
A BILL FOR AN ACT

RELATING TO MORTGAGES.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 FORECLOSURE CONSULTANTS AND RECONVEYANCES

6 PART I. GENERAL PROVISIONS

7 § -1 **Short title.** This chapter may be cited as the
8 Mortgage Rescue Fraud Protection Act.

9 § -2 **Purpose.** The purpose of this chapter is to protect
10 homeowners from unfair or deceptive practices by foreclosure
11 consultants or through foreclosure reconveyance agreements.

12 § -3 **Definitions.** As used in this chapter, unless the
13 context requires otherwise:

14 "Department" means the department of commerce and consumer
15 affairs.

16 "Homeowner" means the person holding record title to
17 residential real property on the date when an action to



1 foreclose the mortgage or deed of trust to the residential real
2 property is commenced pursuant to the provisions of chapter 667.

3 "Residence in foreclosure" means a residential real
4 property consisting of not more than four single family dwelling
5 units, one of which is occupied by the owner as the owner's
6 principal place of residence, and against which:

7 (1) An action to foreclose has been filed in the circuit
8 court pursuant to section 667-1;

9 (2) A notice of intention to foreclose under power of sale
10 has been published pursuant to section 667-5; or

11 (3) A notice of default is served pursuant to section
12 667-22.

13 § -4 **Exempt agreements and persons.** This chapter shall
14 not apply to:

15 (1) A person admitted to practice law in this State, while
16 performing any activity related to the person's
17 regular practice of law in this State;

18 (2) A person who holds or is owed as an obligation secured
19 by a lien on any residence in foreclosure for which
20 the person performed services in connection with the
21 obligation or lien, if the obligation or lien did not
22 arise as a result of a foreclosure reconveyance;



- 1 (3) A person doing business under any law of this State or
2 the United States that regulates banks, trust
3 companies, savings and loan associations, credit
4 unions, insurance companies, title insurers, or
5 insurance companies authorized to conduct business in
6 this State, while the person performs services as part
7 of the person's normal business activities;
- 8 (4) A person originating or closing a loan in a person's
9 normal course of business if, as to that loan:
- 10 (A) The loan is subject to the requirements of the
11 federal Real Estate Settlement Procedures Act, 12
12 U.S.C. §2601 to §2617; or
- 13 (B) With respect to any second mortgage or home
14 equity line of credit, the loan is subordinate to
15 and closed simultaneously with a qualified first
16 mortgage loan under subparagraph (A) or is
17 initially payable on the face of the note or
18 contract to an entity included in paragraph (3);
- 19 (5) A judgment creditor of the homeowner, if the judgment
20 creditor's claim accrued against a residence before
21 the residence became a residence in foreclosure;



- 1 (6) A title insurer authorized to conduct business in this
- 2 State while performing title insurance services;
- 3 (7) A person licensed as a mortgage broker or mortgage
- 4 lender under chapter 454 while acting under the
- 5 authority of that license;
- 6 (8) A person licensed as a real estate broker or real
- 7 estate salesperson under chapter 467 while the person
- 8 engages in any activity for which the person is
- 9 licensed; or
- 10 (9) A nonprofit organization that offers counseling or
- 11 advice to homeowners in foreclosure or loan default,
- 12 if the organization is not directly or indirectly
- 13 related to and does not contract for services with
- 14 for-profit lenders or foreclosure purchasers.

15 § -5 **Required language.** The disclosures and documents
16 required by this chapter shall be in English. If a provider
17 required to make disclosures or provide document pursuant to
18 this chapter communicates with an individual primarily in a
19 language other than English, the provider must furnish a
20 translation into the other language of the disclosures and
21 documents required by this chapter.

