
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- 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;



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

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

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

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

17 (b) A distressed property consultant shall also:

18 (1) Take reasonable steps sufficient to monitor and ensure
19 that all employees and independent contractors comply
20 with this chapter. Such steps shall include the
21 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, the performance of 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 the distressed property consultant's
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- Enforcement authority. The attorney general or
the director of the office of consumer protection is authorized
to investigate reported or suspected violations of the federal
mortgage assistance relief services rules, set forth in title 12
Code of Federal Regulations part 1015, and to enforce such rules
by bringing civil actions or proceedings.

§480E- 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



1 solicitation, representation, or offer to perform or provide,
2 any mortgage assistance relief service shall:

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

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

18 "~~[+] §480E-1 [.]~~ Purpose. The purpose of this chapter is to
19 protect Hawaii consumers from persons who prey on ~~[homeowners~~
20 ~~who face property foreclosures, liens, or encumbrances.]~~
21 consumers by offering services that purport to provide relief



1 from consumers' mortgage loan obligations or from other filed or
2 threatened liens or encumbrances against their properties.

3 Consumers who face foreclosures, liens, or encumbrances are
4 often in desperate financial situations that can have severe
5 adverse consequences for individuals and families even if the
6 consumers have significant equity in their residential real
7 property. The consumers' desperation makes them vulnerable to
8 persons who claim they can stop, prevent, or delay foreclosures,
9 liens, or encumbrances[-], or claim they can reduce, modify, or
10 eliminate mortgage loan obligations or other filed or threatened
11 liens or encumbrances. Persons who make these claims often use

12 the consumers' desperation to foster unequal bargaining
13 positions and withhold or misrepresent vital information and
14 details. As a result, consumers may be convinced to give up
15 their real property interests and valuable equity to these
16 persons while receiving little in return. Requiring full and
17 complete disclosure of vital information will better enable
18 consumers to make informed decisions when dealing with persons
19 claiming to be able to stop foreclosures, liens, or
20 encumbrances. This [+]chapter[+] addresses possible
21 misrepresentations by compelling persons who offer assistance to



1 fully and completely describe their services in written
2 contracts and gives [~~the homeowners~~] consumers the right to
3 cancel at any time before a distressed property consultant has
4 performed all services called for in a contract."

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

7 1. By adding nine new definitions to be appropriately
8 inserted and to read:

9 "Distressed property owner" or "property owner" means the
10 owner of any distressed property.

11 "Fully performed" means:

12 (1) In the case of relief requiring the consent of any
13 lending party, the distressed property consultant or
14 attorney has:

15 (A) Carried out and provided all of the services the
16 distressed property consultant or attorney
17 contracted to perform or represented would be
18 performed; and

19 (B) Obtained from the lending party a written offer
20 for mortgage assistance relief that the consumer
21 has accepted by executing the written contract.



1 (2) In the case of relief requiring the consent of any
2 non-lending party, including any person that may hold
3 a lien or encumbrance against any residential real
4 property, the distressed property consultant or
5 attorney has:

6 (A) Carried out and provided all of the services the
7 distressed property consultant or attorney
8 contracted to perform or represented would be
9 performed; and

10 (B) Obtained from the non-lending party a written
11 offer for mortgage assistance relief that the
12 consumer has accepted by executing the written
13 contract.

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



1 "Lending party" means the person from whom mortgage
2 assistance relief is sought and includes the residential loan
3 holder or servicer.

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

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

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

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



- 1 (3) Saving the owner's property from foreclosure or loss
2 of home due to nonpayment of taxes;
- 3 (4) Negotiating, obtaining, or arranging any modification
4 of any term of a residential loan, including a
5 reduction in the amount of interest, principal
6 balance, monthly payments, or fees;
- 7 (5) Negotiating, obtaining, or arranging any extension of
8 the period of time within which the consumer may:
- 9 (A) Cure the default on a residential loan;
10 (B) Reinstate the residential loan;
11 (C) Redeem any residential real property; or
12 (D) Exercise any right to reinstate a residential
13 loan or redeem a residential real property;
- 14 (6) Negotiating, obtaining, or arranging, with respect to
15 any residential real property:
- 16 (A) A short sale;
17 (B) A deed-in-lieu of foreclosure; or
18 (C) Any other disposition of the property other than
19 a sale to a third party who is not the
20 residential loan holder;



1 (7) Obtaining any forbearance or modification in the
2 timing of payments from any residential loan holder or
3 servicer;

