

ACT 142

H.B. NO. 2326

A Bill for an Act Relating to Mortgage Rescue Fraud.

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

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

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

- (1) All contracts or other agreements between the distressed property consultant and any consumer for any mortgage assistance relief service;
 - (2) Copies of all written communications between the distressed property consultant and the distressed property owner or owners occurring prior to the date on which the property owner or owners entered into an agreement with the distressed property consultant for 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 or owners’ 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 consumers and shall also include, at a minimum, the following:
 - (A) If the distressed property consultant is engaged in the telemarketing of mortgage assistance relief services, performing random, blind recording and testing of the oral representations made by individuals engaged in sales or other customer service functions;
 - (B) Establishing a procedure for receiving and responding to any and all complaints regarding or relating to the distressed property consultant or mortgage assistance relief service, or both; and
 - (C) Ascertaining the number and nature of any complaints regarding transactions in which any employee or independent contractor, or both, is involved;
 - (2) Investigate promptly and fully each consumer complaint received;
 - (3) Take corrective action with respect to any employee or independent contractor whom the distressed property 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 executive 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 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) Execute a written contract that identifies each mortgage assistance relief service to be provided;
- (2) Maintain a client trust account that complies with all applicable state laws and rules;
- (3) Deposit into the attorney's client trust account all moneys received by or on behalf of the consumer to be provided with any mortgage assistance relief service; and
- (4) Keep and maintain all moneys received in deposit in the client trust account until such time as the attorney has fully performed each service the attorney contracted to perform or represented would be performed."

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

“~~[[§480E-1]]~~ Purpose. The purpose of this chapter is to protect Hawaii consumers from persons who prey on ~~[homeowners who face property foreclosures, liens, or encumbrances]~~ consumers by offering services that purport to provide relief from consumers’ mortgage loan obligations or from other filed or threatened liens or encumbrances against their properties. Consumers who face foreclosures, liens, or encumbrances are often in desperate financial situations that can have severe adverse consequences for individuals and families even if the consumers have significant equity in their residential real property. The consumers’ desperation makes them vulnerable to persons who claim they can stop, prevent, or delay foreclosures, liens, or encumbrances~~[-]~~, or claim they can reduce, modify, or eliminate mortgage loan obligations or other filed or threatened liens or encumbrances. Persons who make these claims often use the consumers’ desperation to foster unequal bargaining positions and withhold or misrepresent vital information and details. As a result, consumers may be convinced to give up their real property interests and valuable equity to these persons while receiving little in return. Requiring full and complete disclosure of vital information will better enable consumers to make informed decisions when dealing with persons claiming to be able to stop foreclosures, liens, or encumbrances. This ~~[[chapter]]~~ addresses possible misrepresentations by compelling persons who offer assistance to fully and completely describe their services in written contracts and gives ~~[the homeowners]~~ consumers the right to cancel at any time before a distressed property consultant has performed all services called for in a contract.”

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

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

““Distressed property owner” or “property owner” means the owner of any distressed property.

“Fully performed” means:

- (1) In the case of relief requiring the consent of any lending party, the distressed property consultant or attorney has:
 - (A) Carried out and provided all of the services the distressed property consultant or attorney contracted to perform or represented would be performed; and
 - (B) Obtained from the lending party a written offer for mortgage assistance relief that the consumer has accepted by executing the written contract.
- (2) In the case of relief requiring the consent of any non-lending party, including any person that may hold a lien or encumbrance against any residential real property, the distressed property consultant or attorney has:
 - (A) Carried out and provided all of the services the distressed property consultant or attorney contracted to perform or represented would be performed; and
 - (B) Obtained from the non-lending party a written offer for mortgage assistance relief that the consumer has accepted by executing the written contract.
- (3) In all other cases, being instances where consent is not obtained as the result of a mortgage assistance relief service, the property owner obtains the desired relief from a court of law, which includes a favorable determination that the mortgage assistance relief service conferred a benefit upon the property owner and is therefore compensable.