22 **PART II. FORECLOSURE CONSULTANTS**



1 § -11 **Definitions.** As used in this part, unless the
2 context requires otherwise:

3 "Foreclosure consultant" means a person who:

4 (1) Solicits or contacts a homeowner in writing, in
5 person, or through any electronic or
6 telecommunications medium and, directly or indirectly,
7 makes a representation or offer to perform any service
8 that the person represents will:

9 (A) Stop, enjoin, delay, void, set aside, annul,
10 stay, or postpone a foreclosure sale;

11 (B) Obtain forbearance from any servicer of process,
12 beneficiary, or mortgagee;

13 (C) Assist the homeowner to exercise a right of
14 reinstatement provided in the loan documents or
15 to refinance a loan on a residence in
16 foreclosure;

17 (D) Obtain an extension of the period within which
18 the homeowner may reinstate the homeowner's
19 obligation or extend the deadline to object to a
20 ratification;

21 (E) Obtain a waiver of an acceleration clause
22 contained in any promissory note or contract



- 1 secured by a mortgage on a residence in
- 2 foreclosure or contained in the mortgage;
- 3 (F) Assist the homeowner to obtain a loan or advance
- 4 of funds;
- 5 (G) Avoid or ameliorate the impairment of the
- 6 homeowner's credit resulting from the residence
- 7 becoming a residence in foreclosure;
- 8 (H) Save the homeowner's residence from foreclosure;
- 9 (I) Purchase or obtain an option to purchase the
- 10 homeowner's residence within twenty days of a
- 11 residence becoming a residence in foreclosure;
- 12 (J) Arrange for the homeowner to become a lessee or
- 13 renter entitled to continue to reside in the
- 14 homeowner's residence;
- 15 (K) Arrange for the homeowner to have an option to
- 16 repurchase the homeowner's residence; or
- 17 (L) Engage in any documentation, grant, conveyance,
- 18 sale, lease, trust, or gift by which the
- 19 homeowner clogs the homeowner's equity of
- 20 redemption in the homeowner's residence; or
- 21 (2) Systematically contacts owners of property that court
- 22 records or newspaper advertisements show are



1 residences in foreclosure or in danger of becoming
2 residences in foreclosure.

3 "Foreclosure consulting contract" means a written, oral, or
4 equitable agreement between a foreclosure consultant and a
5 homeowner for the provision of any foreclosure consulting
6 service or foreclosure reconveyance.

7 "Foreclosure consulting service" includes:

- 8 (1) Receiving money for the purpose of distributing it to
9 creditors in payment or partial payment of any
10 obligation secured by a lien on a residence in
11 foreclosure;
- 12 (2) Contacting creditors on behalf of a homeowner;
- 13 (3) Arranging or attempting to arrange for an extension of
14 the period within which a homeowner may cure the
15 homeowner's default and reinstate the homeowner's
16 obligation;
- 17 (4) Arranging or attempting to arrange for any delay or
18 postponement of the sale of a residence in
19 foreclosure;
- 20 (5) Arranging or facilitating the purchase of a
21 homeowner's equity of redemption or legal or equitable



1 title within twenty days of a residence becoming a
2 residence in foreclosure;

3 (6) Arranging or facilitating any transaction wherein a
4 homeowner will become a lessee, optionee, life tenant,
5 partial homeowner, or vested or contingent
6 remainderman of the homeowner's residence;

7 (7) Arranging or facilitating the sale of a homeowner's
8 residence or the transfer of legal title, in any form,
9 to another party as an alternative to foreclosure;

10 (8) Arranging for a homeowner to have an option to
11 repurchase the homeowner's residence after a sale or
12 transfer;

13 (9) Arranging for or facilitating a homeowner remaining in
14 the homeowner's residence as a tenant, renter, or
15 lessee; or

16 (10) Arranging or facilitating any other grant, conveyance,
17 sale, lease, trust, or gift.

18 "Immediate family" means a person's parents, spouse,
19 children, natural or adopted, and siblings of the whole and
20 half-blood.

