



1 positions and withhold or misrepresent vital information and  
2 details. As a result, consumers may be convinced to give up  
3 their real property interests and valuable equity to such  
4 persons while receiving little in return. Requiring full and  
5 complete disclosure of vital information will better enable  
6 consumers to make informed decisions when dealing with persons  
7 claiming to be able to stop foreclosures, liens, or  
8 encumbrances. The Mortgage Rescue Fraud Prevention Act  
9 addresses possible misrepresentations by compelling persons  
10 offering assistance to spell out their services in written  
11 contracts and giving the homeowners the right to cancel at any  
12 time before a rescuer has performed all services called for in  
13 the contracts.

14 **§ -2 Definitions.** As used in this chapter, unless the  
15 context otherwise requires:

16 "Consideration" means any payment or thing of value  
17 provided to the owner of a distressed property, including  
18 reasonable costs paid to independent third parties necessary to  
19 complete the distressed property conveyance or payment of money  
20 to satisfy a debt or legal obligation of the owner of the  
21 distressed property. "Consideration" shall not include amounts  
22 imputed as a down payment or fee to the distressed property

1 purchaser, or a person acting in participation with the  
2 distressed property purchaser.

3 "Distressed property" means any residential real property  
4 that:

5 (1) Is in foreclosure or at risk of foreclosure because  
6 payment of any loan that is secured by the residential  
7 real property is more than ninety days delinquent;

8 (2) Had a lien or encumbrance charged against it because  
9 of nonpayment of any taxes, lease assessments,  
10 association fees, or maintenance fees; or

11 (3) Is at risk of having a lien or encumbrance charged  
12 against it because the payment of any taxes, lease  
13 assessments, association fees, or maintenance fees are  
14 more than ninety days delinquent.

15 "Distressed property consultant" means any person who makes  
16 any solicitation, representation, or offer to or does perform  
17 any of the following:

18 (1) Stop or postpone the foreclosure sale or loss of any  
19 distressed property due to the nonpayment of any loan  
20 that is secured by the distressed property;

21 (2) Stop or postpone the charging of any lien or  
22 encumbrance against any distressed property or

- 1           eliminate any lien or encumbrance charged against any  
2           distressed property for the nonpayment of any taxes,  
3           lease assessments, association fees, or maintenance  
4           fees;
- 5           (3) Obtain any forbearance from any beneficiary or  
6           mortgagee, or relief with respect to a tax sale of the  
7           property;
- 8           (4) Assist the owner to exercise any cure of default  
9           arising under Hawaii law;
- 10          (5) Obtain any extension of the period within which the  
11          owner may reinstate the owner's rights with respect to  
12          the property;
- 13          (6) Obtain any waiver of an acceleration clause contained  
14          in any promissory note or contract secured by a  
15          mortgage on a distressed property or contained in the  
16          mortgage;
- 17          (7) Assist the owner in foreclosure, loan default, or  
18          post-tax sale redemption period to obtain a loan or  
19          advance of funds;
- 20          (8) Avoid or ameliorate the impairment of the owner's  
21          credit resulting from the recording of a notice of

1           default or the conduct of a foreclosure sale or tax  
2           sale; or

3           (9) Save the owner's residence from foreclosure or loss of  
4           home due to nonpayment of taxes.

5           A "distressed property consultant" does not include any of  
6 the following:

7           (1) A person or the person's authorized agent acting under  
8           the express authority or written approval of the  
9           Department of Housing and Urban Development;

10          (2) A person who holds or is owed an obligation secured by  
11          a lien on any distressed property, or a person acting  
12          under the express authorization or written approval of  
13          such person, when the person performs services in  
14          connection with the obligation or lien, if the  
15          obligation or lien did not arise as the result of or  
16          as part of a proposed distressed property conveyance;

17          (3) Banks, savings banks, savings and loan associations,  
18          credit unions, trust companies, depository, and  
19          nondepository financial service loan companies, and  
20          insurance companies organized, chartered, or holding a  
21          certificate of authority to do business under the laws

1 of this State or any other state or under the laws of  
2 the United States;

3 (4) Licensed attorneys engaged in the practice of law;

4 (5) A Department of Housing and Urban Development approved  
5 mortgagee and any subsidiary or affiliate of these  
6 persons or entities, and any agent or employee of  
7 these persons or entities, while engaged in the  
8 business of these persons or entities; or

9 (6) A nonprofit organization that, pursuant to Hawaii  
10 Revised Statutes 446, offers counseling or advice to  
11 an owner of a distressed property, if the nonprofit  
12 organization has no contract or agreement for services  
13 with lenders, distressed property purchasers, or any  
14 person who effects loans or distressed property  
15 purchases.