“Lending party” means the person from whom mortgage assistance relief is sought and includes the residential loan holder or servicer.

“Material” means likely to affect a consumer’s choice of, or conduct regarding, any mortgage assistance relief service.

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

- (1) Stopping, preventing, or postponing the loss of any residential real property, whether by mortgage or deed or trust foreclosure sale or repossession, or otherwise saving any consumer’s residential real property from foreclosure or repossession;
- (2) Stopping, preventing, or postponing the charging of any lien or encumbrance against any residential real property or reducing or eliminating any lien or 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
 - (C) Any other disposition of the property other than a sale to a third party who is not the residential loan holder;
- (7) Obtaining any forbearance or modification in the timing of payments from any residential loan holder or servicer;
- (8) Obtaining any forbearance from any beneficiary or mortgagee, or any relief with respect to a tax sale of any residential real property;
- (9) Obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or other contract secured by a mortgage on any residential real property or contained in the mortgage;
- (10) Obtaining any extension of the period within which the owner may reinstate the owner’s rights with respect to the owner’s property;
- (11) Obtaining a loan or advance of funds while the consumer is in foreclosure or at risk of foreclosure due to nonpayment of any obligation related to a residential real property, including but not limited to one or more loans, taxes, lease assessments, association fees, or maintenance fees;
- (12) Obtaining a loan or advance of funds during any post-tax sale redemption period;
- (13) Considering or deciding whether a consumer should continue making payments on any loan, taxes, lease assessments, association fees,

- or maintenance fees or any other obligation related to a residential real property;
- (14) Exercising any cure of default;
 - (15) Avoiding or ameliorating the impairment of the property owner's credit resulting from the recording or filing of a notice of default or the conduct of a foreclosure sale or tax sale;
 - (16) Drafting, preparing, performing, creating, or otherwise obtaining a forensic loan audit, a forensic securitization audit, or any other type of audit, report, summary, affidavit, or declaration involving an opinion, determination, or analysis of whether a lending party has an enforceable mortgage or lien, predicated upon claims that a lending party that is a party to a pooling and service agreement failed to adhere to the terms of that agreement, or that errors occurred after the signing of the mortgage loan, or disputing whether the lending party is the holder of the promissory note, or any argument that the lending party has failed to comply with federal or state mortgage lending laws;
 - (17) Drafting, preparing, performing, creating, or otherwise obtaining any documentation used or intended to be used to advance any legal theory in defense of a foreclosure or ejection action, regardless of any disclaimer as to providing legal advice; or
 - (18) Understanding any legal theory that may be used in defense of a foreclosure or ejection action, regardless of any disclaimer as to providing legal advice.

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

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

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

"Servicer" means the person responsible for:

- (1) Receiving any scheduled periodic payments pursuant to the terms of the residential loan that is the subject of the offer to provide mortgage assistance relief services; and
- (2) Making the payments of principal and interest and such other payments with respect to the amounts received from the consumer as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract."

2. By amending the definition of "distressed property" to read:

"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; [øø]
- (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.”

3. By amending the definition of “distressed property consultant” to read:

““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 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) Attorneys licensed in the State of Hawaii 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;

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

4. By deleting the definition of “material fact”.

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

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

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

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

~~“[§480E-3] 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[;] owners, 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 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 in the following form and printed in not less than fourteen-point type:

“You may stop doing business with us at any time. You may accept or reject the offer of mortgage assistance we obtain from your lender (or servicer). If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [insert amount or method of calculating the amount] for our services. [Name of the company] is not associated with the government, and our service is not approved by the government or your lender. Even if you agree to use our service in an attempt to obtain mortgage assistance relief from the lending party, your lender may not agree to change your loan. IF YOU STOP PAYING YOUR MORTGAGE, YOU COULD LOSE YOUR HOME AND DAMAGE YOUR CREDIT RATING.”

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

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

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

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

~~[[§480E-5]]~~ Cancellation of a distressed property consultant contract.

