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Testimony of the Department of Commerce and Consumer Affairs

Office of Consumer Protection

Before the
House Committee on Finance
Thursday, March 28, 2024
2:00 PM
Via Videoconference
Conference Room 308

On the following measure:

S.B. 2861, S.D. 1, H.D. 1, RELATING TO EXCLUSIVE LISTING AGREEMENTS

Chair Yamashita, Vice Chair Kitagawa, and Members of the Committees:

My name is Mana Moriarty, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP).

The Department strongly supports this bill to prohibit one-sided exclusive listing agreements and prohibit recording of these agreements at the Department of Land and Natural Resources Bureau of Conveyances. **The Department requests that the Committee amend the effective date of this bill to November 1, 2024.**

The Department has grave concerns about reported investigations of, and state attorney general lawsuits against, companies who take unfair advantage of homeowners by offering to provide listing services and then record an agreement to provide those services against the title to the property. Here is an example of how the agreement works and how the harm occurs:

- A company targets homes in specific areas of a community, typically elderly and vulnerable populations, offering cash, as little as a few hundred dollars, in return for 40-year listing agreements.
- The company records the agreement as a lien that runs with the property. Therefore, children who inherit the property are subject to the terms of the agreement.
- The agreement clouds the property's title and hampers the homeowner's ability to borrow money through a mortgage or home equity loan.
- The agreement entitles the company to a fee, or triggers a default, when the home changes hands without consent or affirmation of the company.
- Attorney general investigations and lawsuits assert that the companies deceptively advertise the agreement's terms and fail to fully disclose the terms to the homeowner.

Across the nation, seven state attorneys general have filed lawsuits against a Florida-based company, MV Realty, that operated a predatory real estate scheme targeting financially vulnerable homeowners in 33 states.

Since this bill was introduced in the Legislature, it has evolved to include a homeowner right to obtain a court order declaring an unlawful agreement void and unenforceable; and to authorize a homeowner who successfully brings a court action to recover actual damages, costs, and attorney's fees, which may not be offset. It is the Department's position that a homeowner who successfully brings an action for a violation of this law retains the right to recover treble damages against a service provider pursuant to Hawaii Revised Statutes section 480-13, notwithstanding references to "actual damages" on page 4, line 18 to page 5, line 5.

The scope and type of real property to which this bill applies has been narrowed by amending the definition of "residential real property" on page 5, lines 14-16. With this amendment, the bill now does not prohibit developers from entering into exclusive listing agreements if the residential real property to be sold includes more than four dwelling units.

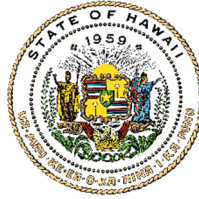
The bill also eliminates procedural hurdles for a homeowner to clear title to the property. Page 4, lines 3-6 states that “[n]o owner or buyer shall be required to record any document to remove an exclusive listing agreement that is made or is presented for recording or filing with the bureau of conveyances in violation of this section.”

As amended in the House Draft 1, this bill provides important protections for homeowners and is narrowly tailored to deter anti-consumer and anti-competitive business practices. **We respectfully urge you to pass the bill out of your Committee, with an amended effective date of November 1, 2024.**

Thank you for the opportunity to testify on this bill.

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA**

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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
DAWN N. S. CHANG
Chairperson**

**Before the House Committee on
FINANCE**

**Thursday, March 28, 2024
2:00 PM
State Capitol, Conference Room 308**

**In consideration of
SENATE BILL 2861, SENATE DRAFT 1, HOUSE DRAFT 1
RELATING TO EXCLUSIVE LISTING AGREEMENTS**

Senate Bill 2861, Senate Draft 1, House Draft 1 proposes to make void and enforceable under state law that governs unfair and deceptive practices certain exclusive listing agreements for the sale of residential real property; prohibits the recording of exclusive listing agreements of any duration for the sale of residential real estate with the Bureau of Conveyances; and establishes that certain exclusive listing agreements shall not be enforceable, have any legal effect, or provide actual or constructive notice, or operate as a lien, encumbrance, or security interest. The bill also establishes certain remedies for the parties that may have been affected by these exclusive listing agreements. **The Department of Land and Natural Resources (Department) supports this measure.**

The Department appreciates the amendments made by the Senate Committee on Commerce and Consumer Protection in response to previously raised concerns by the Bureau of Conveyance and stands in support of this SD1-HD1 version of the bill that will better protect the Hawai'i homeowners from unfair and deceptive practices.

