

JAN 27 2016

A BILL FOR AN ACT

RELATING TO MORTGAGE RESCUE FRAUD.

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

1 SECTION 1. Chapter 480E, Hawaii Revised Statutes, is
2 amended by adding three new sections to be appropriately
3 designated and to read as follows:

4 "§480E-A Recordkeeping and compliance requirements. (a)
5 Any distressed property consultant shall keep, for a period of
6 twenty-four months from the date the record is created, the
7 following records:

- 8 (1) All contracts or other agreements between the
9 distressed property consultant and any consumer for
10 any mortgage assistance relief service;
- 11 (2) Copies of all written communications between the
12 distressed property consultant and the distressed
13 property owner or owners occurring prior to the date
14 on which the property owner or owners entered into an
15 agreement with the distressed property consultant for
16 any mortgage assistance relief service;

(3) Copies of all documents or telephone recordings created in connection with compliance with subsection (b) ;

(4) All files containing the distressed property owner's names and phone numbers, dollar amounts paid, and descriptions of mortgage assistance relief services purchased, to the extent the distressed property consultant keeps such information in the ordinary course of business;

(5) Copies of all materially different sales scripts, training materials, commercial communications, or other marketing materials, including web sites and weblogs, for any mortgage assistance relief service; and

(6) Copies of the documentation provided to the consumer as specified in section 480E-3.

(b) A distressed property consultant shall also:

(1) Take reasonable steps sufficient to monitor and ensure that all employees and independent contractors comply with this chapter. Such steps shall include the monitoring of communications directed at specific

1 consumers, and shall also include, at a minimum, the
2 following:

3 (A) If the distressed property consultant is engaged
4 in the telemarketing of mortgage assistance
5 relief services, performing random, blind
6 recording and testing of the oral representations
7 made by individuals engaged in sales or other
8 customer service functions;

9 (B) Establishing a procedure for receiving and
10 responding to any and all complaints regarding or
11 relating to the distressed property consultant or
12 mortgage assistance relief service, or both; and

13 (C) Ascertaining the number and nature of any
14 complaints regarding transactions in which any
15 employee or independent contractor, or both, is
16 involved;

17 (2) Investigate promptly and fully each consumer complaint
18 received;

19 (3) Take corrective action with respect to any employee or
20 independent contractor whom the distressed property
21 consultant determines is not complying with this

chapter, which action may include training,
disciplining, or terminating the individual; and

(4) Maintain any information and material necessary to
demonstrate its compliance with this subsection.

(c) A distressed property consultant may keep the records
required by this section in any form, and in the same manner,
format, or place as it keeps such records in the ordinary course
of business.

§480E-B Enforcement authority. The attorney general or
the director of the office of consumer protection are authorized
to investigate reported or suspected violations of the federal
mortgage assistance relief services rules, set forth in 12
C.F.R. part 1015, and to enforce such rules by bringing civil
actions or proceedings.

§480E-C Requirements for attorneys licensed in Hawaii. An
attorney licensed in the State of Hawaii engaged in the practice
of law who performs or provides, or attempts to perform or
provide, or who arranges for others to perform or provide, or
who assists others to perform or provide, or who makes any
solicitation, representation, or offer to perform or provide,
any mortgage assistance relief service shall:

- 1 (1) Execute a written contract that identifies each
2 mortgage assistance relief service to be provided;
3 (2) Maintain a client trust account that complies with all
4 applicable state laws and rules;
5 (3) Deposit into the attorney's client trust account all
6 monies received by on or behalf of the consumer to be
7 provided with any mortgage assistance relief service;
8 and
9 (4) Keep and maintain all moneys received in deposit in
10 the client trust account until such time as the
11 attorney has fully performed each service the attorney
12 contracted to perform or represented would be
13 performed."

14 SECTION 2. Section 480E-1, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[+] §480E-1[+] **Purpose.** The purpose of this chapter is to
17 protect Hawaii consumers from persons who prey on [~~homeowners~~
18 ~~who face property foreclosures, liens, or encumbrances.~~] them by
19 offering services that purport to provide relief from their
20 mortgage loan obligations or from other filed or threatened
21 liens or encumbrances against their properties. Consumers who
22 face foreclosures, liens, or encumbrances are often in desperate

1 financial situations that can have severe adverse consequences
2 for individuals and families even if the consumers have
3 significant equity in their residential real property. The
4 consumers' desperation makes them vulnerable to persons who
5 claim they can stop, prevent, or delay foreclosures, liens, or
6 encumbrances[-], or claim they can reduce, modify, or eliminate
7 mortgage loan obligations or other filed or threatened liens or
8 encumbrances. Persons who make these claims often use the
9 consumers' desperation to foster unequal bargaining positions
10 and withhold or misrepresent vital information and details. As
11 a result, consumers may be convinced to give up their real
12 property interests and valuable equity to these persons while
13 receiving little in return. Requiring full and complete
14 disclosure of vital information will better enable consumers to
15 make informed decisions when dealing with persons claiming to be
16 able to stop foreclosures, liens, or encumbrances. This
17 [+]chapter[+] addresses possible misrepresentations by
18 compelling persons who offer assistance to fully and completely
19 describe their services in written contracts and gives [the
20 ~~homeowners~~] consumers the right to cancel at any time before a
21 distressed property consultant has performed all services called
22 for in a contract."