(a) In addition to any other legal right to rescind a contract, any distressed property owner has the right to cancel a distressed property consultant contract, without any penalty or obligation, at any time before the distressed property consultant has fully performed each and every service the distressed property consultant contracted to perform or represented would be performed.

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

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail with postage prepaid. Notice by certified mail, return receipt requested, addressed to the address specified in the distressed property consultant 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 nature that the distressed property purchaser represents will be performed for any ~~[owner of the]~~ distressed property owner before or after the distressed property conveyance;
- (3) A complete description of the terms of any related agreement designed to allow any ~~[owner of the]~~ distressed property owner to remain in the distressed property, such as a rental agreement, repurchase agreement, contract for deed, or lease with option to buy;
- (4) All notices as provided in this chapter;
- (5) The following notice, in a type size no smaller than fourteen-point boldface type, completed with the name of the distressed property purchaser, shall appear immediately above the notice of right to cancel a distressed property conveyance contract required by section 480E-7(a):

“NOTICE REQUIRED BY HAWAII LAW
UNTIL YOUR RIGHT TO CANCEL THIS CONTRACT HAS ENDED, (Name of distressed property purchaser) OR ANYONE WORKING FOR (Name of distressed property purchaser) CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN ANY DEED OR ANY OTHER DOCUMENT. YOU ARE URGED TO HAVE THIS CONTRACT REVIEWED BY AN ATTORNEY OF YOUR CHOICE WITHIN FIFTEEN BUSINESS DAYS OF SIGNING IT.”; and

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

“NOTICE REQUIRED BY HAWAII LAW
AS PART OF THIS TRANSACTION, YOU ARE GIVING UP TITLE TO YOUR HOME.””

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

“~~[[§480E-8]]~~ **Cancellation of a distressed property conveyance contract.**

- (a) In addition to any other legal right to rescind a contract, any distressed prop-

erty owner has the right to cancel a distressed property conveyance contract, without any penalty or obligation, at any time before the later of midnight of the fifteenth business day following the day on which the last party to a distressed property conveyance contract signs the distressed property conveyance contract or 5:00 p.m. on the last day of the period during which any ~~[owner of a]~~ distressed property owner has the right to cure a default under state law.

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

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

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

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

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

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

“~~[[~~**§480E-10]]** **Prohibitions.** (a) A distressed property consultant shall not:

- (1) Represent, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, or performance of any mortgage assistance relief service, that a distressed property owner cannot or should not contact or communicate with the distressed property owner’s lender or servicer;
- (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
- (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;
- (I) The availability, performance, cost, or characteristics of any alternative to for-profit mortgage assistance relief services through which the distressed property owner can obtain mortgage assistance relief, including negotiating directly with the residential loan holder or servicer, or using any nonprofit housing counselor agency or program;
- (J) The amount of money or the percentage of the debt amount that a distressed property owner may save by using any mortgage assistance relief service;
- (K) The total cost to purchase any mortgage assistance relief service; or
- (L) The terms, conditions, or limitation of any offer of mortgage assistance relief the distressed property consultant obtains from the distressed property owner's residential loan holder or servicer, including the time period in which the distressed property owner must decide to accept the offer;
- (3) Make any representation, expressly or by implication, about the benefits, performance, or efficacy of any mortgage assistance relief service unless, at the time such representation is made, the provider possesses and relies upon competent and reliable evidence that substantiates that the representation is true. For the purposes of this paragraph, "competent and reliable evidence" means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by individuals qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results;
- ~~[(1) Misrepresent or conceal]~~ (4) Conceal any material fact;
- ~~[(2)]~~ (5) Induce or attempt to induce a distressed property owner to waive any provision of this chapter;

