

IAN 2 2 2009

A BILL FOR AN ACT

RELATING TO THE MORTGAGE RESCUE FRAUD PREVENTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 467-14, Hawaii Revised Statutes, is amended to read as follows:

"§467-14 Revocation, suspension, and fine. In addition to any other actions authorized by law, the commission may revoke any license issued under this chapter, suspend the right of the licensee to use the license, fine any person holding a license, registration, or certificate issued under this chapter, or terminate any registration or certificate issued under this chapter, for any cause authorized by law, including but not limited to the following:

(1) Making any misrepresentation concerning any real estate transaction;

(2) Making any false promises concerning any real estate transaction of a character likely to mislead another;

(3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;



1 (4) Without first having obtained the written consent to
2 do so of both parties involved in any real estate
3 transaction, acting for both the parties in connection
4 with the transaction, or collecting or attempting to
5 collect commissions or other compensation for the
6 licensee's services from both of the parties;

7 (5) When the licensee, being a real estate salesperson,
8 accepts any commission or other compensation for the
9 performance of any of the acts enumerated in the
10 definition set forth in section 467-1 of real estate
11 salesperson from any person other than the real estate
12 salesperson's employer or the real estate broker with
13 whom the real estate salesperson associates or, being
14 a real estate broker or salesperson, compensates one
15 not licensed under this chapter to perform any such
16 act;

17 (6) When the licensee, being a real estate salesperson,
18 acts or attempts to act as a real estate broker or
19 represents, or attempts to represent, any real estate
20 broker other than the real estate salesperson's
21 employer or the real estate broker with whom the real
22 estate salesperson is associated;



- 1 (7) Failing, within a reasonable time, to account for any
2 moneys belonging to others [~~which~~] that may be in the
3 possession or under the control of the licensee;
- 4 (8) Any other conduct constituting fraudulent or dishonest
5 dealings;
- 6 (9) When the licensee, being a partnership, permits any
7 member of the partnership who does not hold a real
8 estate broker's license to actively participate in the
9 real estate brokerage business thereof or permits any
10 employee thereof who does not hold a real estate
11 salesperson's license to act as a real estate
12 salesperson [~~therefore,~~] therefor;
- 13 (10) When the licensee, being a corporation, permits any
14 officer or employee of the corporation who does not
15 hold a real estate broker's license to have the direct
16 management of the real estate brokerage business
17 thereof or permits any officer or employee thereof who
18 does not hold a real estate salesperson's license to
19 act as a real estate salesperson [~~therefore,~~]
20 therefor;
- 21 (11) When the licensee, being a real estate salesperson,
22 fails to file with the commission a written statement



1 setting forth the name of the real estate broker by
2 whom the licensee is employed or with whom the
3 licensee is associated;

4 (12) When the licensee fails to obtain on the contract
5 between the parties to the real estate transaction
6 confirmation of who the real estate broker represents;

7 (13) Violating this chapter; chapter 484, 514A, 514B, 514E,
8 or 515; section 516-71; or the rules adopted pursuant
9 thereto;

10 (14) Splitting fees with or otherwise compensating others
11 not licensed hereunder for referring business;
12 provided that notwithstanding paragraph (5), a real
13 estate broker may pay a commission to:

14 (A) A licensed real estate broker of another state,
15 territory, or possession of the United States if
16 that real estate broker does not conduct in this
17 State any of the negotiations for which a
18 commission is paid;

19 (B) A real estate broker lawfully engaged in real
20 estate brokerage activity under the laws of a
21 foreign country if that real estate broker does



1 not conduct in this State any of the negotiations
2 for which a commission is paid; or

3 (C) A travel agency that in the course of business as
4 a travel agency or sales representative, arranges
5 for compensation the rental of a transient
6 vacation rental; provided that for purposes of
7 this paragraph "travel agency" means any person[~~7~~
8 ~~which~~] that, for compensation or other
9 consideration, acts or attempts to act as an
10 intermediary between a person seeking to purchase
11 travel services and any person seeking to sell
12 travel services, including an air or ocean
13 carrier;

