

H.B. NO. 2114

A BILL FOR AN ACT

RELATING TO MORTGAGE RESCUE FRAUD.

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

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

3 (1) By amending the definition of "distressed property
4 consultant" to read as follows:

5 ""Distressed property consultant" means any person who
6 performs or provides, or attempts to perform or provide, or who
7 arranges for others to perform or provide, or who assists others
8 to perform or provide, or who makes any solicitation,
9 representation, or offer to perform or provide, any mortgage
10 assistance relief service.

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

13 ~~[-(1) A person or the person's authorized agent acting~~
14 ~~under the express authority or written approval of the~~
15 ~~federal Department of Housing and Urban Development;~~
16 ~~-(2) A person who holds or is owed an obligation secured by~~
17 ~~a lien on any distressed property, or a person acting~~
18 ~~under the express authorization or written approval of~~

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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)]~~ (1) Attorneys licensed in the State of Hawaii
13 engaged in 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~~
22 ~~are subject to regulation by the board of public~~

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1 ~~accountancy while engaged in the practice of public~~
2 ~~accountancy;~~

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

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

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

19 (2) The residential loan holder, or any agent or
20 contractor of such individual or entity; or

21 (3) The servicer of a residential loan, or any agent or
22 contractor of such individual or entity."

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1 (2) By amending the definition of "mortgage assistance
2 relief services" to read as follows:

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

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

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

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

21 (4) Negotiating, obtaining, or arranging any modification
22 of any term of a residential loan, including a

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

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- 1 (9) Obtaining any waiver of an acceleration clause or
2 balloon payment contained in any promissory note or
3 other contract secured by a mortgage on any
4 residential real property or contained in the
5 mortgage;
- 6 (10) Obtaining any extension of the period within which the
7 owner may reinstate the owner's rights with respect to
8 the owner's property;
- 9 (11) Obtaining a loan or advance of funds while the
10 consumer is in foreclosure or at risk of foreclosure
11 due to nonpayment of any obligation related to a
12 residential real property, including but not limited
13 to one or more loans, taxes, lease assessments,
14 association fees, or maintenance fees;
- 15 (12) Obtaining a loan or advance of funds during any post-
16 tax sale redemption period;
- 17 (13) Considering or deciding whether a consumer should
18 continue making payments on any loan, taxes, lease
19 assessments, association fees, or maintenance fees or
20 any other obligation related to a residential real
21 property;
- 22 (14) Exercising any cure of default;

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- 1 (15) Avoiding or ameliorating the impairment of the
2 property owner's credit resulting from the recording
3 or filing of a notice of default or the conduct of a
4 foreclosure sale or tax sale;
- 5 (16) Drafting, preparing, performing, creating, or
6 otherwise obtaining a forensic loan audit, a forensic
7 securitization audit, or any other type of audit,
8 report, summary, affidavit, or declaration involving
9 an opinion, determination, or analysis of whether a
10 lending party has an enforceable mortgage or lien,
11 predicated upon claims that a lending party that is a
12 party to a pooling and service agreement failed to
13 adhere to the terms of that agreement, or that errors
14 occurred after the signing of the mortgage loan, or
15 disputing whether the lending party is the holder of
16 the promissory note, or any argument that the lending
17 party has failed to comply with federal or state
18 mortgage lending laws;
- 19 (17) Drafting, preparing, performing, creating, or
20 otherwise obtaining any documentation used or intended
21 to be used to advance any legal theory in defense of a

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1 foreclosure or ejectment action, regardless of any
2 disclaimer as to providing legal advice; or
3 (18) Understanding any legal theory that may be used in
4 defense of a foreclosure or ejectment action,
5 regardless of any disclaimer as to providing legal
6 advice."

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

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

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12

INTRODUCED BY: 

BY REQUEST

JAN 24 2022

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Report Title:

Mortgage Rescue Fraud Prevention Act; Foreclosures; Distressed Property Consultant; Mortgage Assistance Relief Service

Description:

Amends the definitions of a "distressed property consultant" and "mortgage assistance relief service" in section 480E-2, Hawaii Revised Statutes.

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: To delete certain exemptions to the definition of a "distressed property consultant" in the State's Mortgage Rescue Fraud Prevention Act that are not in the federal Mortgage Assistance Relief Services (MARS) Rule and to correct a typographical error in the definition of "mortgage assistance relief service."

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

JUSTIFICATION: Section 480E-2 has exemptions to the definition of "distressed property consultant" that do not exist in the federal law. The protection these exemptions offer is illusory, as anyone engaged in wrongdoing can be sued under federal law. In the absence of an amendment to section 480E-2, the State may be limited to bringing an action against a distressed property consultant in only federal court. The definition of "mortgage assistance relief service" in section 480E-2 currently refers to "deed or trust," when it should instead read "deed of trust." This typographical error should be corrected to make the Hawaii definition consistent with the federal law definition.

Impact on the public: Banks, certified public accountants, and United States Department of Housing and Urban Development agents will be subject to regulation under section 480E-2.

Impact on the department and other agencies:
The Office of Consumer Protection can choose to file a lawsuit in state court or federal court.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-110.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.