4 (8) Obtaining any forbearance from any beneficiary or
5 mortgagee, or any relief with respect to a tax sale of
6 any residential real property;

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

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

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



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

3 (13) Considering or deciding whether a consumer should
4 continue making payments on any loan, taxes, lease
5 assessments, association fees, or maintenance fees or
6 any other obligation related to a residential real
7 property;

8 (14) Exercising any cure of default;

9 (15) Avoiding or ameliorating the impairment of the
10 property owner's credit resulting from the recording
11 or filing of a notice of default or the conduct of a
12 foreclosure sale or tax sale;

13 (16) Drafting, preparing, performing, creating, or
14 otherwise obtaining a forensic loan audit, a forensic
15 securitization audit, or any other type of audit,
16 report, summary, affidavit, or declaration involving
17 an opinion, determination, or analysis of whether a
18 lending party has an enforceable mortgage or lien,
19 predicated upon claims that a lending party that is a
20 party to a pooling and service agreement failed to
21 adhere to the terms of that agreement, or that errors



1 occurred after the signing of the mortgage loan, or
2 disputing whether the lending party is the holder of
3 the promissory note, or any argument that the lending
4 party has failed to comply with federal or state
5 mortgage lending laws;

6 (17) Drafting, preparing, performing, creating, or
7 otherwise obtaining any documentation used or intended
8 to be used to advance any legal theory in defense of a
9 foreclosure or ejectment action, regardless of any
10 disclaimer as to providing legal advice; or

11 (18) Understanding any legal theory which may be used in
12 defense of a foreclosure or ejectment action,
13 regardless of any disclaimer as to providing legal
14 advice.

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



1 "Residential loan holder" means any person who holds the
2 residential loan that is the subject of the offer to provide
3 mortgage assistance relief services.

4 "Residential real property" means any fee simple or
5 leasehold real property wherever located, the primary use of
6 which is occupancy as a residence by any natural person or
7 persons, regardless of whether the property owner resides on the
8 property.

9 "Servicer" means the person responsible for:

10 (1) Receiving any scheduled periodic payments pursuant to
11 the terms of the residential loan that is the subject
12 of the offer to provide mortgage assistance relief
13 services; and

14 (2) Making the payments of principal and interest and such
15 other payments with respect to the amounts received
16 from the consumer as may be required pursuant to the
17 terms of the mortgage servicing loan documents or
18 servicing contract."

19 2. By amending the definitions of "distressed property"
20 and "distressed property consultant" to read:



1 "Distressed property" means any residential real property
2 that:

- 3 (1) Is in foreclosure or at risk of foreclosure because
4 payment of any loan that is secured by the residential
5 real property is more than sixty days delinquent;
6 (2) Had a lien or encumbrance charged against it because
7 of nonpayment of any taxes, lease assessments,
8 association fees, or maintenance fees;
9 (3) Is at risk of having a lien or encumbrance charged
10 against it because the payments of any taxes, lease
11 assessments, association fees, or maintenance fees are
12 more than ninety days delinquent;
13 (4) Secures a loan for which a notice of default has been
14 given; [or]
15 (5) Secures a loan that has been accelerated[-]; or
16 (6) Is the subject of any solicitation, representation,
17 offer, agreement, promise, or contract to perform any
18 mortgage assistance relief service.

19 "Distressed property consultant" means any person who
20 performs or provides, or attempts to perform or provide, or who
21 arranges for others to perform or provide, or who assists others



1 to perform or provide, or who makes any solicitation,
2 representation, or offer to perform or provide, any ~~[of the~~
3 ~~following relating to a distressed property:]~~ mortgage
4 assistance relief service.

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

8 ~~-(2) Stop or postpone the charging of any lien or~~
9 ~~encumbrance against any distressed property or~~
10 ~~eliminate any lien or encumbrance charged against any~~
11 ~~distressed property for the nonpayment of any taxes,~~
12 ~~lease assessments, association fees, or maintenance~~
13 ~~fees;~~

14 ~~-(3) Obtain any forbearance from any beneficiary or~~
15 ~~mortgagee, or relief with respect to a tax sale of the~~
16 ~~property;~~

17 ~~-(4) Assist the owner to exercise any cure of default~~
18 ~~arising under Hawaii law;~~

19 ~~-(5) Obtain any extension of the period within which the~~
20 ~~owner may reinstate the owner's rights with respect to~~
21 ~~the property;~~



1 ~~(6) Obtain any waiver of an acceleration clause contained~~
2 ~~in any promissory note or contract secured by a~~
3 ~~mortgage on a distressed property or contained in the~~
4 ~~mortgage;~~