16 "Distressed property consultant contract" means any  
17 agreement or obligation between an owner or agent of an owner of  
18 a distressed property and a distressed property consultant.

19 "Distressed property purchaser" means any person who  
20 acquires any interest in a distressed property directly or  
21 indirectly through a distressed property conveyance or  
22 distressed property conveyance contract.

1 "Distressed property conveyance" means the transfer of any  
2 interest in a distressed property effected directly or  
3 indirectly by or through a distressed property consultant.

4 "Distressed property conveyance contract" means any  
5 agreement or obligation effecting a distressed property  
6 conveyance.

7 "Distressed property lease" means any agreement or  
8 obligation regarding the lease or rental of a distressed  
9 property effected directly or indirectly by or through a  
10 distressed property consultant or distressed property purchaser.

11 "Person" means any individual, partnership, corporation,  
12 limited liability company, association, or other group or  
13 entity, however organized.

14 **§ -3 Distressed property consultant contract.** (a) A  
15 distressed property consultant contract shall be in writing and  
16 shall fully disclose all services to be performed by the  
17 distressed property consultant, the exact terms of the agreement  
18 between the distressed property consultant and all owners of the  
19 distressed property and the total amount and terms of  
20 compensation to be directly or indirectly received by the  
21 distressed property consultant.

1           (b) A distressed property consultant contract shall  
2 contain on its first page in a type size no smaller than  
3 fourteen-point boldface type:

4           (1) A description of the distressed property;

5           (2) The name, street address, and telephone number of the  
6 distressed property consultant; and

7           (3) The name and address of the distressed property  
8 consultant to which notice of cancellation is to be  
9 mailed.

10          (c) A distressed property consultant contract shall be  
11 dated and signed by the distressed property consultant. If the  
12 distressed property consultant is a person other than an  
13 individual, the individual executing the distressed property  
14 consultant contract on behalf of the distressed property  
15 consultant shall identify the title and office held by the  
16 individual.

17          (d) A distressed property consultant contract shall be  
18 dated and signed by all owners of the distressed property. The  
19 following notice in a type size no smaller than fourteen-point  
20 boldface type shall appear immediately before the space reserved  
21 for each owners' signature:

1 "YOU, THE OWNER, MAY CANCEL THIS TRANSACTION AT ANY TIME  
2 BEFORE THE DISTRESSED PROPERTY CONSULTANT HAS FULLY  
3 PERFORMED EACH AND EVERY SERVICE THE DISTRESSED PROPERTY  
4 CONSULTANT CONTRACTED TO PERFORM OR REPRESENTED WOULD BE  
5 PERFORMED. SEE THE ATTACHED NOTICE OF CANCELLATION FORM  
6 FOR AN EXPLANATION OF THIS RIGHT."

7 (Name or anyone working for the distressed property  
8 consultant) CANNOT:

9 (1) Take any money from you or ask you for money until  
10 (Name) has completely finished  
11 doing everything the distressed property consultant  
12 said they would do; or

13 (2) Ask you to sign or have you sign any lien,  
14 encumbrance, mortgage, assignment, or deed unless the  
15 lien, encumbrance, mortgage, assignment, or deed is  
16 fully described including all disclosures required by  
17 this chapter.

