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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Commerce and Consumer Protection  
Friday, February 11, 2022  
10:00 a.m.  
Via Videoconference**

**On the following measure:  
S.B. 3082, RELATING TO MORTGAGE RESCUE FRAUD**

Chair Baker, Vice Chair Chang, and Members of the Committee:

My name is Stephen Levins, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection. The Department supports this administration bill.

The purposes of this bill are to: (1) delete certain exemptions to the definition of a "distressed property consultant" in the State's Mortgage Rescue Fraud Prevention Act that are not in the federal Mortgage Assistance Relief Services (MARS) Rule; and (2) correct a typographical error in the definition of "mortgage assistance relief service."

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 persons from whom consumers are in need of protection. S.B. 3082 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. Section 480E-2 has exemptions to the definition of "distressed property consultant" that do not exist in the federal law. The protection these exemptions offer is illusory, as anyone engaged in wrongdoing can be sued under federal law. In the absence of an amendment to section 480E-2, the State may be limited to bringing an action against a distressed property consultant in only federal court. S.B. 3082 will help to 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.

The definition of "mortgage assistance relief service" in section 480E-2 currently refers to "deed or trust," when it should instead read "deed of trust." This typographical error should be corrected to make the Hawaii definition consistent with the federal law definition.

Thank you for the opportunity to testify in support of this bill.

**SB-3082**

Submitted on: 2/8/2022 10:11:48 AM

Testimony for CPN on 2/11/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
James Evers	Testifying for State of Hawaii Office of Consumer Protection	Support	Yes

Comments:

I am available to answer any questions on behalf of the DCCA-Office of Consumer Protection and will remain in the waiting room until needed.



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February 11, 2022

**The Honorable Rosalyn H. Baker, Chair**

Senate Committee on Commerce & Consumer Protection  
Via Videoconference

**RE: Senate Bill 3082, Relating to Mortgage Rescue Fraud**

**HEARING: Friday, February 11, 2022, at 10:00 a.m.**

Aloha Chair Baker, Vice Chair Chang, and Members of the Committee,

I am Ken Hiraki, Director of Government Affairs, testifying on behalf of the Hawaii Association of REALTORS® ("HAR"), the voice of real estate in Hawaii, and its over 10,800 members. HAR **provides comments** on Senate Bill 3082, which amends the definitions of a "distressed property consultant" and "mortgage assistance relief service" in section 480E-2, Hawaii Revised Statutes.

In 2008, the Mortgage Rescue Fraud Prevention Act (Act 137) was passed to protect financially strapped homeowners from equity skimming and foreclosure rescue scams. At the time, there was no real estate licensee exemption which placed a chilling effect on real estate licensees trying to help their clients that have a distressed property.

Real estate licensees help homeowners by negotiating with lenders, sometimes multiple lenders, to avoid foreclosure. In turn, they negotiate on behalf of their client to the lender to pursue better options, such as short sales, which puts more control on the part of the homeowner and is better on their credit than a foreclosure.

The following year, [Act 66](#) amended Act 137, to add the real estate broker salesperson exemption. Act 66 also amended HRS 467-14, to provide that a licensee may have their license revoked, suspended or be fined, if they acquire an "ownership interest, ownership interest, directly or indirectly, or by means of a subsidiary or affiliate, in any distressed property that is listed with the licensee or within three hundred sixty-five days after the licensee's listing agreement for the distressed property has expired or is terminated."

**Real estate licensees are highly regulated to ensure the consumer is protected. For the foregoing reasons, we respectfully request that real estate brokers and salesperson continue to be exempt under this measure.**

Mahalo for the opportunity to testify.

Presentation to The  
The Committee On Commerce and Consumer Protection  
Friday, February 11, 2022, 10:00 PM  
State Capitol Conference Room 229 & Videoconference

**Testimony on SB 3082 In Opposition**

TO: The Honorable Rosalyn H. Baker, Chair  
The Honorable Stanley Chang, Vice Chair  
Members of the Committee

My name is Neal K. Okabayashi, Executive Director of the Hawaii Bankers Association (HBA). HBA represents seven Hawai'i banks and three banks from the continent with branches in Hawai'i.

HBA does not object to the purpose of the Mortgage Assistance Relief Services Rule (Rule), as republished in 12 CFR section 1015.7 (Rule) as a Consumer Financial Protection Bureau (CFPB) Rule, and in fact HBA supports the Chapter 480E, Hawai'i's version of the Rule. Last year, the Office of Consumer Protection (OCP) sent HBA a letter lauding one local bank that spotted a potential mortgage rescue fraud and assisted OCP in its investigation of the matter.

Our objection to the proposed amendment is that it is unnecessary and does not add to consumer protection from borrowers in default, and in fact, detracts from consumer protection. The proposed amendment also does not comport with the justification sheet claiming that certain exemptions are not in the Rule although the substance of the Chapter 480E exemptions is consistent with the Rule and meets the spirit of the Rule. The OCP seeks to mirror certain language of what was the Federal Trade Commission (FTC) rule but the OCP's interpretation of some exemptions is contrary to the FTC compliance guidelines which specifically states that "The Rule doesn't cover **lenders** and servicers that offer mortgage assistance relief services in connection with loans they own or service." Despite the FTC guidance, OCP seeks to eliminate lenders from the exemption.

Section 480E-2 includes as an exemption: "Banks, savings banks, savings and loan associations, credit unions, trust companies, depository and nondepository financial service loan companies, . . ." There is no reason to delete that exemption just to mirror the prior FTC rule especially when the FTC, which then interpreted the rule, said lenders were exempt.

There is no justification for a deletion of the lenders' exemption as an attempt to match the old FTC rule but now the CFPB Rule. It has long been the case that local banks have taken the lead in attempting to help borrowers with loan mortgage issues by engaging in negotiation on loan forbearance and loan mitigation.

Despite the justification sheet claiming the amendments are to mirror federal law, that is not correct. The amendment would retain the full exemption for attorneys but the Rule only has a partial exemption for attorneys.

The proposed amendments would also delete the exemption for certified public accountants. The FTC compliance guide states that accountants are exempt as long as they do not claim that their services will help a homeowner get a loan modification.

The proposed amendment also deletes the exemption for nonprofits contrary to the FTC compliance guidelines that says the Rule does not apply to bona fide non-profit organizations. This proposed amendment is likely to prevent HUD approved housing counselors, such as Hawaii Homeownership Center and the Consumer Credit Counseling Service Center of Hawaii from being exempt and thus shying from advising consumers on loan forbearance and mitigation efforts.

In the justification sheet, the OCP claims that the amendments will allow the state to file in either state or federal court. Generally, one can file in federal court only if there is a federal case, meaning a violation of federal law or there is diversity of citizenship, meaning the opposing parties are in different states. Since the lawsuit will be based on state law, it appears that the federal court will have no jurisdiction over the OCP lawsuit, regardless of whether state law mimics federal law in certain sections.

Thank you for the opportunity to submit this testimony in opposition on SB 3082. Please let us know if we can provide further information.

Neal K. Okabayashi  
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