21 § -12 Foreclosure consulting contract. (a) A
22 foreclosure consulting contract shall be in writing and provided



1 to the homeowner, without changes, alterations, or modification,
2 for review at least twenty-four hours before it is signed by the
3 homeowner.

4 (b) A foreclosure consulting contract shall be printed in
5 at least twelve-point type and shall include the name and
6 address of the foreclosure consultant to whom a notice of
7 cancellation can be mailed and the date the homeowner signed the
8 contract.

9 (c) A foreclosure consulting contract shall fully disclose
10 the exact nature of the foreclosure consulting services to be
11 provided and the total amount and terms of any compensation to
12 be received by the foreclosure consultant.

13 (d) A foreclosure consulting contract shall be dated and
14 personally signed, with each page being initialed, by each
15 homeowner of the residence in foreclosure and the foreclosure
16 consultant and shall be acknowledged by a notary public in the
17 presence of the homeowner at the time the contract is signed by
18 the homeowner and the foreclosure consultant.

19 (e) A foreclosure consulting contract shall contain the
20 following notice, which shall be printed in at least fourteen-
21 point bold-face type, completed with the name of the foreclosure



1 consultant, and located in immediate proximity to the space
2 reserved for the homeowner's signature:

3 "NOTICE REQUIRED BY STATE LAW

4 _____(Name of foreclosure consultant) or anyone
5 working for him or her CANNOT ask you to sign or have you sign
6 any lien, mortgage, or deed as part of signing this agreement
7 unless the terms of the transfer are specified in this document
8 and you are given a separate explanation of the precise nature
9 of the transaction.

10 _____(Name of foreclosure consultant) or anyone
11 working for him or her CANNOT guarantee you that they will be
12 able to refinance your home or arrange for you to keep your
13 home. Continue making mortgage payments until a refinancing, if
14 applicable, is approved.

15 You may cancel this contract, at any time, without penalty
16 of any kind. If you want to cancel this contract, mail or
17 deliver a signed and dated copy of this notice of cancellation,
18 or any other written notice, indicating your intent to cancel to
19 _____(Name and address of the foreclosure
20 consultant).

21 As part of any cancellation, you (the homeowner) must repay
22 any money actually spent on your behalf by _____



1 (Name of foreclosure consultant) prior to receipt of this notice
2 and as a result of this agreement, within sixty days, along with
3 interest at the prime rate published by the federal reserve plus
4 two percentage points; provided that the total interest rate
5 shall not to exceed eight per cent per year.

6 THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE
7 LOSS OF YOUR HOME. CONTACT AN ATTORNEY FOR LEGAL ADVICE OR A
8 HOUSING COUNSELOR APPROVED BY THE FEDERAL DEPARTMENT OF HOUSING
9 AND URBAN DEVELOPMENT FOR OTHER OPTIONS WITH YOUR LENDER BEFORE
10 SIGNING."

11 (f) A completed form in duplicate, entitled "NOTICE OF
12 CANCELLATION", shall accompany the foreclosure consulting
13 contract. The Notice of Cancellation shall:

- 14 (1) Be on a separate sheet of paper attached to the
15 contract;
- 16 (2) Be easily detachable; and
- 17 (3) Contain the following statement, printed in at least
18 fourteen point type:

19 "NOTICE OF CANCELLATION

20 (Date of Contract)

21 To: (Name of foreclosure consultant)

22 (Address of foreclosure consultant)



1 I hereby cancel this contract.

2 _____ (date)

3 _____ (homeowner's
4 signature)".

5 (g) If a foreclosure reconveyance is included in a
6 foreclosure consulting contract or arranged after the execution
7 of a foreclosure consulting contract, the foreclosure purchaser
8 shall provide the homeowner with a document entitled "NOTICE OF
9 RIGHT TO RESCIND TRANSFER OF DEED OR TITLE" in the form required
10 under part III.

