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TO THE  
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

THE TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION OF 2009

Wednesday, February 18, 2009  
2:00 p.m.

TESTIMONY ON H.B. NO. 1071, H.D.1 - RELATING TO MORTGAGE SERVICERS

THE HONORABLE ROBERT N. HERKES, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Nick Griffin, Commissioner of Financial Institutions ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). With requested amendments, the Department strongly supports this Administration bill relating to mortgage servicers.

The purpose of the bill is to establish a State system of licensure and regulation to ensure that servicers of residential mortgage loans secured by real property located in the State of Hawaii conduct those activities responsibly and with requisite accountability to borrowers.

Servicers that engage in servicing residential mortgage loans are frequently a borrower's only contact for information regarding the borrower's loan, and the only party to which the borrower may turn to address and resolve matters that can arise during the course of making payments on that loan, including but not limited to issues relating to required reserves for the payment of property tax and required hazard insurance on the property that secures a borrower's loan. A number of other states have robust mortgage servicer related regulatory and supervisory provisions in their statutes. However, in the absence of any regulation of these residential mortgage servicers by the State of Hawaii, a borrower who owns property in Hawaii securing a residential mortgage loan may discover that the borrower may have little, if any, recourse apart from costly litigation if a mortgage servicer mishandles its servicing responsibilities, or otherwise neglects or refuses to address problems, errors, or other concerns that may arise for the borrower during the term of the loan.

The present wave of foreclosures that is particularly impacting borrowers who obtained subprime and non-traditional mortgage loans has highlighted the fact that many servicers are unable or disinclined to assist borrowers in distress since the servicers may lack adequate staffing or the financial incentive to do so. In many instances, assisting a borrower by negotiating a modification or workout of a delinquent loan may be more costly to the servicer than the alternative of allowing the mortgaged

property to be sold in foreclosure, which transfers the financial loss and other ensuing consequences onto the borrower and lender rather than the servicer.

A prior law regulating the activities of real estate collection servicing agents, Chapter 454D, HRS, was repealed by Act 254, Session Laws of Hawaii, 1999, upon the Legislature's finding that regulation of these servicers was "unnecessary" as it "does not serve to protect the public health, safety, and welfare." However, the foreclosure crisis currently being experienced by millions of homeowners nationwide and many here in Hawaii has focused attention on the fact that borrowers are now losing their homes as the result of foreclosure actions that are being initiated, in most instances, by mainland servicers unregulated in Hawaii.

This measure does not require that servicers agree to loan modifications, but rather provides, more generally, for the licensure and regulation of those residential mortgage servicers that service loans secured by property located in Hawaii, many of which presently may not be otherwise regulated or subject to existing State laws. One outcome will be that a borrower who owns property in Hawaii securing a residential mortgage loan will have the enhanced consumer protection afforded by an available local complaint process and the statutory enforcement powers conferred upon a Hawaii regulatory agency to compel servicer accountability to such borrowers. Presently, such borrowers find themselves at the mercy of regulatory agencies in other states that can

and do decline to assist a borrower if the property securing the loan in question is not also located in the state where the servicer is licensed.

As proposed, this measure (the "Act"):

- defines key terms, including "mortgage servicer";
- mandates the licensing of non-exempt mortgage servicers;
- exempts specified persons including insured depository financial institutions and their operating subsidiaries from the application of the Act;
- establishes an initial license application fee of \$500 and an annual license renewal fee of \$250;
- specifies duties of, and required disclosures to be made by, mortgage servicers;
- authorizes sanctions including the suspension, revocation and denial of a license for violations of the Act;
- confers and delineates the powers and authority of the Commissioner to carry out the purposes of the Act;
- acknowledges a private right of action by any person damaged as a result of a violation of the Act;
- provides for an administrative penalty of not more than \$5,000 for each violation of the Act; and

- provides that all fees and fines collected by the Commissioner under the Act are to be deposited in the compliance resolution fund established pursuant to Section 26-9(o), HRS.

At its recent hearing by the House Committee on Housing, this measure was amended to transfer proposed regulatory responsibility under the Act from the Commissioner to the Director of the Department. Stand. Com. Rep. No. 229 of the Committee on Housing indicates that that committee amended the measure in that fashion to place responsibility for licensing mortgage servicers with the Department's Professional and Vocational Licensing Division, instead of the Division of Financial Institutions ("DFI"). We respectfully request that your committee amend the measure to restore proposed regulatory responsibility under the Act to the Commissioner, since DFI is, in the Department's view, a more suitable and appropriate division to oversee this program, because DFI is staffed with experienced financial institution examiners who are already quite familiar with the issues currently presented by the delinquencies and foreclosures in the local residential real estate lending arena. DFI's examiners have the expertise to assist consumers who encounter problems when attempting to discuss their concerns with non-responsive servicers.