SECTION 3. Section 480E-2, Hawaii Revised Statutes, is amended to read as follows:

"§480E-2 Definitions. As used in this chapter, unless the context otherwise requires:

"Consideration" means any payment or thing of value provided to an owner of a distressed property, including reasonable costs paid to independent third parties necessary to complete the distressed property conveyance or payment of money to satisfy a debt or legal obligation of an owner of the distressed property. "Consideration" shall not include any amounts paid or to be paid directly or indirectly to the distressed property purchaser, including amounts identified as "gift equity", "fees", "escrow", or "down payment".

"Distressed property" means any residential real property that:

- (1) Is in foreclosure or at risk of foreclosure because payment of any loan that is secured by the residential real property is more than sixty days delinquent;
- (2) Had a lien or encumbrance charged against it because of nonpayment of any taxes, lease assessments, association fees, or maintenance fees;

(3) Is at risk of having a lien or encumbrance charged against it because the payments of any taxes, lease assessments, association fees, or maintenance fees are more than ninety days delinquent;

(4) Secures a loan for which a notice of default has been given; [or]

(5) Secures a loan that has been accelerated[-]; or

(6) Is the subject of any solicitation, representation, offer, agreement, promise, or contract to perform any mortgage assistance relief service.

"Distressed property consultant" means any person who performs or provides, or attempts to perform or provide, or who arranges for others to perform or provide, or who assists others to perform or provide, or who makes any solicitation, representation, or offer to perform or provide, any ~~of the following relating to a distressed property:-~~ mortgage assistance relief service.

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

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

~~eliminate any lien or encumbrance charged against any distressed property for the nonpayment of any taxes, lease assessments, association fees, or maintenance fees;~~

~~(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~~

1 ~~notice of default or the conduct of a foreclosure sale~~
2 ~~or tax sale; or~~
3 ~~(9) Save the owner's residence from foreclosure or loss of~~
4 ~~home due to nonpayment of taxes.]~~

5 "Distressed property consultant" shall 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 federal 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) Attorneys licensed in the State of Hawaii engaged in
4 the practice of law;

5 (5) Certified public accountants licensed under chapter
6 466, persons holding a permit to practice public
7 accountancy in the State of Hawaii, and persons
8 holding a valid certified public accountant license
9 issued under the laws of another state or territory
10 who are lawfully practicing in the State of Hawaii
11 with a temporary permit to practice pursuant to rules
12 established by the board of public accountancy and who
13 are subject to regulation by the board of public
14 accountancy while engaged in the practice of public
15 accountancy;

16 (6) A federal Department of Housing and Urban Development
17 approved mortgagee and any subsidiary or affiliate of
18 these persons or entities, and any agent or employee
19 of these persons or entities, while engaged in the
20 business of these persons or entities;

21 (7) A nonprofit organization that, pursuant to chapter
22 446, offers counseling or advice to an owner of a

1 distressed property, if the nonprofit organization has
2 no contract or agreement for services with lenders,
3 distressed property purchasers, or any person who
4 effects loans or distressed property purchases; or

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

10 "Distressed property consultant contract" means any
11 agreement or obligation between an owner or agent of an owner of
12 a distressed property and a distressed property consultant.

13 "Distressed property conveyance" means the transfer of any
14 interest in a distressed property effected directly or
15 indirectly by or through a distressed property consultant.

16 "Distressed property conveyance contract" means any
17 agreement or obligation affecting a distressed property
18 conveyance.

19 "Distressed property lease" means any agreement or
20 obligation regarding the lease or rental of a distressed
21 property effected directly or indirectly by or through a
22 distressed property consultant or distressed property purchaser.

1 "Distressed property owner" and "property owner" mean the
2 owner of any distressed property.

3 "Distressed property purchaser" means any person who
4 acquires any interest in a distressed property directly or
5 indirectly through a distressed property conveyance or
6 distressed property conveyance contract.

7 "Fully performed" means:

8 (1) In the case of relief requiring the consent of any
9 lending party, the distressed property consultant or
10 attorney has both:

11 (A) Carried out and provided all of the services the
12 distressed property consultant or attorney
13 contracted to perform or represented would be
14 performed; and

15 (B) Obtained from the lending party a written offer
16 for mortgage assistance relief that the consumer
17 has accepted by executing the written contract.

18 (2) In the case of relief requiring the consent of any
19 non-lending party, including any person that may hold
20 a lien or encumbrance against any residential real
21 property, the distressed property consultant or
22 attorney has both:

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1 (A) Carried out and provided all of the services the
2 distressed property consultant or attorney
3 contracted to perform or represented would be
4 performed; and

5 (B) Obtained from the non-lending party a written
6 offer for mortgage assistance relief that the
7 consumer has accepted by executing the written
8 contract.

9 (3) In all other cases, being instances where consent is
10 not obtained as the result of a mortgage relief
11 service, the property owner obtains the desired relief
12 from a court of law which includes a favorable
13 determination that the mortgage assistance relief
14 service conferred a benefit upon the property owner
15 and is therefore compensable.