5 ~~(7) Assist the owner in foreclosure, loan default, or~~
6 ~~post-tax sale redemption period to obtain a loan or~~
7 ~~advance of funds;~~

8 ~~(8) Avoid or ameliorate the impairment of the owner's~~
9 ~~credit resulting from the recording or filing of a~~
10 ~~notice of default or the conduct of a foreclosure sale~~
11 ~~or tax sale; or~~

12 ~~(9) Save the owner's residence from foreclosure or loss of~~
13 ~~home due to nonpayment of taxes.]~~

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

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

19 (2) A person who holds or is owed an obligation secured by
20 a lien on any distressed property, or a person acting
21 under the express authorization or written approval of



1 such person, when the person performs services in
2 connection with the obligation or lien, if the
3 obligation or lien did not arise as the result of or
4 as part of a proposed distressed property conveyance;

5 (3) Banks, savings banks, savings and loan associations,
6 credit unions, trust companies, depository and
7 nondepository financial service loan companies, and
8 insurance companies organized, chartered, or holding a
9 certificate of authority to do business under the laws
10 of this State or any other state, or under the laws of
11 the United States;

12 (4) Attorneys licensed in the State of Hawaii engaged in
13 the practice of law;

14 (5) Certified public accountants licensed under chapter
15 466, persons holding a permit to practice public
16 accountancy in the State of Hawaii, and persons
17 holding a valid certified public accountant license
18 issued under the laws of another state or territory
19 who are lawfully practicing in the State of Hawaii
20 with a temporary permit to practice pursuant to rules
21 established by the board of public accountancy and who



1 are subject to regulation by the board of public
2 accountancy while engaged in the practice of public
3 accountancy;

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

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

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

20 3. By deleting the definition of "material fact".



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

6 "~~[+]§480E-2.5[+]~~ Mortgage rescue fraud; consumer
7 education. The office of consumer protection shall educate
8 consumers about ~~[fraudulent activities]~~ abusive practices that
9 may be committed against homeowners who may be offered mortgage
10 assistance relief services or who face property foreclosures,
11 liens, or encumbrances, as appropriate."

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

14 "~~[+]§480E-3[+]~~ Distressed property consultant contract.
15 (a) A distressed property consultant contract shall be in
16 writing and shall fully disclose all services to be performed by
17 the distressed property consultant and all terms of any
18 agreements between the distressed property consultant and all
19 ~~[owners of the]~~ distressed property~~[,]~~ owners, including the
20 total amount and terms of compensation to be directly or
21 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 individual, the individual executing the distressed property consultant contract on behalf of the distressed property consultant shall identify the title and office held by the individual.

(d) A distressed property consultant contract shall be dated and signed by all ~~[owners of the]~~ distressed property ~~[-]~~ owners.

(e) A distressed property consultant contract shall disclose the following information, and shall be substantially



1 in the following form and printed in not less than fourteen
2 point type:

3 "You may stop doing business with us at any time. You
4 may accept or reject the offer of mortgage assistance
5 we obtain from your lender (or servicer). If you
6 reject the offer, you do not have to pay us. If you
7 accept the offer, you will have to pay us [insert
8 amount or method of calculating the amount] for our
9 services.

10 [Name of the company] is not associated with the
11 government, and our service is not approved by the
12 government or your lender.

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

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

18 For the purposes of this subsection the amount "you will have to
19 pay" shall consist of the total amount the consumer must pay to
20 purchase, receive, and use all of the mortgage assistance relief



1 services that are the subject of the sales offer, including but
2 not limited to all fees and charges.

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

11 (g) For forms of mortgage assistance relief that can only
12 be obtained from a lending party, the objective of every such
13 distressed property consultant contract shall be to obtain from
14 the lending party a written offer to the distressed property
15 owner for mortgage assistance relief on terms acceptable to the
16 property owners. Any such agreement with the lending party for
17 mortgage assistance relief shall be in writing, and shall become
18 binding upon the distressed property owners only after all
19 property owners have accepted the offer by executing the written
20 contract."



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

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

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

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

20 (d) Notice of cancellation given by any [~~owner of a~~]
21 distressed property owner need not take the particular form as



1 provided with the distressed property consultant contract and,
2 however expressed, is effective if it indicates the intention of
3 ~~[an owner]~~ the distressed property owner not to be bound by the
4 contract."