11 (h) The foreclosure consultant shall provide to the
12 homeowner a signed, dated, and acknowledged copy of the
13 foreclosure consulting contract and the attached notice of
14 cancellation immediately upon execution of the contract.

15 § -13 **Waiver of rights.** Any provision in a foreclosure
16 consulting contract that attempts or purports to:

17 (1) Waive, supersede, or in anyway limit the homeowner's
18 rights under this chapter;

19 (2) Consent to jurisdiction for litigation or choice of
20 law in a state other than this State;

21 (3) Consent to a venue in a county other than the county
22 in which the property is located; or



1 (4) Impose any costs or filing fees greater than the
2 actual costs and fees,
3 is void.

4 § -14 **Prohibited acts.** A foreclosure consultant may
5 not:

6 (1) Claim, demand, charge, collect, or receive any
7 compensation until after the foreclosure consultant
8 has fully performed each and every service the
9 foreclosure consultant contracted to perform or
10 represented that the foreclosure consultant would
11 perform;

12 (2) Claim, demand, charge, collect, or receive any
13 interest or any other compensation for any loan that
14 the foreclosure consultant makes to the homeowner that
15 exceeds eight per cent per year;

16 (3) Take any wage assignment, any lien on any type of real
17 or personal property, or other security to secure the
18 payment of compensation;

19 (4) Receive any consideration from any third party in
20 connection with foreclosure consulting services
21 provided to a homeowner unless the consideration is
22 first fully disclosed in writing to the homeowner;



1 (5) Acquire any interest, directly or indirectly, or by
 2 means of a subsidiary, affiliate, or corporation in
 3 which the foreclosure consultant or a member of the
 4 foreclosure consultant's immediate family is a primary
 5 stockholder or party in interest, in a residence in
 6 foreclosure from a homeowner with whom the foreclosure
 7 consultant has contracted;

8 (6) Take any power of attorney from a homeowner to enter
 9 into a foreclosure consulting contract that does not
 10 comply in all respects with this part; or

11 (7) Facilitate or engage in any transaction that is
 12 unconscionable given the terms and circumstances of
 13 the transaction.

14 **PART III. FORECLOSURE RECONVEYANCES**

15 § -21 **Definitions.** As used in this part, unless the
 16 context requires otherwise:

17 "Foreclosure purchaser" means a person who acquires title
 18 or possession of a deed or other document to a residence in
 19 foreclosure as a result of a foreclosure reconveyance.

20 "Foreclosure reconveyance" means a transaction involving:

21 (1) The transfer of title to a residence in foreclosure by
 22 a homeowner during or incident to a proposed



1 foreclosure proceeding, either by transfer of interest
2 from the homeowner to another party or by creation of
3 a mortgage, trust, or other lien or encumbrance during
4 the foreclosure process that allows the acquirer to
5 obtain legal or equitable title to all or part of the
6 residence in foreclosure; and

7 (2) The subsequent conveyance, or promise of a subsequent
8 conveyance, or an interest back to the homeowner by
9 the acquirer or a person acting in participation with
10 the acquirer that allows the homeowner to possess the
11 residence in foreclosure following the completion of
12 the foreclosure proceeding, including an interest in a
13 contract for deed, purchase agreement, land
14 installment sale, contract for sale, option to
15 purchase, lease, trust, or other contractual
16 arrangement.

17 "Primary housing expenses" means the total amount required
18 to pay regular principal, interest, rent, utilities, insurance,
19 real property taxes, and association dues on a residence in
20 foreclosure.



1 "Resale" means a bona fide market sale of a residence in
2 foreclosure subject to a foreclosure reconveyance by the
3 foreclosure purchaser to an unaffiliated third party.

4 "Resale price" means the gross sale price of a residence in
5 foreclosure on resale.