With the requested changes, the Department strongly supports this bill and asks for your favorable consideration. Thank you for the opportunity to testify. I would be happy to respond to any questions you may have.

**The Honorable Robert N. Herkes, Chair**  
**The Honorable Glenn Wakai, Vice Chair**  
**House Committee on Consumer Protection and Commerce**

**Hearing : Wednesday, February 18, 2009, 2:00 p.m.**  
**State Capitol, Conference Room 325**

**IN SUPPORT OF HB 1071 HD 1 WITH AMENDMENTS**

**Chair and Members of the Committee:**

My name is Ryker Wada, representing the Legal Aid Society of Hawai'i ("LASH"). I am advocating for our clients who include the working poor, seniors, citizens with English as a second language, disabled and other low and moderate income families who are consumers. We are testifying in support of HB 1071 HD 1 with amendments as it may strengthen protections for consumers in the State of Hawaii.

I supervise a housing counseling program in the Consumer Unit at the Legal Aid Society of Hawaii. The Homeownership Counseling Project provides advice to individuals and families about homeownership issues. Specifically the project provides information on how to prepare yourself before purchasing a home and what to do if you are in danger of losing your home through foreclosure. In the past Fiscal Year we serviced more than 200 clients in our Project and more than 70 in the past 2 months.

HB 1071 HD 1 seeks to provide licensing and regulation of the mortgage industry. Unlike similar bills heard before this Committee, this bill would not eliminate the consumer protections created in HRS 454 and enumerated in a Supreme Court case Beneficial v. Kida. This is important as it would continue important consumer protections in the State of Hawaii. However LASH offers this suggestion to strengthen the bill:

1. Include a prohibited acts section similar to other mortgage industry regulation bills heard before this committee.
2. Include language cross-referencing HRS Chapter 480 clarifying that a violation of the chapter constitutes an unfair or deceptive act or practice. Clearly a violation of the prohibited acts of HB 1071 HD1 are both unfair and deceptive and thus should be

actionable under HRS Chapter 480. Similar language is contained in related consumer protection statutes.

The Legal Aid Society of Hawaii supports the intent of HB 1071 HD 1, would fully support the bill with the proposed amendments, and supports its efforts to protect the consumers in the State of Hawaii. The Legal Aid Society of Hawaii urges the Committees to consider the suggested language.

**Conclusion:**

We appreciate these committees' recognition of the need to protect consumers in the State of Hawaii. HB 1071 HD 1 attempts to strengthen protections for consumers by regulating the mortgage broker industry, however HB 1071 HD 1 should be amended to create stronger protection for consumers. We support HB 1071 HD 1 with amendments and its attempts to protect homeowners in the State of Hawaii. Thank you for the opportunity to testify.

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February 18, 2009

Rep. Robert N. Herkes, Chair  
and members of the House Committee on Consumer Protection & Commerce  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **House Bill 1071, HD 1 (Mortgage Servicers)**  
**Hearing Date/Time: Wednesday, February 18, 2009, 2:00 P.M.**

I am the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is the trade association for Hawaii's financial services loan companies which are regulated by the Hawaii Commissioner of Financial Institutions under the Code of Financial Institutions (Chapter 412, Article 9 of the Hawaii Revised Statutes).

The HFSA **supports the intent** of this Bill.

The purpose of this Bill is to enact a new chapter of the Hawaii Revised Statutes ("HRS") to provide for licensing and regulation of mortgage servicers that service residential mortgage loans secured by real property located in the state of Hawaii.

Problems periodically occur for Hawaii residents who have mortgage loans and who have to deal with mainland mortgage servicers who are not responsive to inquiries and requests. It is necessary that there be some form of registration or licensing of mortgage servicers.

Your Committee needs to determine if HRS Sec. 26H-6 applies here because this Bill could be a new regulatory measure on a unregulated profession or vocation. If so, a concurrent resolution would be required to request a "sunrise" analysis by the Legislative Auditor.

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

(MSCD/hfsa)