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

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

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 distressed property
18 conveyance;

19 (2) A complete description of the terms of payment or
20 other consideration including any services of any
21 nature that the distressed property purchaser



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

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

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

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

17 "NOTICE REQUIRED BY HAWAII LAW

18 UNTIL YOUR RIGHT TO CANCEL THIS CONTRACT HAS ENDED,

19 (Name of distressed property purchaser) OR ANYONE

20 WORKING FOR (Name of distressed property purchaser)

21 CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN ANY DEED OR



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

4 (6) If title to the distressed property will be
5 transferred in the conveyance transaction, the
6 following notice, in a type size no smaller than
7 fourteen-point boldface type, completed with the name
8 of the distressed property purchaser, shall appear
9 immediately below the notice required by paragraph
10 (5):

11 "NOTICE REQUIRED BY HAWAII LAW
12 AS PART OF THIS TRANSACTION, YOU ARE GIVING UP TITLE
13 TO YOUR HOME."

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

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



1 which the last party to a distressed property conveyance
2 contract signs the distressed property conveyance contract or
3 5:00 p.m. on the last day of the period during which any [~~owner~~
4 ~~of a~~] distressed property owner has the right to cure a default
5 under state law.

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

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

20 (d) Notice of cancellation, if given by mail, is effective
21 when deposited in the mail with postage prepaid. Notice by



1 certified mail, return receipt requested, addressed to the
2 address specified in the distressed property conveyance
3 contract, shall be conclusive proof of notice of cancellation.

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

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

15 SECTION 9. Section 480E-10, Hawaii Revised Statutes, is
16 amended by amending its title and subsections (a) and (b) to
17 read as follows:

18 "[+]§480E-10[+] Prohibitions. (a) A distressed property
19 consultant shall not:

20 (1) Represent, expressly or by implication, in connection
21 with the advertising, marketing, promotion, offering



1 for sale, or performance of any mortgage assistance
2 relief service, that a distressed property owner
3 cannot or should not contact or communicate with the
4 distressed property owner's lender or servicer.

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

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

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

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

19 (i) The United States government;

20 (ii) Any governmental homeowner assistance plan;



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

3 (iv) Any nonprofit housing counselor agency or
4 program;

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

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

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

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

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



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

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

7 (I) The availability, performance, cost, or
8 characteristics of any alternative to for-profit
9 mortgage assistance relief services through which
10 the distressed property owner can obtain mortgage
11 assistance relief, including negotiating directly
12 with the residential loan holder or servicer, or
13 using any nonprofit housing counselor agency or
14 program;

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

18 (K) The total cost to purchase any mortgage
19 assistance relief service; or

20 (L) The terms, conditions, or limitation of any offer
21 of mortgage assistance relief the distressed



1 property consultant obtains from the distressed
2 property owner's residential loan holder or
3 servicer, including the time period in which the
4 distressed property owner must decide to accept
5 the offer;

6 (3) Make any representation, expressly or by implication,
7 about the benefits, performance, or efficacy of any
8 mortgage assistance relief service unless, at the time
9 such representation is made, the provider possesses
10 and relies upon competent and reliable evidence that
11 substantiates that the representation is true. For
12 purposes of this paragraph, "competent and reliable
13 evidence" means tests, analyses, research, studies, or
14 other evidence based on the expertise of professionals
15 in the relevant area, that have been conducted and
16 evaluated in an objective manner by individuals
17 qualified to do so, using procedures generally
18 accepted in the profession to yield accurate and
19 reliable results;

20 ~~[-(1) Misrepresent or conceal]~~ (4) Conceal any material
21 fact;



1 ~~[(2)]~~ (5) Induce or attempt to induce a distressed property
2 owner to waive any provision of this chapter;

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

5 ~~[(4)]~~ (7) Engage or attempt to engage in any activity or
6 act concerning the distressed property not fully
7 disclosed in the distressed property consultant
8 contract;

9 ~~[(5)]~~ (8) Induce or attempt to induce a distressed property
10 owner to engage in any activity or act not fully
11 disclosed in the distressed property consultant
12 contract;

13 ~~[(6)]~~ (9) Take, ask for, claim, demand, charge, collect, or
14 receive any compensation until after the distressed
15 property consultant has fully performed each service
16 the distressed property consultant contracted to
17 perform or represented would be performed;

18 ~~[(7)]~~ (10) Take, ask for, claim, demand, charge, collect,
19 or receive for any reason, any fee, interest, or any
20 other compensation that exceeds the two most recent
21 monthly mortgage installments of principal and



