

May 18, 2009

The Honorable Linda Lingle  
Governor, State of Hawai'i  
Executive Chambers  
State Capitol  
Honolulu, Hawai'i 96813

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

Dear Governor Lingle:

The Hawai'i Association of REALTORS® (“HAR”) strongly supports S.B. 34, H.D. 1, S.D. 1, C.D. 1. The primary purpose of this measure is to undo the unintended consequences of the Mortgage Rescue Fraud Prevention Act by excluding active licensed real estate brokers and salespersons from the definition of distressed property consultants. The bill also places a time limit on 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, Act 137, Session Laws of Hawai'i 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. 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. Short sales have been a great benefit to distressed property owners, because they allow the homeowner to avoid the negative consequences of foreclosure.

The language of Act 137 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.” Once deemed a distressed property consultant, the licensee would be subject to onerous requirements and penalties under the law.



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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 to assess its impact and develop a solution. 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.

**We urge your support and prompt signature to allow real estate licensees to help distressed homeowners during a time when that help is needed most.** Thank you for your consideration.

If you have any questions, please feel free to contact Myoung Oh at the HAR Government Affairs Department at (808) 733-7060, extension 104.

Sincerely,

HAWAI‘I ASSOCIATION OF REALTORS®

A handwritten signature in black ink that reads "Judith E. Kalbrener". The signature is written in a cursive, flowing style.

Judith E. Kalbrener  
2009 HAR President