- ~~[(3)]~~ (6) Make any promise or guarantee not fully disclosed in the distressed property consultant contract;
- ~~[(4)]~~ (7) Engage or attempt to engage in any activity or 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 to secure the payment of compensation. This type of security is void and not enforceable;
- ~~[(9)]~~ (12) Receive any consideration from any third party in connection with services rendered to a distressed property owner unless the consideration is fully disclosed in the distressed property consultant contract;
- ~~[(10)]~~ (13) Acquire any interest, directly or indirectly, or by means of a subsidiary or affiliate, in a distressed property from a distressed property owner with whom the distressed property consultant has contracted;
- ~~[(11)]~~ (14) Require or ask a distressed property owner to sign any lien, encumbrance, mortgage, assignment, or deed unless the lien, encumbrance, mortgage, assignment, or deed is fully described in the distressed property consultant contract, including all disclosures required by this chapter; ~~or~~
- ~~[(12)]~~ (15) Take any power of attorney from a distressed property owner for any purpose, except to inspect documents concerning the distressed property as allowed by law[-];
- (16) Advise or instruct a distressed property owner to stop making payments to any lending party if that property owner is not in receipt of a written notice that the property owner’s residential loan has been accelerated;
- (17) Fail to disclose, at the time the distressed property consultant furnishes the distressed property owner with the lending party’s written offer for mortgage assistance relief, the following information:
“This is an offer of mortgage assistance we obtained from your lender [or servicer]. You may accept or reject the offer. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [same amount as disclosed in the distressed property consultant contract] for our services.”
The disclosure required by this paragraph shall be made in a clear and prominent manner, on a separate written page, and preceded by the heading:
“IMPORTANT NOTICE: Before buying this service, consider the following information.”

- The heading shall be in bold face type that is two-point type larger than the type size of the required disclosure;
- (18) Fail to provide, at the time the distressed property consultant furnishes the distressed property owner with the written agreement specified in paragraph (17), a notice from the lending party that describes all material differences between the terms, conditions, and limitations associated with the distressed property owner's current residential loan and the terms, conditions, and limitations associated with the distressed property owner's residential loan if the owner accepts the lending party's offer, including but not limited to differences in the loan's:
- (A) Principal balance;
 - (B) Contract interest rate, including the maximum rate and any adjustable rates, if applicable;
 - (C) Amount and number of the owner's scheduled periodic payments on the loan;
 - (D) Monthly amounts owed for principal, interest, taxes, and any mortgage insurance on the loan;
 - (E) Amount of any delinquent payments owing or outstanding;
 - (F) Assessed fees or penalties; and
 - (G) Term;
- The notice required by this paragraph shall be made in a clear and prominent manner, on a separate written page, and preceded by the heading: "IMPORTANT INFORMATION FROM YOUR [name of lender or servicer] ABOUT THIS OFFER." The heading shall be in bold face type that is two-point type larger than the type size of the required disclosure;
- (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 the 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 the distressed property owner would owe in failing to qualify; or
- (20) File any document in the bureau of conveyances of the State of Hawaii that purports to modify, reduce, eliminate, discharge, contest, or otherwise affect any mortgage, lien, or encumbrance of record without either the express written consent of the lending party or lienholder or a court order permitting or directing the document to be filed, with the exception of a notice of pendency of action or lis pendens.
- (b) A distressed property purchaser shall not:
 - (1) Misrepresent or conceal any material fact;
 - (2) Induce or attempt to induce a distressed property owner to waive any provision of this chapter;
 - (3) Make any promise or guarantee not fully disclosed in the distressed property conveyance [[contract]];
 - (4) Engage or attempt to engage in any activity or act concerning the distressed property not fully disclosed in the distressed property conveyance contract;