6 "Settlement" means an in-person, face-to-face meeting with
7 the homeowner to complete final documents incident to the sale
8 or transfer of a residence in foreclosure, or to the creation of
9 a mortgage or equitable interest in a residence in foreclosure,
10 conducted by a settlement agent who is not employed by or an
11 affiliate of the foreclosure purchaser, during which the
12 homeowner must be presented with a completed copy of the HUD-1
13 Settlement form.

14 § -22 **Notice of transfer of deed or title.** (a) If a
15 foreclosure reconveyance is included in a foreclosure consulting
16 contract or arranged after the execution of a foreclosure
17 consulting contract, the foreclosure purchaser shall provide the
18 homeowner with a document entitled "NOTICE OF TRANSFER OF DEED
19 OR TITLE".

20 (b) The "NOTICE OF TRANSFER OF DEED OR TITLE" shall:

21 (1) Contain the entire agreement of the parties;



- 1 (2) Be printed in at least twelve-point type and written
- 2 in English and translated into any other language that
- 3 is used by the homeowner and was used in discussions
- 4 to describe the services of the foreclosure consultant
- 5 or foreclosure purchaser to negotiate the transfer or
- 6 sale of the residence in foreclosure;
- 7 (3) Be dated and personally signed by the homeowner and
- 8 the foreclosure purchaser and witnessed and
- 9 acknowledged by a notary public;
- 10 (4) Describe in detail the terms of any foreclosure
- 11 conveyance, including:
- 12 (A) The name, business address, telephone number, and
- 13 facsimile number of the person to whom the deed
- 14 or title will be transferred;
- 15 (B) The address of the residence in foreclosure;
- 16 (C) The total consideration to be given by the
- 17 foreclosure purchaser, the foreclosure
- 18 consultant, and any other party as a result of
- 19 the transfer;
- 20 (D) The time at which title is to be transferred to
- 21 the foreclosure purchaser and the terms of any
- 22 conveyance;



- 1 (E) Any financial or legal obligations that the
- 2 homeowner may remain subject to, including a
- 3 description of any mortgages, liens, or other
- 4 obligations that will remain in place;
- 5 (F) A description of any services of any nature that
- 6 the foreclosure purchaser will perform for the
- 7 homeowner before or after the sale of transfer;
- 8 (G) A complete description of the terms of any
- 9 related agreement designed to allow the homeowner
- 10 to remain in the residence, including the terms
- 11 of any rental agreement, repurchase agreement,
- 12 contract for deed, land installment contract, or
- 13 option to buy, and any provisions for eviction or
- 14 removal of the homeowner in the case of late
- 15 payment; and
- 16 (H) How any repurchase price or fee associated with
- 17 any transfer of title or deed back to the
- 18 homeowner will be calculated; and
- 19 (5) Contain the following statement printed in at least
- 20 fourteen-point bold-face type and located in immediate
- 21 proximity to the space reserved for the homeowner's
- 22 signature:



1 "If you change your mind about transferring
2 ownership of your property, you, the homeowner, may
3 cancel or rescind the transfer of the deed or title to
4 your property at any time before midnight of the third
5 business day that begins the day after you sign the
6 deed or title.

7 To rescind this transaction, mail or deliver a
8 signed and dated copy of the Notice provided, or any
9 other written notice expressing a similar intent, to
10 (name of foreclosure consultant) at (address of
11 foreclosure consultant).

12 THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD
13 RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY
14 FOR LEGAL ADVICE OR A HOUSING COUNSELOR APPROVED BY
15 THE FEDERAL DEPARTMENT OF HOUSING AND URBAN
16 DEVELOPMENT FOR OTHER OPTIONS WITH YOUR LENDER BEFORE
17 SIGNING."