18 (e) A distressed property consultant contract shall be  
19 accompanied by a completed form in duplicate, captioned "NOTICE  
20 OF CANCELLATION," which shall be attached to the contract, shall  
21 be easily detachable, and shall contain, in a type size no

1 smaller than fourteen-point boldface type, the following  
2 statement written in the same language as used in the contract:

3 **NOTICE OF CANCELLATION**

4 (Enter date of transaction)

5 (Date)

6 YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR  
7 OBLIGATION, AT ANY TIME BEFORE THE DISTRESSED PROPERTY  
8 CONSULTANT HAS FULLY PERFORMED EACH AND EVERY SERVICE THE  
9 DISTRESSED PROPERTY CONSULTANT CONTRACTED TO PERFORM OR  
10 REPRESENTED WOULD BE PERFORMED.

11  
12 TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND  
13 DATED COPY OF THIS CANCELLATION NOTICE, OR ANY OTHER  
14 WRITTEN NOTICE TO (Name of distress property consultant)  
15 Address of distressed property consultant's place of  
16 business.

17  
18 I HEREBY CANCEL THIS TRANSACTION.

19 \_\_\_\_\_  
20 (Date)

1 (Owner's signature)

2 (f) The distressed property consultant shall provide all  
3 distressed property owners with a copy of a distressed property  
4 consultant contract and the attached notice of cancellation  
5 immediately upon execution of the contract.

6 **§ -4 Cancellation of distressed property consultant**

7 **contract.** (a) In addition to any other legal right to rescind  
8 a contract, an owner has the right to cancel a distressed  
9 property consultant contract at any time before the distressed  
10 property consultant has fully performed each and every service  
11 the distressed property consultant contracted to perform or  
12 represented would be performed.

13 (b) Cancellation occurs when any owner of the distressed  
14 property delivers, by any means, written notice of cancellation  
15 to the address specified in the distressed property consultant  
16 contract.

17 (c) Notice of cancellation, if given by mail, is effective  
18 when deposited in the mail with postage prepaid. Notice by  
19 certified mail, return receipt requested, addressed to the  
20 address specified in the distressed property consultant  
21 contract, shall be conclusive proof of notice of cancellation.

1 (d) Notice of cancellation given by any owner of the  
2 distressed property need not take the particular form as  
3 provided with the distressed property consultant contract and,  
4 however expressed, is effective if it indicates the intention of  
5 an owner not to be bound by the contract.

6 **§ -5 Distressed property conveyance contract.** (a) A  
7 distressed property conveyance contract shall be in writing and  
8 shall fully disclose all rights and obligations of the  
9 distressed property purchaser and all owners of the distressed  
10 property and the exact terms of the agreement between the  
11 distressed property purchaser and all owners of the distressed  
12 property.

13 (b) Every distressed property conveyance contract shall  
14 specifically include the following terms:

15 (1) The total consideration to be given by the distressed  
16 property purchaser or tax lien payor in connection  
17 with or incident to the sale;

18 (2) A complete description of the terms of payment or  
19 other consideration including, but not limited to, any  
20 services of any nature that the distressed property  
21 purchaser represents will be performed for the owner  
22 of the distressed property before or after the sale;

- 1 (3) A complete description of the terms of any related
- 2 agreement designed to allow the owner of the
- 3 distressed property to remain in the home such as a
- 4 rental agreement, repurchase agreement, contract for
- 5 deed, or lease with option to buy;
- 6 (4) A notice of cancellation as provided in this chapter;
- 7 (5) The following notice in a type size no smaller than
- 8 fourteen-point boldface type, if the contract is
- 9 printed, or in capital letters, if the contract is
- 10 typed, and completed with the name of the distressed
- 11 property purchaser, immediately above the statement
- 12 required this chapter:

13 **"NOTICE REQUIRED BY HAWAII LAW**

14

15 UNTIL YOUR RIGHT TO CANCEL THIS CONTRACT HAS ENDED, (Name

16 of distressed property purchaser) OR ANYONE WORKING FOR

17 (Name of distressed property purchaser) CANNOT ASK YOU TO

18 SIGN OR HAVE YOU SIGN ANY DEED OR ANY OTHER DOCUMENT. YOU

19 ARE URGED TO HAVE THIS CONTRACT REVIEWED BY AN ATTORNEY OF

20 YOUR CHOICE WITHIN FIVE BUSINESS DAYS OF SIGNING IT;"

21

22 and

1           (6) If title to the distressed property will be  
2           transferred in the conveyance transaction, the  
3           following notice in a type size no smaller than  
4           fourteen-point boldface type, if the contract is  
5           printed, or in capital letters if the contract is  
6           typed, and completed with the name of the distressed  
7           property purchaser, immediately above the statement  
8           required by this chapter:

9                           **"NOTICE REQUIRED BY HAWAII LAW**

10           AS PART OF THIS TRANSACTION, YOU ARE GIVING UP TITLE TO  
11   YOUR HOME."

12

13           (c) A distressed property conveyance contract shall  
14   contain on its first page in a type size no smaller than  
15   fourteen-point boldface type:

- 16           (1) A description of the distressed property;
- 17           (2) The name, street address, and telephone number of the  
18           distressed property purchaser; and
- 19           (3) The name and address of the distressed property  
20           purchaser to which notice of cancellation is to be  
21           mailed.

1 (d) A distressed property conveyance contract shall be  
2 dated and signed by the distressed property purchaser. If the  
3 distressed property purchaser is a person other than an  
4 individual, the individual executing the distressed property  
5 conveyance contract on behalf of the distressed property  
6 purchaser shall identify the title and office held by the  
7 individual.

8 (e) A distressed property conveyance contract shall be  
9 dated and signed by all owners of the distressed property.

10 (f) The distressed property purchaser shall provide all  
11 distressed property owners with a copy of a distressed property  
12 conveyance contract immediately upon execution of the contract.

13 (g) Pursuant to chapter 501 or 502, the distressed  
14 property purchaser shall record the distressed property  
15 conveyance contract no earlier than five days after its  
16 execution but no later than ten days of its execution, provided  
17 that the contract has not been canceled.

18 **§ -6 Cancellation of a distressed property conveyance**

19 **contract.** (a) In addition to any other right of rescission,  
20 the owner of the distressed property has the right to cancel any  
21 contract with a distressed property purchaser until midnight of  
22 the fifth business day following the day on which the owner of

1 the distressed property signs a contract or until 8:00 a.m. on  
2 the last day of the period during which the owner of the  
3 distressed property has the right to cure the default under  
4 Hawaii law.

5 (b) Cancellation occurs when any owner of the distressed  
6 property delivers, by any means, written notice of cancellation  
7 to the address specified in the distressed property conveyance  
8 contract.

9 (c) Notice of cancellation, if given by mail, is effective  
10 when deposited in the mail with postage prepaid. Notice by  
11 certified mail, return receipt requested, addressed to the  
12 address specified in the distressed property consultant  
13 contract, shall be conclusive proof of notice of cancellation.

14 (d) Notice of cancellation given by any owner of the  
15 distressed property need not take the particular form as  
16 provided with the distressed property conveyance contract and,  
17 however, expressed, is effective if it indicates the intention  
18 of an owner not to be bound by the contract.

19 (e) Within ten days following receipt of a notice of  
20 cancellation given in accordance with this section, the  
21 distressed property purchaser shall return, without condition,

1 any original contract and any other documents signed by the  
2 owner of the distressed property.

3       **§ -7 Notice of right of cancellation of a distressed**  
4 **property conveyance contract.** (a) The contract shall contain  
5 in immediate proximity to the space reserved for the owner of  
6 the distressed property's signature a conspicuous statement in a  
7 type size no smaller than fourteen-point boldface type, if the  
8 contract is printed, or in capital letters, if the contract is  
9 typed, as follows:

10       "YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOUSE,  
11       WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE (Date  
12       and time of day). SEE THE ATTACHED NOTICE OF CANCELLATION  
13       FORM FOR AN EXPLANATION OF THIS RIGHT."

14       The distressed property purchaser shall accurately enter  
15 the date and time of day on which the cancellation right ends.