1 interest due on the loan first secured by the
2 distressed property or the most recent annual real
3 property tax charged against the distressed property,
4 whichever is less;

5 ~~[(8)]~~ (11) Take or ask for a wage assignment, a lien of any
6 type on real or personal property, or other security
7 to secure the payment of compensation. This type of
8 security is void and not enforceable;

9 ~~[(9)]~~ (12) Receive any consideration from any third party
10 in connection with services rendered to a distressed
11 property owner unless the consideration is fully
12 disclosed in the distressed property consultant
13 contract;

14 ~~[(10)]~~ (13) Acquire any interest, directly or indirectly, or
15 by means of a subsidiary or affiliate, in a distressed
16 property from a distressed property owner with whom
17 the distressed property consultant has contracted;

18 ~~[(11)]~~ (14) Require or ask a distressed property owner to
19 sign any lien, encumbrance, mortgage, assignment, or
20 deed unless the lien, encumbrance, mortgage,
21 assignment, or deed is fully described in the



1 distressed property consultant contract, including all
2 disclosures required by this chapter; ~~[or]~~
3 ~~[(12)]~~ (15) Take any power of attorney from a distressed
4 property owner for any purpose, except to inspect
5 documents concerning the distressed property as
6 allowed by law~~[-]~~;

7 (16) Advise or instruct a distressed property owner to stop
8 making payments to any lending party if that property
9 owner is not in receipt of a written notice that the
10 property owner's residential loan has been
11 accelerated;

12 (17) Fail to disclose, at the time the distressed property
13 consultant furnishes the distressed property owner
14 with the lending party's written offer for mortgage
15 assistance relief, the following information:

16 "This is an offer of mortgage assistance we
17 obtained from your lender [or servicer]. You may
18 accept or reject the offer. If you reject the
19 offer, you do not have to pay us. If you accept
20 the offer, you will have to pay us [same amount



1 as disclosed in the distressed property
2 consultant contract] for our services."

3 The disclosure required by this paragraph shall be
4 made in a clear and prominent manner, on a separate
5 written page, and preceded by the heading:

6 "IMPORTANT NOTICE: Before buying this service,
7 consider the following information."

8 The heading must be in bold face type that is two
9 point-type larger than the type size of the required
10 disclosure;

11 (18) Fail to provide, at the time the distressed property
12 consultant furnishes the distressed property owner
13 with the written agreement specified in paragraph
14 (17), a notice from the lending party that describes
15 all material differences between the terms,
16 conditions, and limitations associated with the
17 distressed property owner's current residential loan
18 and the terms, conditions, and limitations associated
19 with the distressed property owner's residential loan
20 if the owner accepts the lending party's offer,



1 including but not limited to differences in the
2 loan's:

3 (A) Principal balance;

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

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

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

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

12 (F) Assessed fees or penalties; and

13 (G) Term;

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



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

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

10 (B) The likely amount of the scheduled periodic
11 payments and any arrears, payments, or fees that
12 the distressed property owner would owe in
13 failing to qualify; or

14 (20) File any document in the bureau of conveyances of the
15 State of Hawaii that purports to modify, reduce,
16 eliminate, discharge, contest, or otherwise affect any
17 mortgage, lien, or encumbrance of record without
18 either the express written consent of the lending
19 party or lienholder or a court order permitting or
20 directing the document to be filed, with the exception
21 of a notice of pendency of action or lis pendens.



- 1 (b) A distressed property purchaser shall not:
- 2 (1) Misrepresent or conceal any material fact;
- 3 (2) Induce or attempt to induce a distressed property
- 4 owner to waive any provision of this chapter;
- 5 (3) Make any promise or guarantee not fully disclosed in
- 6 the distressed property conveyance [†]contract[†];
- 7 (4) Engage or attempt to engage in any activity or act
- 8 concerning the distressed property not fully disclosed
- 9 in the distressed property conveyance contract;
- 10 (5) Induce or attempt to induce a distressed property
- 11 owner to engage in any activity or act not fully
- 12 disclosed in the distressed property conveyance
- 13 contract;
- 14 (6) Enter into or attempt to enter into a distressed
- 15 property conveyance unless the distressed property
- 16 purchaser verifies and can demonstrate that ~~[an owner~~
- 17 ~~of]~~ the distressed property owner has a reasonable
- 18 ability to pay any amounts due to reacquire an
- 19 interest in the distressed property or to make monthly
- 20 or any other payments due under a distressed property
- 21 conveyance contract or distressed property lease, if



