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GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: 1/26/2023

TO: Senator Karl Rhoads
Chair, Committee on Judiciary

FROM: Mihoko E. Ito

RE: **S.B. 31 Relating to Attachment and Execution of Real Property**
Hearing Date: January 27, 2023 at 10:00 a.m.
Conference Room 016 & Videoconference

Dear Chair Rhoads and Members of Committee on Judiciary:

We submit this testimony on behalf of the Hawaii Bankers Association (HBA). HBA represents seven Hawai'i banks and one bank from the continent with a branch in Hawai'i.

HBA submits **comments** regarding this bill, which increases the real property exemption amount for attachment or execution. This measure would allow a debtor to forgive the amount of the debt they owe on real property as follows:

- \$90,000 for heads of household or for individuals over 62 (currently \$30,000)
- \$60,000 for all other individuals (currently \$20,000)

HBA has concerns regarding the proposed increases outlined in this bill. If the purpose of the bill is to provide increased relief to primary owner occupants who fall into debt, HBA would ask this Committee to also review and possibly revise the statute to apply only to true primary owner occupants, which it currently does not. In addition, HBA is concerned that this measure could have unintended consequences on other borrowers. Specifically, an increase in the exemption amounts could mean that lenders would need to take protective action such as increasing the loan to value ratio, which means the requirement of larger down payments to decrease risks from a debtor. This measure could negatively impact the rest of the population who want to obtain mortgages in order to better their livelihoods and lawfully pay their debts.

HBA joins in the testimony of the other trade associations representing lenders, and would suggest that further discussion is warranted before increasing the exemption amounts. We would be happy to work with the committee and stakeholders further to work through some of the issues raised and develop a proposed solution.

Thank you for the opportunity to submit this testimony.

HAWAII FINANCIAL SERVICES ASSOCIATION

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

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January 27, 2023

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
and members of the Senate Committee on Judiciary
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **S.B. 31 (Attachment and Execution of Real Property)**
Hearing Date/Time: Friday, January 27, 2023, 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 **offers comments** about this Bill.

This Bill increases the real property exemption amount for attachment or execution.

We should point out that this Bill does not deal with homeowner exemptions for real property tax assessment purposes. The exemption in this Bill is entirely different: it’s an exemption from claims of certain creditors.

Currently the real property exemption amounts in the statute (HRS Sec. 651-92) are either \$30,000 (for a head of a family or an individual 62 years of age or older) or \$20,000 (for any other person). This Bill would increase those amounts to \$90,000 and \$60,000 respectively.

We understand that this exemption in the statute is referred by some as a “homestead exemption”. We agree that should be the purpose of this exemption.

However, the existing statute doesn’t specifically state that the real property must be an owner-occupied residential property. Nor do the revisions in this Bill address this issue. Without clarification, a debtor could exempt an interest in all types of real properties and in multiple real properties which are not the debtor’s primary residence, including in an investment property, in a commercial property, or in a vacant property.

And if the intent is that the exemption is a “homestead exemption”, there shouldn’t be two different exemptions in the law (\$30,000 or \$20,000). There should only be one exemption for one amount on one owner-occupied residential property.

Additionally, neither the existing statute nor this Bill limits the number of times that a debtor can use the exemption. It should be used only once.

While it might be timely to increase the exemption from \$30,000, there are implications that need to be considered regarding the dollar amount of an increase. There is an interplay between the exemptions in the federal bankruptcy law and the exemption in the Hawaii law which should be considered. And perhaps any new exemption amount should be at the lower end of the \$60,000 to \$90,000 range proposed in this Bill.

An unintended consequence of this Bill is that consumers and other borrowers could be negatively impacted. That’s because if this Bill passes, lenders and other creditors might need to tighten their underwriting standards for loans or other credit to ensure that the lenders and creditors get repaid the monies that are loaned or advanced. Access to credit could be reduced.

Discussion on these issues is needed among the stakeholders.

If your Committee is inclined to pass this Bill, this Bill should be amended to:

- (1) clarify that the real property must be an owner-occupied residential property;**
- (2) restrict the exemption to only that one owner-occupied residential property;**
- (3) limit the frequency of the use of the exemption to only once for a debtor;**
- (4) insert a blank amount for the dollar amount; and**
- (5) add a “defective” effective date so that there can be further discussion among the various stakeholders.**

Thank you for considering our testimony.



MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

January 27, 2023

The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice Chair
Members of the Senate Committee on Judiciary

Hearing Date: January 27, 2023
Hearing Time: 10:00 am
Hearing Place: Hawaii State Capitol

Re: SB 31 Relating to Attachment and Execution of Real Property

I am Linda Nakamura, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. The members of the MBAH originate and service, or support the origination and servicing, of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation or rules, it is related only to mortgage lending and servicing.

After reviewing SB 31, the MBAH has concerns regarding the bill and its impact on mortgage loans and lending in Hawaii. We concur with the comments offered by the Hawaii Financial Services Association. We recommend that the legislature proceed slowly and study the impacts of this measure in order to avoid any unintended consequences from the amendments.

Thank you for the opportunity to present this testimony.

Linda Nakamura
Mortgage Bankers Association of Hawaii

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Testimony to the Senate Committee on Judiciary
Friday, January 27, 2023, 10:00 am
Conference Room 016

Comments Regarding SB 31, Relating to Attachment and Execution of Real Property

To: The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 47 Hawaii credit unions, representing over 864,000 credit union members across the state.

HCUL offers the following comments regarding SB 31. This bill would increase the amount of real property exemption from attachment or execution from \$30,000 to \$90,000 for property owned by heads of household or 65 years or older, and from \$20,000 to \$60,000 for property owned by a single person.

The majority of Hawaii's credit unions currently offer mortgages and other forms of credit to their members. Credit unions are not-for-profit organizations whose members ultimately bear any losses. Occasionally, members default in payment of their obligations, and a credit union may have to take legal action to collect the debt. If the credit union cannot collect the debt, its members suffer the loss. Increasing the exemption amount by three times may also have the unintended consequence of making it more difficult for credit union members to qualify for loans, as the risk incurred by financial institutions would be higher.

We further concur with the testimony of the Hawaii Financial Services Association and the Hawaii Bankers Association.

Thank you for the opportunity to provide comments on this issue.