DEPARTMENT OF CONSUMER & BUSINESS SERVICES

Department of Consumer and Business Services
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Before the
Senate Committee on General Government, Consumer and Small Business Protection

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HB 3489

Testimony of
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Division of Finance and Corporate Securities
Department of Consumer and Business Services

For the record, my name is David C. Tatman. I am the Administrator of the Division of Finance and Corporate Securities of the Department of Consumer and Business Services. I am here today to testify on HB 3489 and to give the committee some background information as you consider the adoption of HB 3489. At the outset, we would like to thank Representative Holvey for bringing this issue forward as a priority bill.

In 2009, the Legislative Assembly passed House Bill 2191. This bill created an umbrella registration meant to regulate different entities performing services related to consumer debt. Prior to the passage of the bill, Oregon regulated the practice of credit counseling and debt consolidation (in other words, taking one payment from a consumer to apply to multiple creditors). Newer forms of consumer credit relief, like debt settlement, remained unregulated. The increased

frequency and problems associated with debt settlement caused concern among legislators and regulators in Oregon and in the federal government alike.

Essentially, debt settlement relies on consumers delaying paying creditors and saving enough funds for a possible discounted settlement, to be paid months or years later. Consumers are often told not to contact their creditors or explain the settlement plan and in turn, they may be sued by their creditors, have to declare bankruptcy, and have long-lasting damage to their credit rating if a settlement negotiation does not take place. In addition, many unregistered settlement providers charge significant to outrageous fees for their services – from $1,500 to $10,000. Given the financial straits of consumers needing to negotiate the payment of a lower amount of principal with creditors, not completing a settlement was a likely occurrence. But the fees charged were not refunded.

At the same time, the national mortgage market entered a steep decline in sales, and foreclosures became a common term around the nation. Oregon was not alone in seeing a rapid rise in the number of companies promising to modify a person's home loan with – at best – limited success. We saw the industry advertising in a very aggressive manor for both kinds of debt assistance; starting out with fliers on telephone poles but soon moving to television and the internet.

Thus, the original concept set out to regulate all four of these types of debt-centric businesses by requiring registration, written agreements for services, trust accounts for held funds, analysis of a particular plan of action with a consumer, and capping fees for services. The bill gave DCBS and private citizens alike the means to ensure compliance with the amended statutes.

Just since 2009, DCBS has used the debt management laws as a backstop to convince unregistered providers to return over $260,000 to Oregon consumers. If we can actually locate and contact the business that engaged in the unregistered

debt management services, we can often work with the out-of-state entities to return funds to Oregon consumers. Our estimate is that around 20 to 30% of the complaints we receive end up with some form of recovery. Informal negotiations are an efficient way of resolving these claims for Oregon consumers. Unfortunately, we know that despite these recoveries for Oregon consumers, far more unregistered activity may be occurring than we have been made aware of through complaints or inquiries. And as the state and national economies continue their slowly recoveries, we do not expect the issue to abate anytime soon.

Now to the bill itself:

Because the new law combined existing laws with new provisions, some existing exemptions carried over and applied to the new umbrella registration. One exemption that carried over in particular was the exemption for escrow agents licensed by the Oregon Real Estate Agency (OREA). As currently written, an escrow agent is exempt from registration as a debt management services provider if they hold a license under the escrow provisions of ORS chapter 696. This rather open-ended exemption allows unregistered debt management companies a way to outsource holding funds to a third party holding an escrow license, whether or not the party collects and disburses funds in a way that would be considered an escrow transaction in compliance with Oregon escrow law. We are aware of at least one third-party payment provider that has raised this exemption in the course of negotiations with the department. Several other out-of-state unregistered providers have also talked about obtaining an escrow agent license.

The intent of the bill is to allow traditional escrow activities to occur, while ensuring that third-party payment providers complied with the debt management statutes. The general idea is to continue exempting escrow agents, but remove the exemption if they accept money for an unregistered debt management company.

Out of an abundance of caution, the bill also narrows the exemption for escrow agents in two other areas where funds could be transferred to unregistered debt management providers – debt collection activities and money transmission. We believe an escrow license should not be an alternate route to providing these services.

DCBS has worked with the OREA and stakeholders to develop a set of amendments to address concerns about the bill. The amendments in process do the following:

- Ensures that escrow agents that are "closing an escrow" are still exempt from debt collection, money transmission, and debt management statutes.
- Exempt escrow agents from registration as a debt management service provider if they are providing services within the scope of the escrow laws, but clarify that by assisting a person in specific debt management activities (debt settlement, credit counseling, etc.), the exemption melts away.
- Clarifies that the narrowed exemption would not expose escrow agents acting as trustees for trust deeds, under Oregon's Trust Deed Act. The intent of the bill was not to interfere in an otherwise private legal process (mortgages and foreclosure).

We appreciate the efforts of the Oregon Land Title Association and the Oregon Real Estate Agency in providing input and recommendations for the amendments. We anticipate that Legislative Counsel providing the amendment in the next day or two. We ask for your support, and I am happy to answer any questions you might have.