18 (c) If a foreclosure reconveyance is included in a
19 foreclosure consulting contract or arranged after the execution
20 of a foreclosure consulting contract, the foreclosure purchaser
21 shall provide the homeowner with a document entitled "NOTICE OF



1 RIGHT TO RESCIND TRANSFER OF DEED OR TITLE." The NOTICE OF
2 RIGHT TO RESCIND TRANSFER OF DEED OR TITLE shall:

3 (1) Be a separate sheet of paper attached to the NOTICE OF
4 TRANSFER OF DEED OR TITLE;

5 (2) Be easily detachable; and

6 (3) Contain the following statement printed in at least
7 fourteen-point type:

8 "NOTICE OF RIGHT TO RESCIND TRANSFER OF DEED OR TITLE
9 (Date)

10 You may cancel or rescind the transfer of
11 ownership of your property through the transfer of a
12 deed or title before midnight of the third business
13 day that begins the day after you sign the deed or
14 title.

15 To rescind or cancel this transaction, mail or
16 deliver a signed and dated copy of this Notice, or any
17 other written notice expressing a similar intent, to
18 (name of foreclosure consultant) at (address of
19 foreclosure consultant).

20 THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD
21 RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY
22 FOR LEGAL ADVICE OR A HOUSING COUNSELOR APPROVED BY



1 THE FEDERAL DEPARTMENT OF HOUSING AND URBAN
 2 DEVELOPMENT FOR OTHER OPTIONS WITH YOUR LENDER BEFORE
 3 SIGNING.

4 NOTICE OF RESCISSION

5 To: (name of foreclosure purchaser)
 6 (address of foreclosure purchaser)

7 I hereby rescind the transfer of deed or title to my
 8 property. Please return all executed documents to me.

9 _____ date

10 _____ (homeowner's signature)."

11 (d) The foreclosure purchaser shall provide the homeowner
 12 with a copy of the Notice of Right to Rescind Transfer of Deed
 13 or Title immediately upon execution of any document that
 14 includes a foreclosure reconveyance.

15 (e) The time during which the homeowner may rescind the
 16 contract or transfer does not begin to run until the foreclosure
 17 purchaser has complied with this section.

18 (f) A foreclosure reconveyance may not be carried out
 19 using a power of attorney from the homeowner.

20 (g) A notice of rescission need not take the particular
 21 form specified in this part or any form contained in any
 22 agreement with the foreclosure consultant or foreclosure



1 purchaser and is effective, however expressed, if it indicates
2 the intention of the homeowner to rescind the reconveyance
3 agreement.

4 (h) The right to rescind may not be conditioned upon the
5 repayment of any funds.

6 (i) Within ten days after receipt of a notice of
7 rescission, the foreclosure purchaser shall return, without
8 condition, any original deed, title, contract, and any other
9 document signed by the homeowner.

10 (j) During the three day rescission period, a deed or
11 other document affecting title to the homeowner's residence may
12 not be recorded.

13 § -23 **Waiver of rights.** Any provision in an agreement
14 concerning a foreclosure reconveyance that attempts or purports
15 to:

16 (1) Waive, supersede, or in any way limit the homeowner's
17 rights under this chapter;

18 (2) Consent to jurisdiction for litigation or choice of
19 law in a state other than this State;

20 (3) Consent to a venue in a county other than the county
21 in which the property is located; or



1 (4) Impose any costs or filing fees greater than the
 2 actual costs and fees,
 3 is void.

4 § **-24 Prohibited acts.** A foreclosure purchaser may not:

5 (1) Enter into, or attempt to enter into, a foreclosure
 6 reconveyance with a homeowner unless:

7 (A) The foreclosure purchaser verifies and can
 8 demonstrate that the homeowner has or will have a
 9 reasonable ability to pay for the subsequent
 10 reconveyance of the residence in foreclosure back
 11 to the homeowner on completion of the terms of a
 12 foreclosure conveyance, or if the foreclosure
 13 conveyance provides for a lease with an option to
 14 repurchase the residence in foreclosure, the
 15 homeowner has or will have a reasonable ability
 16 to make the lease payments and repurchase the
 17 residence in foreclosure within the term of the
 18 option to repurchase;

19 (B) The foreclosure purchaser and the homeowner
 20 complete a settlement before any transfer of an
 21 interest in the residence in foreclosure is
 22 effected; and



1 (C) The foreclosure purchaser complies with the
2 requirements of the federal Home Ownership Equity
3 Protection Act, 15 U.S.C. 1639, and its
4 implementing regulations for any foreclosure
5 reconveyance in which the homeowner obtains a
6 vendee interest in a contract for deed.

