Web site: [www.hcul.org](http://www.hcul.org)  
Email: [Info@hcul.org](mailto:Info@hcul.org)



Testimony to the House Committee on Finance  
Wednesday, February 29, 2012

Testimony in support of HB 2375, Relating to Mortgage Rescue Fraud Protection Act

To: The Honorable Marcus Oshiro, Chair  
The Honorable Marilyn Lee, Vice-Chair  
Members of the Committee on Finance

My name is Stéfanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 81 Hawaii credit unions, representing approximately 811,000 credit union members across the state.

We are in support of HB 2375, Relating to Mortgage Rescue Fraud Prevention Act. We have had several credit unions report instances where their members have been victims of these types of fraudulent schemes. We appreciate the efforts of the legislature regarding this important issue.

Thank you for the opportunity to testify.



1050 Queen Street, Suite 201  
Honolulu, Hawaii 96814  
Ph: 808-587-7886  
Toll Free: 1-866-400-1116  
[www.hawaiiancommunity.net](http://www.hawaiiancommunity.net)

**House Committee on Finance**  
**Wednesday, February 29, 2012, 10:00 a.m.**  
**State Capitol, 415 South Beretania Street**  
**Conference Room 308**

**HB 2375: SUPPORT WITH AMENDMENTS**

Chair Oshiro, Vice Chair Lee, and Committee Members:

My name is Jeff Gilbreath, Executive Director of Hawaiian Community Assets, a HUD-approved housing counseling agency that provides free foreclosure prevention counseling services through our statewide offices. In my capacity as Executive Director I also served with the State Mortgage Foreclosure Task Force since in 2011 to present; however, the views I express here are my own and not that of the Task Force.

HB2375 establishes criminal penalties and a mandatory fine for certain violations of the mortgage rescue fraud prevention act. Establishes a special fund to enforce the mortgage rescue fraud prevention act and for related public educational activities. Hawaiian Community Assets strongly supports HB2375 and encourages amendments to ensure criminal penalty for refinance, predatory lending, and foreclosure review scams as well.

With every crisis, there is opportunity to do what is right. And there is opportunity to do what is wrong. Unfortunately, scam artists are extremely adept at developing and implementing false information on the cusp of change within our housing market which allows them to take advantage of our Hawaii families during times of financial and emotional distress.

**Independent Foreclosure Review scams come out with national initiative.** Hawaiian Community Assets recently received funding to promote the free Independent Foreclosure Review Process. Federal Bank Regulators have required the Review by an independent third-party to identify eligible homeowners who may have been financially injured due to errors, misrepresentations or other deficiencies in their foreclosure process. If the review finds that financial injury occurred, the homeowner may receive financial compensation or other remedy. The Review was established in light of the rampant "robo-signing" scandals that received public attention in the fall of 2010 and resulted in Bank of America, the lender responsible for 98% of foreclosure filings in Hawaii in November 2010, to halt foreclosure proceedings in all 50 states.

As soon as the press release came out to inform the public about the free Independent Foreclosure Review Process, individuals came out with scams requiring payment for homeowners to engage in the Process. Hawaiian Community Assets is working closely with community partners and has outreached to the State Office of Consumer Protection and the

Federal Consumer Financial Protection Bureau to have a concerted public education effort to (1) get the word out to our Hawaii homeowners and (2) guard against Independent Foreclosure Review scams.

Hawaiian Community Assets encourages the Finance Committee to consider how HB2375, as written, protects our families from such a scam and what language could be included to take a more comprehensive approach to ensuring consumer protection on this issue.

**Need to address influx of refinance loan scams.** In recent months, the national discussion has pivoted toward refinancing for homeowners current on their mortgage payments. As result, Hawaiian Community Assets has received an influx of phone calls from homeowners, in particular Native Hawaiian and elderly homeowners, who are being contacted as we speak via phone and mail by scammers telling them (1) to not pay their mortgage and instead pay another entity so they can start on the process of refinancing or they are telling the homeowner (2) that they are not current on their mortgage and should pay the entity which they represent so refinancing is an option to address their mortgage situation.

