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TO THE SENATE COMMITTEE ON
JUDICIARY AND LABOR

THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016

TUESDAY, MARCH 1, 2016
9:05 A.M.

WRITTEN COMMENTS SUPPORTING SENATE BILL NO. 2855, S.D. 1, RELATING TO
MORTGAGE RESCUE FRAUD

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
AND TO THE HONORABLE MAILE S.L. SHIMABUKURO, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs (“DCCA”), Office of
Consumer Protection (“OCP”) supports Senate Bill No. 2855, S.D. 1, Relating to
Mortgage Rescue Fraud, an Administration bill. My name is Stephen Levins and I am
the Executive Director of the OCP.

Senate Bill No. 2855, S.D. 1 offers amendments designed to resolve conflicts
between Hawaii’s Mortgage Rescue Fraud Prevention Act, Chapter 480E of the Haw.

Rev. Stat. and the Federal Trade Commission's Mortgage Assistance Relief Services Rule.

When Hawaii's Mortgage Rescue Fraud Prevention Act, Chapter 480E, Haw. Rev. Stat. (MRFA), took effect in June of 2008, the federal government had yet to enact legislation specifically designed to protect consumers from mortgage rescue scams. There was no federal counterpart to MRFA until the enactment of the Federal Trade Commission's Mortgage Assistance Relief Services Rule, 12 C.F.R. part 1015 (MARS Rule) in December 2010. While MRFA and the MARS Rule are both designed to protect consumers from abusive mortgage relief practices, the two laws take distinctly different approaches to identify the consumers in need of protection. Senate Bill No. 2855 takes the unique protection provisions of the MARS Rule and combines and reconciles those with the protection provisions already present in and unique to the existing MFRA. For the most part, the amendments do not represent "new" law, but a reformulation of existing law, as outlined below:

- MRFA is focused on properties already in distress (i.e., in or facing foreclosure), whereas the MARS Rule is more broadly focused on the nature of the service being offered.
- The MARS Rule is premised on the simple notion of results first, payment last, meaning that homeowners should not have to pay in advance for services which may ultimately confer no benefit upon them.

- Under the existing MFRA, advance payment cannot be received until such time as the consultant has completed all of the services, which is not defined under the statute, whereas under the MARS Rule, the “results first” standard is defined as being the receipt of a written offer of assistance from the lender or servicer for the relief sought by the homeowner on terms that the homeowner finds acceptable, and even then, the homeowner is only bound to pay the service provider in the event the homeowner actually accepts the offer of assistance.

- The proposed amendments impose upon attorneys the “results first” standard before client money can be taken as earned from the client trust account.

- The proposed amendments add recordkeeping and compliance requirements.

Bringing the MRFA in line with the MARS Rule will:

- Expand upon the existing list of prohibited practices, including prohibited representations.

- Expand upon the existing list of required protections.

- Enhance consumer protection from mortgage rescue scammers by broadening the scope of MRFA to protect not just owners of distressed property, but even those owners who are not delinquent but are instructed to stop paying their mortgages and thereby become delinquent.

- Eliminate confusion caused by existing conflicts and inconsistencies in an area where there should be none, since the MARS Rule imposes a stricter standard and the State is not at liberty to impose a lesser one.

- Encourage homeowners to obtain their mortgage rescue services from counselors certified by the Department of Housing and Urban Development (HUD), who presently provide these services to homeowners free of charge, and without regard to any income restriction.

In summary, this Legislation, if enacted, will resolve existing conflicts and inconsistencies between federal and state law, enabling enforcement agencies to provide increased protection for Hawaii's vulnerable homeowners, particularly with regard to the "results first, payment last" protection that seems to fuel the scams scene in Hawaii.

Thank you for the opportunity to submit written comments in support of Senate Bill No. 2855, S.D. 1.