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Testimony of Marc Dann
Ohio Senate Committee on Insurance and Financial Institutions
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Chairman Hottinger, Ranking Member Brown and Members of the Committee.

My name is Marc Dann I am the founding partner of DannLaw a law firm that represents consumers throughout Ohio from our offices in Cleveland, Columbus, and Cincinnati. I am here today to offer proponent testimony on HB 489 on behalf of the National Association of Consumer Attorneys, the National Association of Bankruptcy Attorneys, and consumers and homeowners in every corner of our state.

While we are supportive of HB 489 in its totality, we are especially enthusiastic about sections that make mortgage servicers subject to registration and regulation under Ohio's Residential Mortgage Lending Act. This change in the law is both sorely needed and long overdue and we applaud Representative Dever for including it in the bill.

Anyone who has worked within, studied, or observed the evolution of mortgage lending since the collapse of the housing market understands why Ohio must begin to regulate mortgage servicers in general and debt buyers who traffic in defaulted and often underwater second mortgages in particular.

The serious problems that exist in the industry first came to light when I and attorneys general from across the country initiated a multi-state investigation of loan servicers. What we found was, in a word, horrifying. We learned that servicers routinely fabricated documents, forged mortgage notarizations, assignments, and affidavits in support of foreclosure lawsuits, refused to allow borrowers to review escrow payment calculations or to verify that payments had been applied to principal interest and escrow before late fees or servicer generated charges, and engaged in dual tracking—promising to modify a borrower's home loan while simultaneously pursuing foreclosure.

The practices the AG investigation unearthed were so egregious that they precipitated the National Mortgage Settlement that established standards for the loan servicing industry. Unfortunately, however, the settlement did not provide for long-term oversight or establish mechanisms borrowers could use to correct problems or hold bad actors accountable.

And as I and anyone who practices foreclosure defense or consumer protection law knows, there are plenty of bad actors out there abusing borrowers each and every day.

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They're out there because large banks like Chase, Fifth Third, PNC, US Bank, and Huntington that value their reputations and offer a wide range of services, began abandoning mortgage servicing in the wake of the financial crisis.

Now the industry is dominated by shadowy non-bank out-of-state loan servicers like Nationstar, Rushmore, Seterus, SPS, SLS that could care less about their reputation and have little regard for ethics. Here's what they do care about: the millions of dollars in profits they generate by imposing fees on borrowers. For example, in the course of preparing for a trial against Nationstar, which recently changed its name to Mr. Cooper, I learned that the company earns twenty million dollars a quarter on late charges alone. Here's something else I've learned about them and other servicers: because they make huge profits from the fees, they regularly impose them when they're not owed and the refuse to remove or refund them even when presented with proof that they've made a mistake.

HB 489 will protect Ohioans by giving servicers the opportunity to correct mistakes or "bona fide errors" as they are referred to in the legislation and by creating a way for state regulators and individual borrowers to hold companies accountable for bad behavior if they refuse to do so.

The bill also provides relief to borrowers victimized by a particularly odious kind of mortgage servicer: companies that service underwater second mortgages. Many of these loans were first made by predatory lenders like Washington Mutual, Countrywide, Argent, and New Century and were used to provide the down payment for the first mortgage on a home that had been appraised at a price that far exceeded the property's actual value. These loans, as the collapse of the housing market here in Ohio and across the nation starkly demonstrated, were destined to fail.

Today, many of those second mortgages have fallen into the hands of unscrupulous debt buyers who use the threat of foreclosure to extort payments from Ohio borrowers. HB 489 will force these predators to register with the Department of Commerce, maintain a presence in Ohio, provide borrowers with a warning notice that includes a recommendation to consult a lawyer, provide proof of their right to collect the note.

Finally, we support HB 489 because the timing is right. Until Richard Cordray resigned as head of the Consumer Finance Protection Bureau nine months before his term ended that agency had done an outstanding job of regulating mortgage lending. The new head of the agency has, shall we say, shifted focus, and has not authorized any enforcement actions since November 2017 and has sought zero funding for the next fiscal year. This bill provides a sound and much-needed first step toward the creation of a comprehensive framework that will protect consumers and borrowers, wring abuse from the mortgage servicing industry, and hold bad actors accountable.

For these reasons we encourage this committee to favorably recommend HB 489 to the full Senate.

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