16 "Lending party" means the person from whom mortgage
17 assistance relief is sought, and includes the residential loan
18 holder or servicer.

19 "Material" means likely to affect a consumer's choice of,
20 or conduct regarding, any mortgage assistance relief service.

1 ~~["Material fact" means a fact that, if disclosed, might~~
2 ~~have influenced the distressed property owner to not enter into~~
3 ~~the agreement or obligation.]~~

4 "Mortgage assistance relief service" means any service,
5 plan, or program, offered or provided to the consumer in
6 exchange for consideration, that is represented, expressly or by
7 implication, to assist or attempt to assist the consumer with
8 any of the following:

9 (1) Stopping, preventing, or postponing the loss of any
10 residential real property, whether by mortgage or deed
11 or trust foreclosure sale or repossession, or
12 otherwise saving any consumer's residential real
13 property from foreclosure or repossession;

14 (2) Stopping, preventing, or postponing the charging of
15 any lien or encumbrance against any residential real
16 property or reducing or eliminating any lien or
17 encumbrance charged against any residential real
18 property for the nonpayment of any taxes, lease
19 assessments, association fees, or maintenance fees;

20 (3) Saving the owner's property from foreclosure or loss
21 of home due to nonpayment of taxes;

1 (4) Negotiating, obtaining, or arranging any modification
2 of any term of a residential loan, including a
3 reduction in the amount of interest, principal
4 balance, monthly payments, or fees;

5 (5) Negotiating, obtaining, or arranging any extension of
6 the period of time within which the consumer may:

7 (A) Cure the default on a residential loan;

8 (B) Reinstate the residential loan;

9 (C) Redeem any residential real property; or

10 (D) Exercise any right to reinstate a residential
11 loan or redeem a residential real property;

12 (6) Negotiating, obtaining, or arranging, with respect to
13 any residential real property:

14 (A) A short sale;

15 (B) A deed-in-lieu of foreclosure; or

16 (C) Any other disposition of the property other than
17 a sale to a third party who is not the
18 residential loan holder;

19 (7) Obtaining any forbearance or modification in the
20 timing of payments from any residential loan holder or
21 servicer;

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1 (8) Obtaining any forbearance from any beneficiary or
2 mortgagee, or any relief with respect to a tax sale of
3 any residential real property;

4 (9) Obtaining any waiver of an acceleration clause or
5 balloon payment contained in any promissory note or
6 other contract secured by a mortgage on any
7 residential real property or contained in the
8 mortgage;

9 (10) Obtaining any extension of the period within which the
10 owner may reinstate the owner's rights with respect to
11 the owner's property;

12 (11) Obtaining a loan or advance of funds while the
13 consumer is in foreclosure or at risk of foreclosure
14 due to nonpayment of any obligation related to a
15 residential real property, including but not limited
16 to one or more loans, taxes, lease assessments,
17 association fees, or maintenance fees;

18 (12) Obtaining a loan or advance of funds during any post-
19 tax sale redemption period;

20 (13) Considering or deciding whether a consumer should
21 continue making payments on any loan, taxes, lease
22 assessments, association fees, or maintenance fees or

1 any other obligation related to a residential real
2 property;

3 (14) Exercising any cure of default;

4 (15) Avoiding or ameliorating the impairment of the
5 property owner's credit resulting from the recording
6 or filing of a notice of default or the conduct of a
7 foreclosure sale or tax sale;

8 (16) Drafting, preparing, performing, creating, or
9 otherwise obtaining a forensic loan audit, a forensic
10 securitization audit, or any other type of audit,
11 report, summary, affidavit, or declaration involving
12 an opinion, determination, or analysis of whether a
13 lending party has an enforceable mortgage or lien,
14 predicated upon claims that a lending party that is a
15 party to a pooling and service agreement failed to
16 adhere to the terms of that agreement, or that errors
17 occurred after the signing of the mortgage loan, or
18 disputing whether the lending party is the holder of
19 the promissory note, or any argument that the lending
20 party has failed to comply with federal or state
21 mortgage lending laws;

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1 (17) Drafting, preparing, performing, creating, or
2 otherwise obtaining any documentation used or intended
3 to be used to advance any legal theory in defense of a
4 foreclosure or ejectment action, regardless of any
5 disclaimer as to providing legal advice; or

6 (18) Understanding any legal theory which may be used in
7 defense of a foreclosure or ejectment action,
8 regardless of any disclaimer as to providing legal
9 advice.

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

13 "Residential loan" means any loan that is secured by a
14 mortgage against residential real property, regardless of
15 whether the property owner lacks sufficient equity in the
16 property so as to render the loan partially or entirely
17 unsecured.

18 "Residential loan holder" means any person who holds the
19 residential loan that is the subject of the offer to provide
20 mortgage assistance relief services.

21 "Residential real property" means any fee simple or
22 leasehold real property wherever located, the primary use of

1 which is occupancy as a residence by any natural person or
2 persons, regardless of whether the property owner resides on the
3 property.

