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**PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
OFFICE OF CONSUMER PROTECTION**

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

**TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2009**

**Wednesday, February 4, 2009
2:00 p.m.**

**TESTIMONY ON HOUSE BILL NO. 1076 – RELATING TO THE APPLICABILITY OF
THE MORTGAGE RESCUE FRAUD PREVENTION ACT TO REAL ESTATE
LICENSEES.**

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

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify regarding House Bill No. 1076, Relating to the Applicability of the Mortgage Rescue Fraud Prevention Act to Real Estate Licensees. The Department is in strong support of this Administration bill. My name is Stephen Levins, and I am the Executive Director of the Department's Office of Consumer Protection ("OCP").

Testimony on H.B. No.1076

February 4, 2009

Page 2

This bill seeks to correct an unintended consequence of the Mortgage Rescue Fraud Prevention Act ("Act"), Chapter 481E, HRS. The Act, which became law on July 1, 2008, was designed to protect Hawaii consumers from scammers who prey on homeowners facing foreclosure, by requiring that mortgage rescue contracts contain clear disclosures, right to cancel provisions, and fee limitations. Soon after the Act became law, it became apparent that the Act's fee limitations were creating a disincentive for licensed real estate brokers and salespersons to facilitate the implementation of "short sales". A short sale occurs when the bank or mortgage lender agrees to discount a loan balance due to an economic or financial hardship on the part of the mortgagor. It is typically executed to prevent a home foreclosure. Often a bank will allow a short sale if they believe that it will result in a smaller financial loss than foreclosing. For the home owner, advantages include avoidance of a foreclosure on their credit history and partial control of the monetary deficiency.

This bill seeks to correct this undesirable result by specifically excluding licensed real estate brokers and salespersons who are engaged in the act of real estate brokering or sales from the Act's definition of "distressed property consultant".

Although the vast majority of brokers and agents are honorable, the OCP has had some mortgage rescue fraud cases in which licensed brokers and agents have become involved. To address this exigency an additional amendment is being proposed to the governing licensing statute, Chapter 467, HRS, which would prohibit a

Testimony on H.B. No. 1076
February 4, 2009
Page 3

licensed real estate broker or agent from obtaining, for at least 365 days, an interest in a distressed property for which the licensee has or had a listing agreement. This provision is important because the OCP has observed instances in which licensees have obtained title to the homeowners' home through fraud, usually within a short period of time after the rescue contract has been executed. The required waiting period will allow the licensee to acquire an interest in a distressed property only after a sufficient period of time has elapsed.

Thank you for this opportunity to testify on House Bill No. 1076. I will be happy to answer any questions that the members of the Committee may have.

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

**TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE**

**TWENTY-FIFTH LEGISLATURE
Regular Session of 2009**

**Wednesday, February 4, 2009
2:00 p.m.**

WRITTEN TESTIMONY ONLY

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THE MORTGAGE RESCUE FRAUD PREVENTION ACT TO REAL ESTATE
LICENSEES.**

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

My name is Trudy Nishihara and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to provide testimony in support of House Bill No. 1076.

This bill proposes to exempt real estate licensees from the Mortgage Rescue Fraud Prevention Act, Chapter 480E, Hawaii Revised Statutes, and also prohibits a real estate licensee from acquiring an ownership interest in any distressed property listed with the licensee or within 365 days after the licensee's listing agreement for the distressed property is terminated.

Thank you for the opportunity to present written testimony.



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February 3, 2009

The Honorable Robert N. Herkes
Chair, House Committee on Consumer
Protection & Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 1076 Relating to the Mortgage Rescue Fraud Prevention Act

HEARING DATE: Wednesday, February 4, 2009 at 2:00 p.m.

Aloha Chair Herkes and Members of the Committee on Consumer Protection & Commerce,

On behalf of our 9,600 members in Hawai'i, the Hawai'i Association of REALTORS® (HAR) strongly supports H.B. 1076.

In 2008 the Legislature passed the Mortgage Rescue Fraud Prevention Act as Act 137, Session Laws of Hawai'i (SLH) 2008. This law was primarily intended to protect financially strapped homeowners from equity skimming and foreclosure rescue scams.

After the passage of Act 137, HAR and others became aware of the broader implications of the law for consumers and the real estate industry. Specifically, Act 137 has created very real concerns for licensees engaged in bona fide real estate services by creating the potential for licensees to unwittingly become distressed property consultants and face liability for violating the law.

Prior to Act 137, real estate licensees could help homeowners avoid foreclosure by contacting and negotiating with lenders and representing homeowners in short sale transactions. Relying on their professional training in lending and finance, the real estate licensees would negotiate with the lender, and, if a lender agreed to accept a reduced payment for a property, the short sale of the property would result. Prior to Act 137, real estate licensees regularly received calls from homeowners in distress. With their experience and training, licensees have helped distressed homeowners to, in many instances, avoid the negative consequences of foreclosure.

The language of Act 137, however, made it uncertain whether real estate licensees could continue the practice of representing owners in short sale transactions and negotiating with lenders on behalf of distressed homeowners. Under Act 137, a licensee who assists a homeowner with a distressed property would likely fall under the category of a "distressed property consultant" under the Act. Once deemed a distressed property consultant, the licensee would be subject to onerous requirements and penalties under the law.

Because of the ambiguity resulting from Act 137, real estate firms and licensees have shied away from representing existing or potential distressed homeowners for fear of the potential legal consequences. In these tough economic times, it has been the consumer who has ultimately suffered by being denied the valuable services of real estate licensees.



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HAR has worked with the Department of Commerce and Consumer Affairs (DCCA) since the passage of the Act. Together, HAR and DCCA have agreed upon amendments to Act 137 that will exempt realtors from the requirements of the Act, and impose additional requirements under the real estate licensing regulations, Hawai'i Revised Statutes Chapter 467. The result of this collaborative effort is H.B. 1076.¹ We urge your support of this bill.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.

¹ We note that H.B. ~~273~~1076 contains technical, non-substantive amendments from other bills relating the Mortgage Rescue Fraud Prevention Act; i.e., H.B. 233 and S.B. 34. We support H.B. 273, but note our preference for H.B. 233 and S.B. 34.