14 (15) Commingling the money or other property of the
15 licensee's principal with the licensee's own;

16 (16) Converting other people's moneys to the licensee's own
17 use;

18 (17) The licensee is adjudicated insane or incompetent;

19 (18) Failing to ascertain and disclose all material facts
20 concerning every property for which the licensee
21 accepts the agency, so that the licensee may fulfill
22 the licensee's obligation to avoid error,



1 misrepresentation, or concealment of material facts;
2 provided that for the purposes of this paragraph, the
3 fact that an occupant has AIDS or AIDS Related Complex
4 (ARC) or has been tested for HIV (human
5 immunodeficiency virus) infection shall not be
6 considered a material fact;

7 (19) When the licensee obtains or causes to be obtained,
8 directly or indirectly, any licensing examination or
9 licensing examination question for the purpose of
10 disseminating the information to future takers of the
11 examination for the benefit or gain of the licensee;
12 [~~or~~]

13 (20) Failure to maintain a reputation for or record of
14 competency, honesty, truthfulness, financial
15 integrity, and fair dealing[~~-~~]; or

16 (22) Acquiring an ownership interest, directly or
17 indirectly, or by means of a subsidiary or affiliate,
18 in any distressed property that is listed with the
19 licensee or within three hundred sixty-five days after
20 the licensee's listing agreement for the distressed
21 property is terminated.



1 As used in this section, "distressed property" has the same
2 meaning as set forth in section 480E-2.

3 Disciplinary action may be taken by the commission whether
4 the licensee is acting as a real estate broker, or real estate
5 salesperson, or on the licensee's own behalf."

6 SECTION 2. Section 480E-2, Hawaii Revised Statutes, is
7 amended by amending the definition of "distressed property
8 consultant" to read as follows:

9 "Distressed property consultant" means any person who
10 performs or makes any solicitation, representation, or offer to
11 perform any of the following relating to a distressed property:

12 (1) Stop or postpone the foreclosure sale or loss of any
13 distressed property due to the nonpayment of any loan
14 that is secured by the distressed property;

15 (2) Stop or postpone the charging of any lien or
16 encumbrance against any distressed property or
17 eliminate any lien or encumbrance charged against any
18 distressed property for the nonpayment of any taxes,
19 lease assessments, association fees, or maintenance
20 fees;



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



1 "Distressed property consultant" shall not include any of
2 the following:

3 (1) A person or the person's authorized agent acting under
4 the express authority or written approval of the
5 federal Department of Housing and Urban Development;

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

13 (3) Banks, savings banks, savings and loan associations,
14 credit unions, trust companies, depository and
15 nondepository financial service loan companies, and
16 insurance companies organized, chartered, or holding a
17 certificate of authority to do business under the laws
18 of this State or any other state, or under the laws of
19 the United States;

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

21 (5) A federal Department of Housing and Urban Development
22 approved mortgagee and any subsidiary or affiliate of



these persons or entities, and any agent or employee
of these persons or entities, while engaged in the
business of these persons or entities; [~~or~~]

(6) A nonprofit organization that, pursuant to chapter
446, offers counseling or advice to an owner of a
distressed property, if the nonprofit organization has
no contract or agreement for services with lenders,
distressed property purchasers, or any person who
effects loans or distressed property purchases[~~-~~]; or

(7) A person licensed as a real estate broker or real
estate salesperson in Hawaii when acting in the
capacity of a real estate broker or real estate
salesperson."

SECTION 3. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY:

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Report Title:

Mortgage Rescue Fraud Prevention Act; Real Estate Licensees

Description:

Excludes licensed real estate brokers and salespersons from the definition of distressed property consultants in the Mortgage Foreclosure Rescue Fraud Prevention Act. Prohibits certain conduct relating to the acquisition of an ownership interest in distressed property by licensed real estate brokers and salespersons.