4 "Servicer" means the person responsible for:

5 (1) Receiving any scheduled periodic payments pursuant to
6 the terms of the residential loan that is the subject
7 of the offer to provide mortgage assistance relief
8 services; and

9 (2) Making the payments of principal and interest and such
10 other payments with respect to the amounts received
11 from the consumer as may be required pursuant to the
12 terms of the mortgage servicing loan documents or
13 servicing contract."

14 SECTION 4. Section 480E-2.5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[+] §480E-2.5[+] Mortgage rescue fraud; consumer
17 education. The office of consumer protection shall educate
18 consumers about [~~fraudulent activities~~] abusive practices that
19 may be committed against homeowners who may be offered mortgage
20 assistance relief services, or who face property foreclosures,
21 liens, or encumbrances, as appropriate."

SECTION 5. Section 480E-3, Hawaii Revised Statutes, is amended to read as follows:

"[f] §480E-3 [f] Distressed property consultant contract. (a) A distressed property consultant contract shall be in writing and shall fully disclose all services to be performed by the distressed property consultant and all terms of any agreements between the distressed property consultant and all owners of the distressed property, including the total amount and terms of compensation to be directly or indirectly received by the distressed property consultant.

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

- (1) A description of the distressed property;
- (2) The name, street address, and telephone number of the distressed property consultant; and
- (3) The name and address of the distressed property consultant to which notice of cancellation is to be delivered.

(c) A distressed property consultant contract shall be dated and signed by the distressed property consultant. If the distressed property consultant is a person other than an

1 individual, the individual executing the distressed property
2 consultant contract on behalf of the distressed property
3 consultant shall identify the title and office held by the
4 individual.

5 (d) A distressed property consultant contract shall be
6 dated and signed by all owners of the distressed property.

7 (e) A distressed property consultant contract shall
8 disclose the following information, and shall be substantially
9 in the following form and printed in not less than fourteen
10 point type:

11 "You may stop doing business with us at any time. You may
12 accept or reject the offer of mortgage assistance we obtain
13 from your lender (or servicer). If you reject the offer,
14 you do not have to pay us. If you accept the offer, you
15 will have to pay us [insert amount or method of calculating
16 the amount] for our services.

17 [Name of the company] is not associated with the
18 government, and our service is not approved by the
19 government or your lender.

20 Even if you agree to use our service in an attempt to
21 obtain mortgage assistance relief from the lending party,
22 your lender may not agree to change your loan.

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1 IF YOU STOP PAYING YOUR MORTGAGE, YOU COULD LOSE YOUR HOME
2 AND DAMAGE YOUR CREDIT RATING."

3 For the purposes of this subsection the amount "you will have to
4 pay" shall consist of the total amount the consumer must pay to
5 purchase, receive, and use all of the mortgage assistance relief
6 services that are the subject of the sales offer, including, but
7 not limited to, all fees and charges.

8 ~~[(e)]~~ (f) The distressed property consultant shall provide
9 each distressed property owner with a copy of the distressed
10 property consultant contract and attached notice of cancellation
11 immediately upon execution by all parties to the distressed
12 property consultant contract. A distressed property consultant
13 contract shall not be effective until all parties to the
14 distressed property consultant contract have signed the
15 contract.

16 (g) As to those forms of mortgage assistance relief which
17 can only be obtained from a lending party, the objective of
18 every such distressed property consultant contract shall be to
19 obtain from the lending party a written offer to the distressed
20 property owner for mortgage assistance relief on terms
21 acceptable to the property owners. Any such agreement with the
22 lending party for mortgage assistance relief shall be in

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1 writing, and shall become binding upon the distressed property
2 owners only after all property owners have accepted the offer by
3 executing the written contract."

4 SECTION 6. Section 480E-5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[~~f~~] §480E-5[~~f~~] Cancellation of a distressed property
7 consultant contract. (a) In addition to any other legal right
8 to rescind a contract, any distressed property owner has the
9 right to cancel a distressed property consultant contract,
10 without any penalty or obligation, at any time before the
11 distressed property consultant has fully performed each and
12 every service the distressed property consultant contracted to
13 perform or represented would be performed.

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

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

(d) Notice of cancellation given by any ~~owner of a~~ distressed property owner need not take the particular form as provided with the distressed property consultant contract and, however expressed, is effective if it indicates the intention of ~~[an owner]~~ the distressed property owner not to be bound by the contract."

SECTION 7. Section 480E-6, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) A distressed property conveyance contract shall be in writing and shall fully disclose all rights and obligations of the distressed property purchaser and all ~~[owners of the]~~ distressed property owners and all terms of any agreements between the distressed property purchaser and all ~~[owners of the distressed property.]~~ distressed property owners.

