

March 14, 2009

The Honorable Robert N. Herkes, Chair

House Committee on Commerce and Consumer Protection
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: S.B. 34, S.D.1 Relating to the Mortgage Rescue Fraud Prevention Act

HEARING DATE: Monday, March 16, 2009 at 2:15 p.m.

Aloha Chair Herkes and Members of the Committee:

I am Gary Slovin of Goodwill Anderson Quinn & Stifel, here to testify on behalf of the Hawai'i Association of REALTORS® (HAR) and its 9,600 members in Hawai'i. HAR **strongly supports** S.B. 34, S.D. 1, which excludes licensed real estate brokers and salespersons from the definition of distressed property consultants in the Mortgage Foreclosure Rescue Fraud Prevention Act, and prohibits certain conduct relating to the acquisition of an ownership interest in distressed property by licensed real estate brokers and salespersons.

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.

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 real estate licensees 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 S.B. 34, S.D. 1 in its present form. We urge your support.

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.