
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:

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~~



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

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

13 ~~(4)] Attorneys licensed in the State of Hawaii engaged in~~
14 ~~the practice of law;~~

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



1 ~~established by the board of public accountancy and who~~
2 ~~are subject to regulation by the board of public~~
3 ~~accountancy while engaged in the practice of public~~
4 ~~accountancy;~~

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

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

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



1 (2) The residential loan holder, or any agent or
2 contractor of the individual or entity; or

3 (3) The servicer of a residential loan, or any agent or
4 contractor of the individual or entity."

5 2. By amending the definition of "mortgage assistance
6 relief service" to read:

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

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

17 (2) Stopping, preventing, or postponing the charging of
18 any lien or encumbrance against any residential real
19 property or reducing or eliminating any lien or
20 encumbrance charged against any residential real



property for the nonpayment of any taxes, lease
assessments, association fees, or maintenance fees;

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

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

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

(A) Cure the default on a residential loan;

(B) Reinstate the residential loan;

(C) Redeem any residential real property; or

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

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

(A) A short sale;

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



- 1 (C) Any other disposition of the property other than
2 a sale to a third party who is not the
3 residential loan holder;
- 4 (7) Obtaining any forbearance or modification in the
5 timing of payments from any residential loan holder or
6 servicer;
- 7 (8) Obtaining any forbearance from any beneficiary or
8 mortgagee, or any relief with respect to a tax sale of
9 any residential real property;
- 10 (9) Obtaining any waiver of an acceleration clause or
11 balloon payment contained in any promissory note or
12 other contract secured by a mortgage on any
13 residential real property or contained in the
14 mortgage;
- 15 (10) Obtaining any extension of the period within which the
16 owner may reinstate the owner's rights with respect to
17 the owner's property;
- 18 (11) Obtaining a loan or advance of funds while the
19 consumer is in foreclosure or at risk of foreclosure
20 due to nonpayment of any obligation related to a
21 residential real property, including but not limited



1 to one or more loans, taxes, lease assessments,
2 association fees, or maintenance fees;

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

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

10 (14) Exercising any cure of default;

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

15 (16) Drafting, preparing, performing, creating, or
16 otherwise obtaining a forensic loan audit, a forensic
17 securitization audit, or any other type of audit,
18 report, summary, affidavit, or declaration involving
19 an opinion, determination, or analysis of whether a
20 lending party has an enforceable mortgage or lien,
21 predicated upon claims that a lending party that is a



1 party to a pooling and service agreement failed to
2 adhere to the terms of that agreement, or that errors
3 occurred after the signing of the mortgage loan, or
4 disputing whether the lending party is the holder of
5 the promissory note, or any argument that the lending
6 party has failed to comply with federal or state
7 mortgage lending laws;

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

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

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

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



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. (SD1)

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