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

- (1) The total consideration to be given by the distressed property purchaser or tax lien payor in connection with or incident to the distressed property conveyance;
- (2) A complete description of the terms of payment or other consideration including any services of any

1 nature that the distressed property purchaser
2 represents will be performed for any owner of the
3 distressed property before or after the distressed
4 property conveyance;

5 (3) A complete description of the terms of any related
6 agreement designed to allow any [~~owner of the~~]
7 distressed property owner to remain in the distressed
8 property, such as a rental agreement, repurchase
9 agreement, contract for deed, or lease with option to
10 buy;

11 (4) All notices as provided in this chapter;

12 (5) The following notice, in a type size no smaller than
13 fourteen-point boldface type, completed with the name
14 of the distressed property purchaser, shall appear
15 immediately above the notice of right to cancel a
16 distressed property conveyance contract required by
17 section 480E-7(a):

18 "NOTICE REQUIRED BY HAWAII LAW

19 UNTIL YOUR RIGHT TO CANCEL THIS CONTRACT HAS ENDED,

20 (Name of distressed property purchaser) OR ANYONE WORKING

21 FOR (Name of distressed property purchaser) CANNOT ASK YOU TO

22 SIGN OR HAVE YOU SIGN ANY DEED OR ANY OTHER DOCUMENT. YOU ARE

1 URGED TO HAVE THIS CONTRACT REVIEWED BY AN ATTORNEY OF YOUR
2 CHOICE WITHIN FIFTEEN BUSINESS DAYS OF SIGNING IT."; and

3 (6) If title to the distressed property will be
4 transferred in the conveyance transaction, the
5 following notice, in a type size no smaller than
6 fourteen-point boldface type, completed with the name
7 of the distressed property purchaser, shall appear
8 immediately below the notice required by paragraph
9 (5):

10 "NOTICE REQUIRED BY HAWAII LAW

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

13 SECTION 7. Section 480E-8, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[+]§480E-8[+] Cancellation of a distressed property
16 conveyance contract. (a) In addition to any other legal right
17 to rescind a contract, any distressed property owner has the
18 right to cancel a distressed property conveyance contract,
19 without any penalty or obligation, at any time before the later
20 of midnight of the fifteenth business day following the day on
21 which the last party to a distressed property conveyance
22 contract signs the distressed property conveyance contract or

1 5:00 p.m. on the last day of the period during which any owner
2 of a distressed property has the right to cure a default under
3 state law.

4 (b) The period of fifteen business days following the day
5 on which the last party to a distressed property conveyance
6 contract signs the contract during which any [~~owner of the~~]
7 distressed property owner may cancel the contract shall not
8 begin to run until all parties to the distressed property
9 conveyance contract have executed the distressed property
10 conveyance contract and the distressed property purchaser has
11 complied with all the requirements of sections 480E-6, 480E-7,
12 and this section.

13 (c) Cancellation occurs when any [~~owner of a~~] distressed
14 property owner delivers, by any means, and within the time
15 specified under subsection (a), written notice of cancellation
16 to the address specified in the distressed property conveyance
17 contract.

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

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

7 (f) Within fifteen days following receipt of a notice of
8 cancellation given in accordance with this section, the
9 distressed property purchaser shall return, without condition,
10 any and all original contracts and documents signed by any
11 ~~[owner of the distressed property.]~~ distressed property owner."

12 SECTION 8. Section 480E-10, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[+]§480E-10[+] Prohibitions. (a) A distressed property
15 consultant shall not:

- 16 (1) Represent, expressly or by implication, in connection
17 with the advertising, marketing, promotion, offering
18 for sale, or performance of any mortgage assistance
19 relief service, that a distressed property owner
20 cannot or should not contact or communicate with the
21 person's lender or servicer.

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(2) Misrepresent, expressly or by implication, any material aspect of any mortgage assistance relief service, including but not limited to:

(A) The likelihood of negotiating, obtaining, or arranging any represented service or result, such as those set forth in the definition of mortgage assistance relief service;

(B) The amount of time it will take the distressed property consultant to accomplish any represented service or result, such as those set forth in the definition of mortgage assistance relief service;

(C) That a mortgage assistance relief service is affiliated with, endorsed or approved by, or otherwise associated with:

(i) The United States government;

(ii) Any governmental homeowner assistance plan;

(iii) Any federal, state, or local government agency, unit, or department;

(iv) Any nonprofit housing counselor agency or program;

(v) The maker, holder, or servicer of the consumer's residential loan; or

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(vi) Any other individual, entity, or program;

(D) The distressed property owner's obligation to make scheduled periodic payments or any other payments pursuant to the terms of the distressed property owner's residential loan;

(E) The terms or conditions of the distressed property owner's residential loan, including but not limited to the amount of the debt owed;

(F) The terms or conditions of any refund, cancellation, exchange, or repurchase policy for any mortgage assistance relief service, including but not limited to the likelihood of obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted, for a mortgage assistance relief service;

(G) That the distressed property consultant has completed the represented services or has a right to claim, demand, charge, collect, or receive payment or other consideration;

(H) That the distressed property owner will receive legal representation;

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1 (I) The availability, performance, cost, or
2 characteristics of any alternative to for-profit
3 mortgage assistance relief services through which
4 the distressed property owner can obtain mortgage
5 assistance relief, including negotiating directly
6 with the residential loan holder or servicer, or
7 using any nonprofit housing counselor agency or
8 program;

9 (J) The amount of money or the percentage of the debt
10 amount that a distressed property owner may save
11 by using any mortgage assistance relief service;

