

SB756

Measure Title: RELATING TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT.

Report Title: Secure and Fair Enforcement for Mortgage Licensing Act; Seller Exemption

Description: Establishes a mortgage license exemption for sellers of real property who offer or negotiate terms of a mortgage loan secured by the seller's own real property; provided that the seller does not engage in more than three mortgage loans in one calendar year.

Companion: [HB866](#)

Package: None

Current Referral: CPN

Introducer(s): BAKER, RIVIERE, Chun Oakland, English, Green, Ihara, Nishihara, Ruderman

Sort by Date		Status Text
1/23/2015	S	Introduced.
1/26/2015	S	Passed First Reading.
1/28/2015	S	Referred to CPN.
2/13/2015	S	The committee(s) on CPN has scheduled a public hearing on 02-19-15 9:00AM in conference room 229.



DAVID Y. IGE
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TO THE
SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

THE TWENTY-EIGHTH STATE LEGISLATURE
REGULAR SESSION OF 2015

February 19, 2015
9:00 a.m.

TESTIMONY ON S.B. NO. 756

RELATING TO THE SECURE AND FAIR ENFORCEMENT
FOR MORTGAGE LICENSING ACT

THE HONORABLE ROSALYN BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda, Commissioner of Financial Institutions ("Commissioner"),
testifying on behalf of the Department of and Consumer Affairs ("Department") on
Senate Bill No. 756. The Department offers the following comments.

Senate Bill No. 756 would exempt from Chapter 454F, HRS, the Secure and Fair
Enforcement for Mortgage Licensing Act, a seller of real property "who offers or
negotiates terms a mortgage loan secured by the seller's own real property; provided

that the seller does not engage in more than three mortgage loans in one calendar year."

The bill would essentially restore the exemptions that were removed from Chapter 454F through Act 198, section 2 (2014). The Division of Financial Institutions ("DFI") supported the removal of the exemption. DFI believed, and continues to believe, that consumers risk substantial harm when they obtain mortgage loans from sellers who lack the training, knowledge and qualifications required of licensed mortgage loan originators under Chapter 454F, HRS.

Even if the financing to be exempted by S.B. 756 is limited to seller financing of the seller's own property, every such transaction would expose both the seller and buyer to substantial risk. Unlike a financing transaction with a licensed MLO who obtains the borrower a loan through an established mortgage lender, seller financed transactions most likely have no lending standards, including no underwriting standards to evaluate the borrower's ability to pay, no fee and other disclosures to help the borrower understand financial ramifications and compare loan options if any, and no standard loan documentation. In contrast, licensed MLOs must comply with laws that oftentimes were developed in response to consumer complaints. Licensed MLOs typically use lenders who provide standardized loan documents that include federally mandated disclosures to inform and protect consumers.

It appears that a number of seller financing arrangements were made between 2008 and 2011. This was during the height of the financial crisis when bank mortgage lending standards were tightened, and obtaining a mortgage loan could take months. Issues surfaced in 2012 and 2013, when parties to these financing arrangements could

not, or did not want to, honor their agreements. Typically, DFI would be contacted by a borrower who was unable to pay on the mortgage loan that the seller did not want to modify, or a borrower who was objecting to a seller/mortgagee demand to accelerate loan payments. In many cases, there was no written loan agreement. DFI also received a report of a borrower who alleged he had paid off his seller-financed loan, but did not receive title to the property. DFI did not take on these cases because it had no jurisdiction over the seller, who was then exempt from Chapter 454F, HRS. DFI believes that the current law protects consumers who must use a licensed MLO for the mortgage loan origination.

DFI has concerns about this bill, Senate Bill No. 756, and the unintended consequences that may ensue from consumers who may be harmed.

Thank you for the opportunity to testify. I would be pleased to respond to any questions you may have.

February 19, 2015

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce & Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: S.B. 756, Relating to the Secure and Fair Enforcement for Mortgage Licensing Act

HEARING: Thursday, February 19, 2015, at 9:00 a.m.

Aloha Chair Baker, Vice-Chair Taniguchi and Members of the Committee:

I am Myoung Oh, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,400 members. HAR **strongly supports** S.B. 756, which establishes a mortgage license exemption for sellers of real property who offer or negotiates terms of a mortgage loan secured by the seller's own real property, provided that the seller does not engage in more than three mortgage loans in one calendar year.

During the 2014 State Legislative Session, the Legislature amended Hawaii's Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), which established the system for mortgage loan origination in Hawai'i. Act 198, removed exemptions that allowed ordinary, non-licensed property owners to provide financing for their own properties. The action was proposed by DCCA's Division of Financial Institutions (DFI) as a part of a much more complex bill affecting mortgage origination rules in the SAFE Act (HRS 454).

Owner financing is a useful tool in the credit market, as it expands the pool of potential buyers for owners and gives buyers an opportunity to make a purchase that would otherwise be out of reach, especially if they could not qualify for a traditional mortgage loan.