16       (b) The contract shall be accompanied by a completed form  
17 in duplicate, captioned "NOTICE OF CANCELLATION" in a type size  
18 no smaller than fourteen-point boldface type, if the contract is  
19 printed, or in capital letters, if the contract is typed,  
20 followed by a space in which the distressed property purchaser  
21 shall enter the date on which the owner of the distressed  
22 property executes any contract. This form shall be attached to

1 the contract, shall be easily detachable, and shall contain in a  
2 type size no smaller than fourteen-point boldface type, if the  
3 contract is printed, or in capital letters, if the contract is  
4 typed, the following statement written in the same language as  
5 used in the contract:

6 **NOTICE OF CANCELLATION**

7  
8 (Enter date contract signed)

9 (Date)

10  
11 YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOME,  
12 WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE  
13 (Enter date and time of day). TO CANCEL THIS TRANSACTION,  
14 MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS  
15 CANCELLATION NOTICE TO (Name of distressed property  
16 purchaser) AT (Street address of purchaser's place of  
17 business) NOT LATER THAN (Enter date and time of day).

18  
19 I HEREBY CANCEL THIS TRANSACTION.

20  
21 \_\_\_\_\_  
22 (DATE)

1  
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(Seller's signature)

(c) The distressed property purchaser shall provide all owners of the distressed property with a copy of the contract and the attached notice of cancellation immediately at the time the contract is executed by all parties.

(d) The five business days during which an owner of the distressed property may cancel the contract shall not begin to run until all parties to the contract have executed the contract and the distressed property purchaser has complied with all the requirements of this section.

**§ -8 Distressed property lease.** (a) A distressed property lease shall be in writing and shall fully disclose all rights and obligations of the distressed property lessor and distressed property lessee, the exact terms of the agreement between the distressed property lessor and distressed property lessee, the exact period of time the distressed property lease is to be in effect and the total amount and terms of compensation to be directly or indirectly received by the distressed property lessor.

1           (b) Distressed property lessees shall be afforded all  
2 rights under the landlord-tenant code of the State. No  
3 distressed property lease shall provide a distressed property  
4 lessee with rights less than that provided by the State's  
5 landlord-tenant code as set forth in chapter 521.

6           (c) A distressed property lease shall contain on its first  
7 page in a type size no smaller than fourteen-point boldface  
8 type:

9           (1) A description of the distressed property;

10          (2) The name, street address, and telephone number of the  
11 distressed property lessor; and

12          (3) The name and address of the distressed property lessor  
13 to which lease or rental payments, correspondence or  
14 notices are to be mailed.

15          (d) A distressed property lease shall be dated and signed  
16 by the distressed property lessor. If the distressed property  
17 lessor is a person other than an individual, the individual  
18 executing the distressed property conveyance contract on behalf  
19 of the distressed property purchaser shall identify the title  
20 and office held by the individual.

21          (e) A distressed property lease shall be dated and signed  
22 by all lessees of the distressed property.

1           (f) The distressed property lessor shall provide all  
2 distressed property lessees with a copy of a distressed property  
3 lease immediately upon execution of the contract.

4           **§ -9 Prohibitions.** (a) It is a violation of this  
5 chapter for a distressed property consultant, distressed  
6 property purchaser, or distressed property lessor to:

7           (1) Claim, demand, charge, collect, or receive any  
8                compensation until after the distressed property  
9                consultant has fully performed each service the  
10              distressed property consultant contracted to perform;

11          (2) Claim, demand, charge, collect, or receive any fee,  
12              interest, or any other compensation for any reason  
13              that exceeds two monthly mortgage payments of  
14              principal and interest or the most recent tax  
15              installment on the distressed property, whichever is  
16              less;

17          (3) Take a wage assignment, a lien of any type on real or  
18              personal property, or other security to secure the  
19              payment of compensation. Any such security is void  
20              and unenforceable;

21          (4) Receive any consideration from any third party in  
22              connection with services rendered to an owner unless

1           the consideration is first fully disclosed to the  
2           owner;

3           (5) Acquire any interest, directly or indirectly, or by  
4           means of a subsidiary or affiliate in a distressed  
5           property from an owner with whom the distressed  
6           property consultant has contracted;

7           (6) Take any power of attorney from an owner for any  
8           purpose, except to inspect documents as provided by  
9           law;

10          (7) Induce or attempt to induce a distressed property  
11          owner to waive any of the provisions of this chapter;

12          (8) Induce or attempt to induce a distressed property  
13          owner to waive any of the owner's rights; or

14          (9) Induce or attempt to induce an owner to enter a  
15          contract that does not comply in all respects with  
16          this chapter.