Hawaiian Community Assets encourages the State Legislature to be extremely mindful of this and set in place a process for address potential refinance loan scams now, especially with the National Mortgage Settlement increasing the buzz around refinancing mortgage loans at our dinner tables and in our communities.

**Taking a proactive approach to predatory lending scams.** When the foreclosure crisis hit Hawaii and our nation, the panic and hurt of our communities overshadowed talk about the loan products that thrust us all into an international economic crisis in the first place. At the time, it was common practice for our nation's largest financial institutions to qualify individuals for home loans based on "stated income" and without collecting proper income documentation, among other lax practices. We have all heard about the "robo-signing" scandals in which automated systems were pushing through foreclosures without proper review by lending institutions. This automated process was also followed by mortgage servicers to qualify potential homebuyers for loans, according to John Robbins, the Chairman of the Mortgage Bankers Association in May 2007 MSNBC interview.

Furthermore, lenders took advantage of the vacuum of financial literacy that existed, and still exists, within our communities by offering adjustable rate, interest only, and other predatory loan products that had potential to drastically spike a homeowner's interest rates from 5.75% to 15.75% in just 5 years, making foreclosure imminent. According to the Financial Crisis Inquiry Commission of 2011:


"...mortgage fraud...flourished in an environment of collapsing lending standards and lax regulation. The number of suspicious activity reports—reports of possible financial crimes filed by depository banks and their affiliates—related to mortgage fraud grew 20-fold between 1996 and 2005 and then more than doubled again between 2005 and 2009. One study places the losses resulting from fraud on mortgage loans made between 2005 and 2007 at \$112 billion. Lenders made loans that they knew borrowers could not afford and that could cause massive losses to investors in mortgage securities."

Unfortunately, this type of predatory lending scam will have longer lasting impacts than any other loan scams we have seen or discussed today. The Center for Responsible Lending projects that we should expect a second round of adjustable rate mortgage resets by the end of 2012 through 2013, putting us on par to repeat the housing crisis we faced this time last year, when we saw our foreclosure filings increase 687% from 2006 and loss of \$15 billion in home equity by our homeowners since 2008.

To guard against future predatory lending scams, such as adjustable rate mortgages, Hawaiian Community Assets encourages the State Legislature to consider including an amendment that would enforce criminal penalty for such fraudulent acts so we can ensure our children and our children's children can set their roots in their home land and raise a family without worry of becoming a victim of a loan scam.

Thank you for your consideration of my testimony.

Sincerely

A handwritten signature in black ink, appearing to read "Jeff Gilbreath". The signature is written in a cursive, flowing style.

Jeff Gilbreath  
Executive Director



## **FINTestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 28, 2012 1:01 PM  
**To:** FINTestimony  
**Cc:** aforges@dcca.hawaii.gov  
**Subject:** Testimony for HB2375 on 2/29/2012 10:00:00 AM

Testimony for FIN 2/29/2012 10:00:00 AM HB2375

Conference room: 308  
Testifier position: Support  
Testifier will be present: Yes  
Submitted by: Adrienne Forges  
Organization: SOH - DCCA  
E-mail: [aforges@dcca.hawaii.gov](mailto:aforges@dcca.hawaii.gov)  
Submitted on: 2/28/2012

**Comments:**

Name and Title of Person Testifying:  
Bruce B. Kim, Executive Director  
Office of Consumer Protection  
Department of Commerce and Consumer Affairs

Committee(s): Finance

Date of Hearing: Wednesday, February 29, 2012, 10:00 a.m.

Testimony on House Bill No. 2375

Please call if you have questions. Thank you.

Adrienne Forges  
DCCA-OCP  
Ph: 586-2636

## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 28, 2012 1:33 PM  
**To:** FINTestimony  
**Cc:** hisculptor@aol.com  
**Subject:** Testimony for HB2357 on 2/29/2012 3:30:00 PM

Testimony for FIN 2/29/2012 3:30:00 PM HB2357

Conference room: 308  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: Kazu Kauinana  
Organization: Individual  
E-mail: [hisculptor@aol.com](mailto:hisculptor@aol.com)  
Submitted on: 2/28/2012

**Comments:**

The 1% should remain for the VISUAL ARTS only, as it was originally intended. Funds for the performing arts should come from other sources and not change the original purpose of the 1% act.