Additionally, it is important to note that although Hawai'i has met the minimum model state legislation that is required to comply with the SAFE Act, the Consumer Financial Protection Bureau's (CFPB) implementing regulations exclude from the definition of loan originator some sellers who provide seller financing. CFPB has provided some flexibility in the new final rule by excluding from the definition of loan originator two categories of seller financing: those that sell 3 or fewer properties in any 12 month period and those that sell only one in any 12 month period.

Prior to Act 198, owner financing in Hawai'i was exempt. Unless owners are exempt as a mortgage loan originator under the SAFE Act, it is not usually practicable to provide seller financing directly. As such, HAR believes this measure will restore a valuable tool for both owners and buyers.

Mahalo for the opportunity to testify in support of this important measure and ask for this Committee's favorable passage.



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TESTIMONY

February 19, 2015

The Honorable Rosalyn Baker, Chair

Senate Committee on Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: SB 756, Relating to the Secure and Fair Enforcement for Mortgage Licensing Act

HEARING: Thursday, February 19, 2015

I am David DeLeon, Government Affairs Director of the Realtors Association of Maui (RAM). RAM strongly **ENDORSES AND SUPPORTS SB 756** because it would restore the legality of a fundamental private property right: the right of an owner to finance the sale of the owner's property. Owner financing has probably been around as long as there has been "real estate" for sale. However, during the 2014 session, the Legislature passed Act 198, which removed exemptions that permit owners to finance the sale of their properties without first becoming state licensed Mortgage Originators. While DCCA supported this action on consumer protection grounds, RAM believes the department's analysis had under-valued the importance of this type of financing and over-reacted to a small number of reported cases which resulted in consumer complaints.

The value of Owner Financing to a healthy Real Estate Market includes:

- Providing lending capacity for properties where institutional lending is not being offered or is offered at extremely prohibitive rates. Some examples of these types of properties are vacant land and leasehold condominiums with less than 30 years remaining on their term.
- Providing lending opportunities to individuals who may not qualify for a conventional loan but who are nonetheless able to meet their obligations.
- Provides additional income opportunities for property-rich individuals, especially the elderly, to enjoy additional income from their property via interest on mortgage payments.
- In the 1980s, when mortgage interest rates skyrocketed, owners often stepped in to offer buyers terms they could still afford. During that period an estimated quarter of all sales were via Owner Financing.

There are hundreds of these transactions in Hawaii every year. They are a common part of our lending environment and, to our knowledge, there have been few complaints or problems. The Hawaii Association of Realtors produces a standard form Hawaii Realtors use to guide their clients through this process. That form recommends that the parties have an attorney draft the necessary documents for the transaction. That commonsense advice assures that the transaction will have a firm legal grounding.

Act 198 has unnecessarily removed important flexibility in the lending environment in Hawaii. RAM asks the legislature to approve SB 756 in its current form, to restore the right of the owner to finance the sale of the owner's property, because it is a fundamental property right.

From: mailinglist@capitol.hawaii.gov
To: [CPN Testimony](#)
Cc: Tracy@TracyStice.com
Subject: Submitted testimony for SB756 on Feb 19, 2015 09:00AM
Date: Wednesday, February 18, 2015 8:03:08 AM

SB756

Submitted on: 2/18/2015

Testimony for CPN on Feb 19, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Tracy Stice	Individual	Support	No

Comments: February 19, 2015 The Honorable Rosalyn H. Baker, Chair Senate Committee on Commerce & Consumer Protection State Capitol, Room 229 Honolulu, Hawaii 96813 RE: S.B. 756, Relating to the Secure and Fair Enforcement for Mortgage Licensing Act HEARING: Thursday, February 19, 2015, at 9:00 a.m. I am Tracy Stice, an individual , representing myself. My occupation has been a Hawaii real estate broker since 1979. During this time I have been involved in over 100 real estate sales that involved the use of owner financing in some form, as an agreement of sale or a purchase money mortgage. The purchase of my first home in 1978 was via an Agreement of Sale that allowed my wife Laura and I to get a start on Maui. We would not have qualified for any conventional financing at that time as interest rates were over 12% at conventional lenders. Not having the availability of seller financing takes many potential buyers and sellers entirely out of the real estate market. Many properties are in such poor condition that no lender will touch them and they need rehabilitation prior to qualifying for underwriting standards for lenders. Many buyers are willing to take the risk to repair these homes, but the only vehicle to doing so is owner financing. Since the seller could not sell otherwise , except to a cash buyer at a huge discount, both parties win and get what they want. Personally, I have purchased several distressed houses like this, fixed them up so that they qualified for loans and I still own one of them that was built in 1929 . The Hawaii legislature needs to open the door a little to allow sellers to carry financing for properties that otherwise would not be marketable. Buyers will have more choices and perhaps a chance to earn some sweat equity and get started. Please pass this bill and move it along. Mahalo,

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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