17          (b) A distressed property purchaser, in the course of a  
18          distressed property conveyance, shall not:

19          (1) Enter into, or attempt to enter into, a distressed  
20          property conveyance unless the distressed property  
21          purchaser verifies and can demonstrate that the owner  
22          of the distressed property has a reasonable ability to

1 pay for the subsequent conveyance of an interest back  
2 to the owner of the distressed property and to make  
3 monthly or any other required payments due prior to  
4 that time;

- 5 (2) Fail to make a payment to the owner of the distressed  
6 property at the time the title is conveyed so that the  
7 owner of the distressed property has received  
8 consideration in an amount of at least eighty-two per  
9 cent of the property's fair market value, or, in the  
10 alternative, fail to pay the owner of the distressed  
11 property no more than the costs necessary to  
12 extinguish all of the existing obligations on the  
13 distressed property, as set forth in this chapter,  
14 provided that the owner's costs to repurchase the  
15 distressed property pursuant to the terms of the  
16 distressed property conveyance contract do not exceed  
17 one hundred twenty-five per cent of the distressed  
18 property purchaser's costs to purchase the property.  
19 If an owner is unable to repurchase the property  
20 pursuant to the terms of the distressed property  
21 conveyance contract, the distressed property purchaser  
22 shall not fail to make a payment to the owner of the

1 distressed property so that the owner of the  
2 distressed property has received consideration in an  
3 amount of at least eighty-two per cent of the  
4 property's fair market value at the time of conveyance  
5 or at the expiration of the owner's option to  
6 repurchase;

7 (3) Enter into repurchase or lease terms as part of the  
8 subsequent conveyance that are unfair or commercially  
9 unreasonable, or engage in any other unfair conduct;

10 (4) Represent, directly or indirectly, that the distressed  
11 property purchaser is acting as an advisor or a  
12 consultant, or in any other manner represent that the  
13 distressed property purchaser is acting on behalf of  
14 the homeowner, or the distressed property purchaser is  
15 assisting the owner of the distressed property to  
16 "save the house", "buy time", or do anything couched  
17 in substantially similar language;

18 (5) Misrepresent the distressed property purchaser's  
19 status as to licensure or certification;

20 (6) Do any of the following until after the time during  
21 which the owner of a distressed property may cancel  
22 the transaction:

- 1 (A) Accept from the owner of the distressed property  
2 an execution of any instrument of conveyance of  
3 any interest in the distressed property;
- 4 (B) Induce the owner of the distressed property to  
5 execute an instrument of conveyance of any  
6 interest in the distressed property; or
- 7 (C) Pursuant to chapter 501 or 502, record any  
8 document signed by the owner of the distressed  
9 property, including but not limited to any  
10 instrument of conveyance;
- 11 (7) Fail to reconvey title to the distressed property when  
12 the terms of the conveyance contract have been  
13 fulfilled;
- 14 (8) Induce the owner of the distressed property to execute  
15 a quit claim deed when entering into a distressed  
16 property conveyance;
- 17 (9) Enter into a distressed property conveyance where any  
18 party to the transaction is represented by power of  
19 attorney;
- 20 (10) Fail to extinguish all liens encumbering the  
21 distressed property, immediately following the  
22 conveyance of the distressed property, or fail to

1           assume all liability with respect to the lien in  
2           foreclosure and prior liens that will not be  
3           extinguished by such foreclosure, which assumption  
4           shall be accomplished without violations of the terms  
5           and conditions of the lien being assumed. Nothing  
6           herein shall preclude a lender from enforcing any  
7           provision in a contract that is not otherwise  
8           prohibited by law;

9       (11) Fail to complete a distressed property conveyance  
10       through:

11           (A) An escrow depository licensed by the department  
12           of commerce and consumer affairs;

13           (B) A bank, trust company, or savings and loan  
14           association authorized under any law of this  
15           State or of the United States to do business in  
16           the State;

17           (C) A person licensed as a real estate broker in the  
18           State who is the broker for a party to the  
19           escrow, provided the person does not charge any  
20           escrow fee; or

21           (D) A person licensed to practice law in the State  
22           who, in escrow, is not acting as the employee of

1                   a corporation, provided the person does not  
2                   charge any escrow fee.

