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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION
TO THE HOUSE COMMITTEE ON JUDICIARY
THE TWENTY-NINTH LEGISLATURE
Regular Session of 2017
Wednesday, March 29, 2017
2:00 P.M.

WRITTEN TESTIMONY

TESTIMONY ON SENATE BILL NO. 1227, H.D. 1, RELATING TO FORECLOSURES.

TO THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR,
AND TO THE HONORABLE JOY A. SAN BUENAVENTURA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs, Office of Consumer Protection (“OCP”) supports Senate Bill No. 1227, H.D. 1, Relating to Foreclosures. My name is Stephen Levins and I am the Executive Director of the OCP.

Senate Bill No. 1227, H.D. 1 makes permanent the affirmation requirement and form that is filed by an attorney on behalf of a mortgagee who is seeking to foreclose on a residential property under a judicial foreclosure action.

The OCP supports this measure because it believes that it is in the interest of consumer protection. During the height of the foreclosure crisis numerous distressed homeowners reported to government authorities, including the OCP and the Hawaii Attorney General, that the financial institutions were initiating foreclosure actions without a sufficient basis. Amongst the most egregious claims was that some financial institutions were engaging in “robo-signing”, a process in which the banks in support of their foreclosures used false affidavits signed by their employees. Astonishingly, this meant that despite their claims, many of the banks had no valid evidence to support their assertion that the homeowner was in default or that the bank owned the loan. Employees from some of the nation’s largest financial institutions testified that they had signed thousands of false affidavits a month, in which they falsely claimed under oath that they had reviewed the documents and records in support of the foreclosure. In response, the Hawaii legislature enacted Act 182 in 2012, which required a foreclosing party’s attorney to file an “attorney affirmation statement” to help ensure that this kind of conduct would no longer occur in Hawaii. Among other things, the Act mandated that the foreclosing party’s attorney swear that they had communicated with a representative of the foreclosing party who had informed them that they had personally reviewed the documents and records for factual accuracy and confirmed the factual accuracy of the allegations set forth in the foreclosure complaints. Significantly, it also required the attorney to state that they did not believe that there were any false statements of fact or law and that the plaintiff had legal standing to bring the foreclosure action.

In view of the importance of the attorney affirmation, the OCP does not believe that there is any reason to eliminate it at this time. Although the frequency of robo-signing has appeared to have recently diminished, statutory safeguards, such as, the attorney affirmation, will help deter it from reoccurring in Hawaii. Consequently, the OCP is in strong support of this measure.

Thank you for the opportunity to offer comments in support of Senate Bill No. 1227, H.D. 1. I would be happy to answer any questions members of the Committee may have.