1 the distressed property purchaser allows any ~~[owner of~~
2 a] distressed property owner to remain in, occupy,
3 use, or repurchase the distressed property;

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



1 purchaser shall not fail to make a payment to the
2 ~~[owner of the]~~ distressed property owner so that the
3 ~~[owner of the]~~ distressed property owner has received
4 consideration in an amount of at least eighty-two per
5 cent of the property's fair market value at the time
6 of conveyance or at the expiration of the distressed
7 property owner's option to repurchase;

8 (8) Enter into any repurchase or lease agreement as part
9 of a distressed property conveyance contract or
10 subsequent conveyance of an interest in the distressed
11 property back to a distressed property owner that is
12 unfair or commercially unreasonable or engage in any
13 other unfair conduct;

14 (9) Represent, directly or indirectly, that the distressed
15 property purchaser is acting as an advisor or a
16 consultant or is acting on behalf of or assisting [~~an~~
17 ~~owner of~~] a distressed property owner to "remain in
18 the house", "save the house", "buy time", or "stop the
19 foreclosure" or is doing anything other than
20 purchasing the distressed property;



- 1 (10) Misrepresent the distressed property purchaser's
2 status as to licensure or certification;
- 3 (11) Do any of the following until after the time during
4 which [~~an owner of~~] a distressed property owner may
5 cancel the distressed property conveyance contract:
- 6 (A) Accept from [~~an owner of the~~] a distressed
7 property owner execution of any instrument of
8 conveyance of any interest in the distressed
9 property;
- 10 (B) Execute an instrument of conveyance of any
11 interest in the distressed property; or
- 12 (C) Pursuant to chapter 501 or 502, record any
13 document signed by [~~an owner of~~] a distressed
14 property[~~]~~ owner, including any instrument of
15 conveyance;
- 16 (12) Fail to re-convey title in a distressed property to
17 the distressed property owner or owners when the terms
18 of the distressed property conveyance contract have
19 been fulfilled if the distressed property consultant
20 or distressed property purchaser contracted or
21 represented that title in the distressed property



1 would be re-conveyed to the distressed property owner
2 or owners when the terms of the distressed property
3 conveyance contract have been fulfilled;

4 (13) Induce or attempt to induce [~~an owner of the~~] a
5 distressed property owner to execute a quitclaim deed
6 concerning a distressed property;

7 (14) Enter into a distressed property conveyance contract
8 where any party to the contract is represented by
9 power of attorney;

10 (15) Immediately following the conveyance of the distressed
11 property, fail to extinguish all liens encumbering the
12 distressed property at the time of the distressed
13 property conveyance or fail to assume all liability
14 with respect to all liens encumbering the distressed
15 property at the time of the distressed property
16 conveyance, which assumption shall be accomplished
17 without violations of the terms and conditions of the
18 lien or liens being assumed. Nothing herein shall
19 preclude a lender from enforcing any provision in a
20 contract that is not otherwise prohibited by law;



1 (16) Fail to complete a distressed property conveyance
2 through:

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

5 (B) A bank, trust company, or savings and loan
6 association authorized under any law of this
7 State or of the United States to do business in
8 the State;

9 (C) A person licensed as a real estate broker in this
10 State who is the broker for a party to the
11 escrow; provided that the person does not charge
12 any escrow fee; or

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

17 (17) Cause the property to be conveyed or encumbered
18 without the knowledge or permission of all ~~owners of~~
19 a] distressed property owners or in any way frustrate
20 the ability of [a] any distressed property owner to
21 reacquire the distressed property."



1 SECTION 10. Section 480E-11, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~S~~480E-11 Unfair or deceptive act or practice; penalties.

4 (a) Any person who violates any provision of this chapter shall
5 be deemed to have engaged in an unfair or deceptive act or
6 practice in the conduct of any trade or commerce within the
7 meaning of section 480-2.

8 **(b) Any person who violates any provision of title 12 Code**
9 **of Federal Regulations part 1015, pertaining to mortgage**
10 **assistance relief services, shall be deemed to have engaged in**
11 **an unfair or deceptive act or practice in the conduct of any**
12 **trade or commerce within the meaning of section 480-2.**

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

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

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



Report Title:

Mortgage Rescue Fraud Prevention Act; Mortgage Rescue Fraud;
Mortgage Assistance Relief Services; Distressed Property Owners

Description:

Makes numerous amendments to Hawaii's mortgage rescue fraud prevention act, chapter 480E, Hawaii Revised Statutes, for consistency with the federal Mortgage Assistance Relief Services Rule. (SD1)

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