

S.B. NO. 2825

JAN 23 2014

A BILL FOR AN ACT

RELATING TO MORTGAGE RESCUE FRAUD.

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

1 SECTION 1. Section 480E-2, Hawaii Revised Statutes, is
2 amended by amending the definition of "distressed property
3 consultant" to read as follows:

4 "Distressed property consultant" means any person who
5 performs or provides, or attempts to perform or provide, or who
6 arranges for others to perform or provide, or who assists others
7 to perform or provide, or who makes any solicitation,
8 representation, or offer to perform or provide, any of the
9 following relating to a distressed property:

- 10 (1) Stop or postpone the foreclosure sale or loss of any
11 distressed property due to the nonpayment of any loan
12 that is secured by the distressed property;
- 13 (2) Stop or postpone the charging of any lien or
14 encumbrance against any distressed property or
15 eliminate any lien or encumbrance charged against any
16 distressed property for the nonpayment of any taxes,
17 lease assessments, association fees, or maintenance
18 fees;

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

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

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

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- 1 (2) A person who holds or is owed an obligation secured by
2 a lien on any distressed property, or a person acting
3 under the express authorization or written approval of
4 such person, when the person performs services in
5 connection with the obligation or lien, if the
6 obligation or lien did not arise as the result of or
7 as part of a proposed distressed property conveyance;
- 8 (3) Banks, savings banks, savings and loan associations,
9 credit unions, trust companies, depository and
10 nondepository financial service loan companies, and
11 insurance companies organized, chartered, or holding a
12 certificate of authority to do business under the laws
13 of this State or any other state, or under the laws of
14 the United States;
- 15 (4) [~~Licensed attorneys~~] Attorneys licensed in the State
16 of Hawaii engaged in the practice of law;
- 17 (5) Certified public accountants licensed under chapter
18 466, persons holding a permit to practice public
19 accountancy in the State of Hawaii, and persons
20 holding a valid certified public accountant license
21 issued under the laws of another state or territory
22 who are lawfully practicing in the State of Hawaii
23 with a temporary permit to practice pursuant to rules
24 established by the board of public accountancy and who
25 are subject to regulation by the board of public

(6) A federal Department of Housing and Urban Development 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;

(7) 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

[4] (8) [4] A person currently licensed as an active real estate broker or real estate salesperson in Hawaii pursuant to chapter 467, when acting in the capacity of a real estate broker or real estate salesperson in accordance with customary industry standards."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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

INTRODUCED BY:

James Wendell Ke

BY REQUEST

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Report Title:

Mortgage Rescue Fraud Prevention; Distressed Property
Consultant; Attorney Exception

Description:

Clarifies definition of "distressed property consultant" and specifies that attorneys must be licensed by, and engaged in the practice of law in, the State of Hawaii in order to fall within the class of exceptions to the definition of "distressed property consultant".

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

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JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

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

PURPOSE: To expand the definition of "distressed property consultant" so as to include those persons who represent or assist persons who provide distressed property consultant services for an advance fee, and to clarify that attorneys who are exempt from being defined as "distressed property consultants" must be licensed to practice law in the State of Hawaii and actually engaged in the practice of law.

MEANS: Amend section 480E-2, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Persons who have provided services to distressed property owners are claiming that they are not "distressed property consultants" or fall under the attorney exemption because they performed services in association with an out-of-state attorney. These same persons representing distressed property consultants, or providing distressed property consultant services, have associated themselves with attorneys licensed in states other than the State of Hawaii for the purposes of evading compliance with chapter 480E, HRS, by claiming that the out-of-state attorney is exempt under the current definition of "distressed property consultant".

Impact on the public: Enhances protections afforded to the public against mortgage rescue fraud.

Impact on the department and other agencies: By clarifying the definition of "distressed

property consultant" and the attorney exemption, the Attorney General and the Office of Consumer Protection will be able to prosecute chapter 480E, HRS, violations more quickly and obtain judgments with less expenditure of resources.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	CCA 110
OTHER AFFECTED AGENCIES:	Department of the Attorney General
EFFECTIVE DATE:	Upon approval.