12 (K) The total cost to purchase any mortgage
13 assistance relief service; or

14 (L) The terms, conditions, or limitation of any offer
15 of mortgage assistance relief the distressed
16 property consultant obtains from the distressed
17 property owner's residential loan holder or
18 servicer, including the time period in which the
19 distressed property owner must decide to accept
20 the offer;

21 (3) Make any representation, expressly or by implication,
22 about the benefits, performance, or efficacy of any

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1 mortgage assistance relief service unless, at the time
2 such representation is made, the provider possesses
3 and relies upon competent and reliable evidence that
4 substantiates that the representation is true. For
5 the purposes of this paragraph, competent and reliable
6 evidence means tests, analyses, research, studies, or
7 other evidence based on the expertise of professionals
8 in the relevant area, that have been conducted and
9 evaluated in an objective manner by individuals
10 qualified to do so, using procedures generally
11 accepted in the profession to yield accurate and
12 reliable results;

13 [~~(1)~~ ~~Misrepresent or conceal~~] (4) Conceal any material
14 fact;

15 [~~(2)~~] (5) Induce or attempt to induce a distressed
16 property owner to waive any provision of this chapter;

17 [~~(3)~~] (6) Make any promise or guarantee not fully
18 disclosed in the distressed property consultant
19 contract;

20 [~~(4)~~] (7) Engage or attempt to engage in any activity or
21 act concerning the distressed property not fully

disclosed in the distressed property consultant
contract;

~~[(+5)]~~ (8) Induce or attempt to induce a distressed
property owner to engage in any activity or act not
fully disclosed in the distressed property consultant
contract;

~~[(+6)]~~ (9) Take, ask for, claim, demand, charge, collect,
or receive any compensation until after the distressed
property consultant has fully performed each service
the distressed property consultant contracted to
perform or represented would be performed;

~~[(+7)]~~ (10) Take, ask for, claim, demand, charge, collect,
or receive for any reason, any fee, interest, or any
other compensation that exceeds the two most recent
monthly mortgage installments of principal and
interest due on the loan first secured by the
distressed property or the most recent annual real
property tax charged against the distressed property,
whichever is less;

~~[(+8)]~~ (11) Take or ask for a wage assignment, a lien of any
type on real or personal property, or other security

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1 to secure the payment of compensation. This type of
2 security is void and not enforceable;

3 ~~[(+9)]~~ (12) Receive any consideration from any third party
4 in connection with services rendered to a distressed
5 property owner unless the consideration is fully
6 disclosed in the distressed property consultant
7 contract;

8 ~~[(+10)]~~ (13) Acquire any interest, directly or indirectly, or
9 by means of a subsidiary or affiliate, in a distressed
10 property from a distressed property owner with whom
11 the distressed property consultant has contracted;

12 ~~[(+11)]~~ (14) Require or ask a distressed property owner to
13 sign any lien, encumbrance, mortgage, assignment, or
14 deed unless the lien, encumbrance, mortgage,
15 assignment, or deed is fully described in the
16 distressed property consultant contract, including all
17 disclosures required by this chapter; or

18 ~~[(+12)]~~ (15) Take any power of attorney from a distressed
19 property owner for any purpose, except to inspect
20 documents concerning the distressed property as
21 allowed by law.

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1 (16) Advise or instruct a distressed property owner to stop
2 making payments to any lending party if that property
3 owner is not in receipt of a written notice that the
4 property owner's residential loan has been
5 accelerated.

6 (17) Fail to disclose, at the time the distressed property
7 consultant furnishes the distressed property owner
8 with the lending party's written offer for mortgage
9 assistance relief, the following information:

10 "This is an offer of mortgage assistance we
11 obtained from your lender [or servicer]. You may
12 accept or reject the offer. If you reject the
13 offer, you do not have to pay us. If you accept
14 the offer, you will have to pay us [same amount
15 as disclosed in the distressed property
16 consultant contract] for our services."

17 The disclosure required by this paragraph must be made
18 in a clear and prominent manner, on a separate written
19 page, and preceded by the heading:

20 "IMPORTANT NOTICE: Before buying this service,
21 consider the following information."

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1 The heading must be in bold face type that is two
2 point-type larger than the type size of the required
3 disclosure;

4 (18) Fail to provide, at the time the distressed property
5 consultant furnishes the distressed property owner
6 with the written agreement specified in paragraph
7 (17), a notice from the lending party that describes
8 all material differences between the terms,
9 conditions, and limitations associated with the
10 distressed property owner's current residential loan
11 and the terms, conditions, and limitations associated
12 with the distressed property owner's residential loan
13 if the owner accepts the lending party's offer,
14 including but not limited to differences in the
15 loan's:

16 (A) Principal balance;

17 (B) Contract interest rate, including the maximum
18 rate and any adjustable rates, if applicable;

19 (C) Amount and number of the owner's scheduled
20 periodic payments on the loan;

21 (D) Monthly amounts owed for principal, interest,
22 taxes, and any mortgage insurance on the loan;

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(E) Amount of any delinquent payments owing or
outstanding;

(F) Assessed fees or penalties; and

(G) Term;

