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## Testimony of the Department of Commerce and Consumer Affairs

### Office of Consumer Protection

Before the  
Senate Committee on Commerce and Consumer Protection  
Friday, February 16, 2024  
9:30 a.m.  
Via Videoconference  
Conference Room 229

On the following measure:  
**S.B. 2861, RELATING TO EXCLUSIVE LISTING AGREEMENTS**

Chair Keohokalole and Members of the Committee:

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 real estate agents from entering into lopsided and predatory exclusive listing agreements. In states across the nation, unscrupulous individuals have peddled predatory agreements to vulnerable homeowners; these agreements require the homeowner to grant exclusive listing rights for a period of thirty or in some cases forty years. These agreements are designed to be breached, thereby allegedly triggering lien rights which can only be discharged by robbing the homeowner of hard-earned equity.

This bill 1) makes it unlawful for an exclusive listing agreement to last longer than 12 months from the date the agreement was made; and 2) make it unlawful to

present for recording or filing, or to otherwise attempt to record or file, an exclusive listing agreement of any duration.

Seven state attorneys general have filed lawsuits against a Florida-based company operating in 33 states over a predatory real estate scheme targeting financially vulnerable homeowners. If this bill passes, Hawaii will join Alabama, California, Colorado, Florida, Georgia, Idaho, Iowa, Maine, Maryland, Nevada, North Carolina, North Dakota, Ohio, Tennessee, and Utah in enacting legislation banning predatory exclusive listing agreements.

These exclusive listing agreements are problematic mainly when they target vulnerable populations such as our seniors. The OCP is concerned about these companies having an unfair advantage in their bargaining position, just as real estate professionals are worried about the anti-competitive effects of these types of agreements, and title companies are concerned about clouds on title. Here is an example of how the issue occurs:

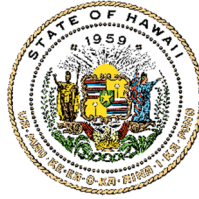
- Companies target homes in specific areas of a community, typically elderly and vulnerable populations, offering cash, as little as a few hundred dollars, in return for 40-year listing agreements
- The agreements are recorded as liens and run with the property they are assigned to and *not* with the owner. Therefore, children who inherit property are subject to the terms of the agreement.
- The agreements cloud the property's title, hampering the homeowner's ability to borrow money through a mortgage or home equity loan.
- The agreements entitle the company to a fee every time the home changes hands over the 40-year life of the agreement.
- The advertisements and explanations of this practice are deceptive and fail to fully explain agreement terms.

This bill would deter unscrupulous filings of these types of agreements, which cloud title and deplete homeowner equity, and would protect homeowners who otherwise would have no easy recourse to remove this type of lien from their real property.

Thank you for the opportunity to testify on this bill.

JOSH GREEN, M.D.  
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SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
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FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Testimony of  
DAWN N. S. CHANG  
Chairperson

Before the Senate Committee on  
COMMERCE AND CONSUMER PROTECTION

Friday, February 16, 2024  
9:30 AM  
State Capitol, Conference Room 229

In consideration of  
SENATE BILL 2861  
RELATING TO EXCLUSIVE LISTING AGREEMENTS

Senate Bill 2861 proposes to make it unlawful for an exclusive listing agreement, as defined, to last longer than 12 months from the date the agreement was made. It would also be unlawful to present for recording or filing, or to otherwise attempt to record or file an exclusive listing agreement of any duration or any memoranda or notice of the agreement. Furthermore, it makes it unlawful to enforce, or attempt to enforce, an exclusive listing agreement that is made or that is presented for recording or filing in violation of these provisions which would make it void and unenforceable and a violation of Section 480-2, Hawaii Revised Statutes (HRS). The bill also authorizes a homeowner who entered into any such agreement to retain any consideration received. **The Department of Land and Natural Resources (Department) acknowledges the intent and offers the following comments and concerns.**

Bureau of Conveyance (BOC) is obligated by statute and administrative rule to record any documents presented that meets the recordability standards and are accompanied by the proper fees. Blanket exclusions of certain kinds of documents may not be practical and could result in unintended consequences with erroneous rejections for valid documents that might be mistaken for exclusive listing agreements (ELA). Also, policing all recording submissions which can average 1,000+ daily for these ELA type documents places an unrealistic burden on the BOC that lacks the legal expertise and resources to single out these ELAs and to interpret these documents that can conceivably be worded by the perpetrators in many different ways.

Since the consumer may not realize the consequences these ELAs will have on them until there is a triggering event (e.g. denied loan application), the Department recommends that the bill include simple, practical recourse that can be taken to remove the lien created by such ELAs after-the-fact. We also recommend that the bill propose increased real estate industry awareness for Realtors through continuing education training to prevent the introduction of these wrongful ELAs.

Mahalo for the opportunity to testify on this measure.

February 16, 2024

**The Honorable Jarrett Keohokalole, Chair**

Senate Committee on Commerce and Consumer Protection  
State Capitol, Conference Room 229 & Videoconference

**RE: Senate Bill 2861, Relating to Exclusive Listing Agreements**

**HEARING: Friday, February 16, 2024, at 9:30 a.m.**

Aloha Chair Keohokalole, Vice Chair Fukunaga, 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 and offers amendments** to Senate Bill 2861, which makes it unlawful for an exclusive listing agreement to last longer than 12 months from the date the agreement was made. Makes it unlawful to present for recording or filing, or to otherwise attempt to record or file, an exclusive listing agreement of any duration.

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 beyond one year. For instance, in new development projects homeowners typically enter into listing agreements to reserve a unit in the project while it is in the process of being built which can take longer than one year. In those instances, the duration should be until the project's completion and ready for homeowners to move in. However, there could be other situations where an extension may be legitimately warranted. Therefore, we respectfully recommend the bill be amended to accommodate new development projects and to allow for extension of listing agreements beyond one year if necessary.

Mahalo for the opportunity to testify.



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**The State Legislature**  
**Senate Committee on Commerce and Consumer Protection**  
**Friday, February 16, 2024**  
**Conference Room 229, 9:30 a.m.**

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

Aloha Chair Keohokalole, 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 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 to protect our homeowners.

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