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TO THE
HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

THE TWENTY-EIGHTH STATE LEGISLATURE
REGULAR SESSION OF 2015

February 9, 2015
2:30 p.m.

TESTIMONY ON H.B. NO. 866

RELATING TO THE SECURE AND FAIR ENFORCEMENT
FOR MORTGAGE LICENSING ACT

THE HONORABLE ANGUS L.K. MCKELVEY, 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
House Bill No. 866. The Department offers the following comments.

House Bill No. 866 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 H.B. 866 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 origination.

DFI has concerns about this bill, House Bill No. 866, 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.



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February 9, 2015

TO: COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Representative Angus L. K. McKelvey, Chair
Representative Justin H. Woodson, Vice Chair

FR: Cathy Lee, President
Hawaii Association of Mortgage Brokers

RE: H.B. 866 Relating to the Secure and Fair Enforcement for Mortgage Licensing Act.
Position: Oppose

Dear Chair Angus McKelvey, Vice Chair Justin Woodson and Members,

The Hawaii Association of Mortgage Brokers (HAMB) opposes House Bill 866.

The bill would exempt sellers of real property from having to be licensed if they offer or negotiate terms of a mortgage loan secured by the seller's own real property, so long as the seller does not engage in more than three mortgage loans in one calendar year. This exemption would carry a potential high risk to the consumers because these sellers would be exempt from requirements in the licensing act that were established as safeguards for the public.

First, licensees are subject to a thorough criminal, financial and personal history background check under Haw. Rev. Stat. (HRS) Section 454F-4. This information is used to determine financial responsibility, character and general fitness. Licensees are also tested to ensure their adequate knowledge of the federal and state laws and regulations relating to ethics, mortgage origination and fraud, consumer protection and fair lending issues under HRS Section 454F-7. Licensees are also required to undergo continuing legal education of 8 hours each year under HRS Section 454F-9. A seller under this bill would be exempt from all of these requirements that are meant to provide consumer protection.

Second, there are volumes of laws and regulations on mortgage transactions. Exempting sellers in these circumstances would appear to pose a significant risk to a private mortgagee because they would still be required to comply with the Truth In Lending Act, the Real Estate Procedures Act, and an array of other consumer protection statutes and regulations. The finding section of

the bill states that this would "be a useful tool in the credit market . . . expands the pool of potential buyers for a seller and gives buyers an opportunity to make a purchase that would otherwise be out of reach, particularly in situations where a person is unable to qualify for a traditional mortgage loan." However, these findings do not appear adequate to address the Ability to Repay (ATR) regulations from Consumer Financial Protection Bureau. This agency requires a lender assess and document their rationale for a positive ATR finding. This can later provide a defense against a foreclosure action brought due to non-payment.

Third, the bill fails to address several questions about the transaction in a way which reflects traditional or usual financing terms, leaving them open to potential abuse.

1. How much of the financing would the seller be providing?
2. What kind of rate of interest would the consumer/buyer be charged? Market rates? Private rates? Or something similar to hard money loans? (Private rates can go as high as 15% or more since it is between to private parties)
3. Would the seller be required to secure a mortgage servicing company to handle the payments
4. What type of terms would be allowable for seller financing loans? 12 months? 5 years? 30 years? Would the terms be fixed interest or variable rate like an ARM? Is a balloon payment part of the terms?
5. What happens in a case where the seller financing closes and three months later, the buyer decides that he cannot make the payments? There would appear to be a foreclosure disaster happening and the buyer accusing the seller of mortgage misdeeds?
6. Is the seller qualified to develop and present financing alternatives to a buyer?

For those reasons, we are unable to support this bill and oppose its passage. Thank you for the opportunity to testify.

February 9, 2015

LATE

The Honorable Angus McKelvey
House Committee on Consumer Protection and Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 866, Relating to the Secure and Fair Enforcement for Mortgage Licensing Act

HEARING: Monday, February 9, 2015, at 2:30 p.m.

Aloha Chair McKelvey, Vice-Chair Woodson and Members of the Committee:

I am Mary Begier, HAR Government Affairs Committee Subcommittee Chair, 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** H.B. 866, which establishes a mortgage licensing exemption for sellers of real property who offer or negotiate terms of a mortgage loan secured by the seller's own 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.