The notice must be made in a clear and prominent
manner, on a separate written page, and preceded by
heading: "IMPORTANT INFORMATION FROM YOUR [name of
lender or servicer] ABOUT THIS OFFER." The heading
must be in bold face type that is two-point-type
larger than the type size of the required disclosure;
and

(19) Fail to disclose in the notice specified in paragraph
(18), in cases where the offer of mortgage assistance
relief obtained by the distressed property consultant
from the lending party is a trial residential loan
modification, the terms, conditions, and limitations
of this offer, including but not limited to:

(A) The fact that the distressed property owner may
not qualify for a permanent loan modification;
and

(B) The likely amount of the scheduled periodic
payments and any arrears, payments, or fees that

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1 the distressed property owner would owe in

2 failing to qualify;

3 (20) File any document in the bureau of conveyances of the
4 State of Hawaii that purports to modify, reduce,
5 eliminate, discharge, contest, or otherwise effect any
6 mortgage, lien, or encumbrance of record without
7 either the express written consent of the lending
8 party or lienholder or a court order permitting or
9 directing the document to be filed, with the exception
10 of a notice of pendency of action or lis pendens.

11 (b) A distressed property purchaser shall not:

12 (1) Misrepresent or conceal any material fact;

13 (2) Induce or attempt to induce a distressed property
14 owner to waive any provision of this chapter;

15 (3) Make any promise or guarantee not fully disclosed in
16 the distressed property conveyance [†]contract[†];

17 (4) Engage or attempt to engage in any activity or act
18 concerning the distressed property not fully disclosed
19 in the distressed property conveyance contract;

20 (5) Induce or attempt to induce a distressed property
21 owner to engage in any activity or act not fully

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1 disclosed in the distressed property conveyance

2 contract;

3 (6) Enter into or attempt to enter into a distressed
4 property conveyance unless the distressed property
5 purchaser verifies and can demonstrate that [~~an owner~~
6 ~~of~~] the distressed property owner has a reasonable
7 ability to pay any amounts due to reacquire an
8 interest in the distressed property or to make monthly
9 or any other payments due under a distressed property
10 conveyance contract or distressed property lease, if
11 the distressed property purchaser allows any [~~owner of~~
12 ~~a~~] distressed property owner to remain in, occupy,
13 use, or repurchase the distressed property;

14 (7) Fail to make a payment to the [~~owner of the~~]
15 distressed property owner at the time the title is
16 conveyed so that the [~~owner of the~~] distressed
17 property owner has received consideration in an amount
18 of at least eighty-two per cent of the property's fair
19 market value, or, in the alternative, fail to pay the
20 [~~owner of the~~] distressed property owner no more than
21 the costs necessary to extinguish all of the existing
22 obligations on the distressed property, as set forth

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1 in this chapter; provided that the distressed property
2 owner's costs to repurchase the distressed property
3 pursuant to the terms of the distressed property
4 conveyance contract do not exceed one hundred twenty-
5 five per cent of the distressed property purchaser's
6 costs to purchase the property. If ~~[an owner]~~ a
7 distressed property owner is unable to repurchase the
8 property pursuant to the terms of the distressed
9 property conveyance contract, the distressed property
10 purchaser shall not fail to make a payment to the
11 ~~[owner of the]~~ distressed property owner so that the
12 ~~[owner of the]~~ distressed property owner has received
13 consideration in an amount of at least eighty-two per
14 cent of the property's fair market value at the time
15 of conveyance or at the expiration of the distressed
16 property owner's option to repurchase;

- 17 (8) Enter into any repurchase or lease agreement as part
18 of a distressed property conveyance contract or
19 subsequent conveyance of an interest in the distressed
20 property back to a distressed property owner that is
21 unfair or commercially unreasonable or engage in any
22 other unfair conduct;

1 (9) Represent, directly or indirectly, that the distressed
2 property purchaser is acting as an advisor or a
3 consultant or is acting on behalf of or assisting an
4 owner of a distressed property to "remain in the
5 house", "save the house", "buy time", or "stop the
6 foreclosure" or is doing anything other than
7 purchasing the distressed property;

8 (10) Misrepresent the distressed property purchaser's
9 status as to licensure or certification;

10 (11) Do any of the following until after the time during
11 which ~~[an owner of]~~ a distressed property owner may
12 cancel the distressed property conveyance contract:

13 (A) Accept from ~~[an owner of the]~~ a distressed
14 property owner execution of any instrument of
15 conveyance of any interest in the distressed
16 property;

17 (B) Execute an instrument of conveyance of any
18 interest in the distressed property; or

19 (C) Pursuant to chapter 501 or 502, record any
20 document signed by ~~[an owner of]~~ a distressed
21 property~~[,]~~ owner, including any instrument of
22 conveyance;