Mahalo for the opportunity to testify in support of this measure.

March 28, 2024

The Honorable Kyle T. Yamashita, Chair

House Committee on Finance

State Capitol, Conference Room 308 & Videoconference

RE: Senate Bill 2861, SD1, HD1, Relating to Exclusive Listing Agreements

HEARING: Thursday, March 28, 2024, at 2:00 p.m.

Aloha Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawaii and its over 11,000 members. HAR **supports** Senate Bill 2861, SD1, HD1, which makes certain long-term exclusive listing agreements for the sale of residential real property void and unenforceable under the state law that governs unfair and deceptive practices. Prohibits the recording or filing of exclusive listing agreements of any duration with the Bureau of Conveyances. Establishes certain remedies. Effective 7/1/3000.

HAR supports this measure as it provides safeguards for consumers. This measure seems to address a bad practice in the real estate market where a company contracts the exclusive right to list an owner's home for up to 40 years in exchange for a modest up-front cash payment, with stiff penalties for terminating the agreement. While this extreme practice does not appear to exist in Hawaii, it has been a problem in 33 other states with the attorney generals in Florida, Massachusetts, and Pennsylvania suing a Florida-based company that engaged in this practice.

We do not approve of such bad practices as they are detrimental to our clients and the real estate industry in general. The National Association of REALTORS® ("NAR") believes that consumers should be aware of all aspects of any listing agreement and should consider consulting with a professional advisor regarding the obligations and any potential risks.

However, we would note that there may be situations where it is necessary to have a listing agreement extend beyond one year. We appreciate the JHA/CPC committees clarifying in their committee report that this measure will allow for situations where upon expiration, both parties can agree to extend their existing agreement for another year or at the very least are not prohibited from entering into another one-year agreement. We support this bill with that clarification.

This measure would likely require HAR to amend our Standard Forms which we provide for the entire industry to utilize and are regularly updated to keep in compliance with current law. Therefore, we would respectfully request an implementation date of November 1, 2024, to coincide with our next updated Standard Forms release schedule.

Mahalo for the opportunity to testify.

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**The State Legislature
House Committee on Finance
Thursday, March 28, 2024
Conference Room 308, 2:00 p.m.**

TO: The Honorable Kyle Yamashita, Chair
FROM: Keali'i Lopez, State Director, AARP Hawaii
RE: Strong Support for S.B. 2861, SD1, HD1 -Relating to Exclusive Listing Agreements

Aloha Chair Yamashita, and Members of the Committee:

My name is Keali'i Lopez, and I am the State Director for AARP Hawai'i. AARP is a nonpartisan, social impact organization that advocates for individuals age 50 and older. We have a membership of nearly 38 million nationwide and nearly 140,000 in Hawaii. We advocate at the state and federal level for the issues that matter most to older adults and their families.

AARP strongly supports S.B 2861 SD1, HD1 which makes it unlawful for an exclusive listing agreement to last longer than 12 months from the date the agreement was made. It also makes it unlawful to present for recording or filing including to attempt to record or file, an exclusive listing agreement of any duration.

For many Hawaii residents, their home is their most important asset and the cornerstone of their financial stability. They rely upon federal, state, and local policymakers to safeguard them against fraud, deception, and unfair practices. Straightforward business practices, marketing materials and contracts empower consumers to understand both the benefits and risks of products and services so they can make informed choices – including engaging in an agreement for future services.

Older homeowners are not immune from the effects of recent economic trends and the resulting stress placed on family budgets. Rising home values are leading to higher property taxes. The greater frequency of natural disasters is leading to increases in the cost of homeowner's insurance. And inflation is driving prices higher for most necessities, like food, prescription drugs, and utilities. These price increases affect older people more deeply since they are more likely to be retired and live on a fixed income.

We know that older adults want to stay in their homes and communities as they age, yet many already face tremendous challenges as property taxes soar beyond their reach. As they search

for the supportive services that will enable them to live with dignity and independence in their own homes, many are now being confronted with the offer of an unfair exclusive listing agreement promising quick cash as a marketing technique. Older adults can be especially vulnerable and need extra safeguards in order to be protected from such an unfair, deceptive, and abusive practice. Furthermore, failing to disclose or misleading consumers about the way that these agreements for future services will slow or prevent a consumer from refinancing or tapping into their home equity – denying them either the opportunity to save money or to access much-needed capital. We encourage you to vote in favor of SB 2861, SD1,HD1 to protect our homeowners.

Thank you for the opportunity to strongly support S.B. 2861, SD1, HD1.