Department of Consumer and Business Services
350 Winter Street NE, Room 200
P.O. Box 14480
Salem, Oregon 97309-0405
(503) 947-7872
www.cbs.state.or.us

Before the
House Committee on Consumer Protection and Government Efficiency

April 16, 2013

HB 3489

Testimony of
David C. Tatman, Administrator
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.

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 marked 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 these licenses should not be an alternate route providing these services.

The bill also provides concurrent authority to the OREA to take action when an escrow agent engages in funds transfers not related to escrow. We recognize that the OREA would not have the subject matter expertise or resources to determine when an escrow provider is providing debt management services. Our read of the current bill is that the OREA could independently take action or choose to act after DCBS takes action against an escrow agent, so that the necessary administrative findings of fact and conclusions of law have been determined and the escrow provider has had an opportunity to request a hearing on the issue from DCBS.

The text of the language in the bill, however, needs some fine-tuning. Given the timeframes, we are committed to amendments in the Senate that meet the following:

- Ensure that escrow agents that are "closing an escrow" are still exempt from debt collection, money transmission, and debt management statutes. We understand that there are two perspectives on whether to include "closing an escrow" in these exemptions, and we are committed to working with both the Oregon Real Estate Agency and the Oregon Land Title Association to figure out the best course of action. We are, frankly, not the subject matter experts in escrow, and would be happy to work with both parties in the Senate.
- Clarify 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), and so we commit to addressing this issue in the Senate, if necessary.

- Rework the exemption in the debt management statutes to clarify that the escrow agent is exempt for traditional escrow transactions, but not if they provide payment support to unregistered debt management service providers. This is the crux of the bill, and we believe clearly spelling out the exemption and when the exemption ends is critical.

We appreciate the efforts of the Oregon Land Title Association and the Oregon Real Estate Agency in providing input and recommendations for the draft. We will continue to seek input and guidance as we refine the concept. We ask for your support, and I am happy to answer any questions you might have.