

ACT 73

S.B. NO. 35

A Bill for an Act Relating to Mortgages.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to exempt certified public accountants, who are already regulated by and subject to the rules adopted by the board of public accountancy, from the provisions of the Mortgage Rescue Fraud Prevention Act.

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

““Distressed property consultant” means any person who performs or makes any solicitation, representation, or offer to perform any of the following relating to a distressed property:

- (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 notice of default or the conduct of a foreclosure sale or tax sale; or
- (9) Save the owner’s residence from foreclosure or loss of home due to nonpayment of taxes.

“Distressed property consultant” shall not include any of the following:

- (1) A person or the person’s authorized agent acting under the express authority or written approval of the federal Department of Housing and Urban Development;
- (2) A person who holds or is owed an obligation secured by a lien on any distressed property, or a person acting under the express authorization or written approval of such person, when the person performs services in connection with the obligation or lien, if the obligation or lien did not arise as the result of or as part of a proposed distressed property conveyance;
- (3) Banks, savings banks, savings and loan associations, credit unions, trust companies, depository and nondepository financial service loan companies, and insurance companies organized, chartered, or holding a certificate of authority to do business under the laws of this State or any other state, or under the laws of the United States;
- (4) Licensed attorneys engaged in the practice of law;
- (5) Certified public accountants licensed under chapter 466, persons holding a permit to practice public accountancy in the State of Hawaii, and persons holding a valid certified public accountant license issued under the laws of another state or territory who are lawfully practicing in the State of Hawaii with a temporary permit to practice pursuant to rules established by the board of public accountancy and who are subject to regulation by the board of public accountancy while engaged in the practice of public accountancy;
- [~~(5)~~] (6) A federal Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons

or entities, and any agent or employee of these persons or entities, while engaged in the business of these persons or entities; or
[(6)] (7) A nonprofit organization that, pursuant to chapter 446, offers counseling or advice to an owner of a distressed property, if the nonprofit organization has no contract or agreement for services with lenders, distressed property purchasers, or any person who effects loans or distressed property purchases.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 26, 2009.)