- (5) Induce or attempt to induce a distressed property owner to engage in any activity or act not fully disclosed in the distressed property conveyance contract;
- (6) Enter into or attempt to enter into a distressed property conveyance unless the distressed property purchaser verifies and can demonstrate that ~~[an owner of]~~ the distressed property owner has a reasonable ability to pay any amounts due to reacquire an interest in the distressed property or to make monthly or any other payments due under a distressed property conveyance contract or distressed property lease, if the distressed property purchaser allows any ~~[owner of a]~~ distressed property owner to remain in, occupy, use, or repurchase the distressed property;
- (7) Fail to make a payment to the ~~[owner of the]~~ distressed property owner at the time the title is conveyed so that the ~~[owner of the]~~ distressed property owner has received consideration in an amount of at least eighty-two per cent of the property's fair market value, or, in the alternative, fail to pay the ~~[owner of the]~~ distressed property owner no more than the costs necessary to extinguish all of the existing obligations on the distressed property, as set forth in this chapter; provided that the distressed property owner's costs to repurchase the distressed property pursuant to the terms of the distressed property conveyance contract do not exceed one hundred twenty-five per cent of the distressed property purchaser's costs to purchase the property. If ~~[an owner]~~ a distressed property owner is unable to repurchase the property pursuant to the terms of the distressed property conveyance contract, the distressed property purchaser shall not fail to make a payment to the ~~[owner of the]~~ distressed property owner so that the ~~[owner of the]~~ distressed property owner has received consideration in an amount of at least eighty-two per cent of the property's fair market value at the time of conveyance or at the expiration of the distressed property owner's option to repurchase;
- (8) Enter into any repurchase or lease agreement as part of a distressed property conveyance contract or subsequent conveyance of an interest in the distressed property back to a distressed property owner that is unfair or commercially unreasonable or engage in any other unfair conduct;
- (9) Represent, directly or indirectly, that the distressed property purchaser is acting as an advisor or a consultant or is acting on behalf of or assisting ~~[an owner of]~~ a distressed property owner to "remain in the house", "save the house", "buy time", or "stop the foreclosure" or is doing anything other than purchasing the distressed property;
- (10) Misrepresent the distressed property purchaser's status as to licensure or certification;
- (11) Do any of the following until after the time during which ~~[an owner of]~~ a distressed property owner may cancel the distressed property conveyance contract:
 - (A) Accept from ~~[an owner of the]~~ a distressed property owner execution of any instrument of conveyance of any interest in the distressed property;
 - (B) Execute an instrument of conveyance of any interest in the distressed property; or

- (C) Pursuant to chapter 501 or 502, record any document signed by ~~[an owner of]~~ a distressed property~~;~~ owner, including any instrument of conveyance;
- (12) Fail to re-convey title in a distressed property to the distressed property owner or owners when the terms of the distressed property conveyance contract have been fulfilled if the distressed property consultant or distressed property purchaser contracted or represented that title in the distressed property would be re-conveyed to the distressed property owner or owners when the terms of the distressed property conveyance contract have been fulfilled;
- (13) Induce or attempt to induce ~~[an owner of the]~~ a distressed property owner to execute a quitclaim deed concerning a distressed property;
- (14) Enter into a distressed property conveyance contract where any party to the contract is represented by power of attorney;
- (15) Immediately following the conveyance of the distressed property, fail to extinguish all liens encumbering the distressed property at the time of the distressed property conveyance or fail to assume all liability with respect to all liens encumbering the distressed property at the time of the distressed property conveyance, which assumption shall be accomplished without violations of the terms and conditions of the lien or liens being assumed. Nothing herein shall preclude a lender from enforcing any provision in a contract that is not otherwise prohibited by law;
- (16) Fail to complete a distressed property conveyance through:
- (A) An escrow depository licensed by the department of commerce and consumer affairs;
- (B) A bank, trust company, or savings and loan association authorized under any law of this State or of the United States to do business in the State;
- (C) A person licensed as a real estate broker in this State who is the broker for a party to the escrow; provided that the person does not charge any escrow fee; or
- (D) A person licensed to practice law in this State who, in escrow, is not acting as the employee of a corporation; provided that the person does not charge any escrow fee; or
- (17) Cause the property to be conveyed or encumbered without the knowledge or permission of all ~~[owners of a]~~ distressed property owners or in any way frustrate the ability of ~~[a]~~ any distressed property owner to reacquire the distressed property.”

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

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

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

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

ACT 142

SECTION 11. Statutory material to be repealed is bracketed and strick-en. New statutory material is underscored.¹

SECTION 12. This Act shall take effect upon its approval.
(Approved June 29, 2016.)

Note

1. Edited pursuant to HRS §23G-16.5.