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- 1 (12) Fail to re-convey title in a distressed property to
2 the distressed property owner or owners when the terms
3 of the distressed property conveyance contract have
4 been fulfilled if the distressed property consultant
5 or distressed property purchaser contracted or
6 represented that title in the distressed property
7 would be re-conveyed to the distressed property owner
8 or owners when the terms of the distressed property
9 conveyance contract have been fulfilled;
- 10 (13) Induce or attempt to induce [~~an owner of the~~] a
11 distressed property owner to execute a quitclaim deed
12 concerning a distressed property;
- 13 (14) Enter into a distressed property conveyance contract
14 where any party to the contract is represented by
15 power of attorney;
- 16 (15) Immediately following the conveyance of the distressed
17 property, fail to extinguish all liens encumbering the
18 distressed property at the time of the distressed
19 property conveyance or fail to assume all liability
20 with respect to all liens encumbering the distressed
21 property at the time of the distressed property
22 conveyance, which assumption shall be accomplished

1 without violations of the terms and conditions of the
2 lien or liens being assumed. Nothing herein shall
3 preclude a lender from enforcing any provision in a
4 contract that is not otherwise prohibited by law;

5 (16) Fail to complete a distressed property conveyance
6 through:

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

9 (B) A bank, trust company, or savings and loan
10 association authorized under any law of this
11 State or of the United States to do business in
12 the State;

13 (C) A person licensed as a real estate broker in this
14 State who is the broker for a party to the
15 escrow; provided that the person does not charge
16 any escrow fee; or

17 (D) A person licensed to practice law in this State
18 who, in escrow, is not acting as the employee of
19 a corporation; provided that the person does not
20 charge any escrow fee; or

21 (17) Cause the property to be conveyed or encumbered
22 without the knowledge or permission of all ~~owners of~~

1 a] distressed property owners or in any way frustrate
2 the ability of [a] any distressed property owner to
3 reacquire the distressed property.

4 (c) There shall be a rebuttable presumption that an
5 appraisal by a person licensed or certified as a real property
6 appraiser by the State or the federal government is an accurate
7 determination of the fair market value of the property.

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

12 SECTION 9. Section 480E-11, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§480E-11 Unfair or deceptive act or practice;
15 penalties. (a) Any person who violates any provision of this
16 chapter shall be deemed to have engaged in an unfair or
17 deceptive act or practice in the conduct of any trade or
18 commerce within the meaning of section 480-2.

19 (b) Any person who violates any provision of 12 C.F.R.
20 part 1015, pertaining to mortgage assistance relief services,
21 shall be deemed to have engaged in an unfair or deceptive act or

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1 practice in the conduct of any trade or commerce within the
2 meaning of section 480-2.

3 ~~[(b)]~~ (c) The penalties provided in this section shall be
4 cumulative to the remedies or penalties available under all
5 other laws of this State."

6 SECTION 10. In codifying the new sections added to chapter
7 480E, Hawaii Revised Statutes, by section 1 of this Act, the
8 revisor of statutes shall substitute appropriate section numbers
9 for the letters used in designating the new sections in this
10 Act.

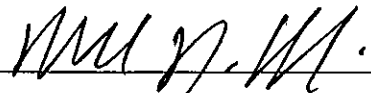
11 SECTION 11. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 12. This Act shall take effect upon its approval.

14

15

INTRODUCED BY:



16

BY REQUEST

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Report Title:

Mortgage Rescue Fraud; Mortgage Assistance Relief Services Rule;
Distressed Property Owners

Description:

Harmonizes Hawaii's Mortgage Rescue Fraud Prevention Act with
the Federal Trade Commission's Mortgage Assistance Relief
Services Rule. Provides technical amendments.

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

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

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

PURPOSE: In the area of mortgage relief services, resolve notable conflicts between Hawaii's Mortgage Rescue Fraud Prevention Act, chapter 480E (MRFA), Hawaii Revised Statutes (HRS), and the Federal Trade Commission's Mortgage Assistance Relief Services Rule, 12 C.F.R. part 1015 (MARS Rule). Provide technical amendments and adopt additional protections to address hundreds of instances of offensive conduct in Hawaii wherein consumers paid for services which conferred little or no benefit to consumers.

MEANS: Adds three new sections to chapter 480E, HRS, and amends sections 480E-1, 480E-2, 480E-2.5, 480E-3, 480E-5, 480E-8, 480E-10, and 480E-11, HRS.

JUSTIFICATION: The MRFA was enacted and in effect before the MARS Rule was passed. The federal and state approaches to protection from mortgage relief scams are distinctly different, with the MRFA focused on properties already in distress, whereas the MARS Rule is focused on the nature of the service being offered. Hawai'i has been broadly hit with several schemes in which homeowners who were current on their mortgages, and thus outside the scope of the MRFA, were instructed to stop paying their mortgages, and thus became victims of mortgage rescue fraud. These victims are in just as much need of protection as people already delinquent when they are solicited to buy into these offensive and harmful schemes. Resolving the inconsistent approaches between federal and state law will enable enforcement

agencies to provide maximum protection for Hawaii homeowners.

Impact on the public: Amending Hawaii's MRFA to make it consistent with the MARS Rule will provide homeowners with enhanced consumer protection from mortgage rescue fraud scammers.

Impact on the department and other agencies: Facilitates protection of consumers by eliminating the confusion caused by current conflicts in the law.

GENERAL FUNDS:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	CCA-110.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	Upon approval.