3       (12) Cause the property to be conveyed or encumbered  
4           without the knowledge or permission of the distressed  
5           property owner, or in any way frustrate the ability of  
6           the distressed property owner to complete the  
7           conveyance back to the distressed property owner; or

8       (13) To make any promises or guarantees that are not  
9           included in a distressed property consultation  
10          contract, distressed property purchaser contract, or  
11          distressed property lease.

12       (c) There is a rebuttable presumption that an appraisal by  
13       a person licensed or certified by the State or the federal  
14       government is an accurate determination of the fair market value  
15       of the property.

16       (d) An evaluation of "reasonable ability to pay" under  
17       this chapter shall include debt to income ratio, fair market  
18       value of the distressed property, and the distressed property  
19       owner's payment history.

20       **§ -10 Violation, penalties.** Any person who violates  
21       any provision of this chapter shall be deemed to have engaged in

H.B. NO. 1332

1 an unfair or deceptive act or practice in the conduct of trade  
2 or commerce within the meaning of section 480-2."

3 SECTION 3. This Act shall take effect upon its approval.

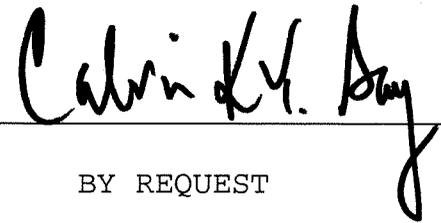
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INTRODUCED BY:



BY REQUEST

JAN 22 2007

JUSTIFICATION SHEET

Hb 1332

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO THE PREVENTION OF MORTGAGE RESCUE FRAUD.

PURPOSE: Create a new chapter in the Hawaii Revised Statutes designed to protect Hawaii consumers from distressed property consultants who offer help to homeowners in distress by negotiating with the homeowners' creditors. This bill will force the consultants to provide homeowners with a written contract spelling out the services and give them the right to cancel at any time before the services are actually performed.

MEANS: Add a new chapter to title 26 of the Hawaii Revised Statutes.

JUSTIFICATION: This bill seeks to protect Hawaii consumers from scammers who prey on homeowners facing foreclosure. These so-called mortgage rescuers offer phantom help to homeowners, taking a fee of a few thousand dollars for supposedly negotiating with the homeowners' creditors. After collecting the money, many do little or no work and essentially abandon the homeowners. In the most insidious cases, the consultant will persuade families to deed their house to investors for a year. The homeowners supposedly can use that time to clear up their credit and refinance the property, then take back title free and clear. In many cases the homeowners wind up becoming tenants and then being evicted. The Mortgage Rescue Fraud Prevention Act addresses both forms of trickery by forcing the consultants to provide homeowners with a written contract spelling out the services and by giving the homeowners the right to cancel at any time before the services are actually performed.

The bill further limits the amount a mortgage rescuer can make if the homeowner is successful in buying back the home to one hundred twenty-five percent of the total debt on the home paid by the rescuer and requires that the mortgage rescuer provide the homeowner with at least eighty-two percent of the value of their home if the homeowner is eventually unable to buy back the home from the mortgage rescuer. These percentages are based on similar statutes enacted in other states.

Impact on the public: This measure will protect homeowners from scammers who seek to take advantage of desperate homeowners trying to save their property from foreclosure.

Impact on the department and other agencies: This bill will assist the department and law enforcement in prosecuting scammers who fraudulently take advantage of homeowners.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: CCA-110.

OTHER AFFECTED  
AGENCIES: Federal Trade Commission

EFFECTIVE DATE: Upon approval.