7 (2) Fail to:

8 (A) Ensure that the title to the residence in
9 foreclosure has been reconveyed to the homeowner
10 in a timely manner if this part or the terms of a
11 foreclosure reconveyance agreement require a
12 reconveyance; or

13 (B) Make payment to the homeowner within ninety days
14 of any resale of a residence in foreclosure that
15 is subject to a foreclosure reconveyance, so that
16 the homeowner receives cash payments or
17 consideration in an amount equal to at least
18 eighty-two per cent of the net proceeds from any
19 resale of a residence in foreclosure, if the
20 residence is sold within eighteen months after
21 the homeowner enters into a foreclosure
22 reconveyance agreement;



- 1 (3) Enter into repurchase or lease terms, as part of the
- 2 foreclosure conveyance, that are unfair or
- 3 commercially unreasonable or engage in any other
- 4 unfair conduct;
- 5 (4) Represent, directly or indirectly, that:
- 6 (A) The foreclosure purchaser is acting as an advisor
- 7 or a consultant to, or in any other manner
- 8 represent that the foreclosure purchaser is
- 9 acting on behalf of, the homeowner;
- 10 (B) The foreclosure purchaser has certification or
- 11 licensure that the foreclosure purchaser does not
- 12 have; or
- 13 (C) The foreclosure purchaser is assisting the
- 14 homeowner to "save the house" or use a
- 15 substantially similar phrase;
- 16 (5) Make any other statements, directly or by implication,
- 17 or engage in any other conduct that is false,
- 18 deceptive, or misleading or that has the likelihood to
- 19 cause confusion or misunderstanding, including
- 20 statements regarding the value of the residence in
- 21 foreclosure, the amount of proceeds the homeowner will
- 22 receive after a foreclosure sale, any contract term,



1 or the homeowner's rights or obligations incident to
2 or arising out of the foreclosure reconveyance; or
3 (6) Until the homeowner's right to cancel the transaction
4 has expired:

5 (A) Record any document, including an instrument of
6 conveyance, signed by the homeowner; or

7 (B) Transfer or encumber or purport to transfer or
8 encumber any interest in the residence in
9 foreclosure to any third party.

10 § -25 **Presumptions, accounting, bona fide purchaser.**

11 (a) For the purposes of section -24(1)(A), there is a
12 rebuttable presumption that:

13 (1) A homeowner has a reasonable ability to pay for a
14 subsequent reconveyance of the residence in
15 foreclosure if the homeowner's payments for primary
16 housing expenses and regular principal and interest
17 payments on other personal debt, on a monthly basis,
18 do not exceed sixty per cent of the homeowner's
19 monthly gross income; and

20 (2) The foreclosure purchaser has not verified reasonable
21 payment ability if the foreclosure purchaser has not



1 obtained documents other than a statement by the
2 homeowner of assets, liabilities, and income.

3 (b) The foreclosure purchaser shall make a detailed
4 accounting of the basis for the amount of a payment made to the
5 homeowner of a residence in foreclosure resold within eighteen
6 months after entering into a foreclosure reconveyance agreement
7 in accordance with section -24(2)(B). The accounting shall
8 include documentation of expenses and other consideration paid
9 by the foreclosure purchaser and deducted from the resale price.

10 (c) A bona fide purchaser for value or bona fide lender
11 for value who enters into a transaction with a homeowner or a
12 foreclosure purchaser when a foreclosure consulting contract is
13 in effect or during the period when a foreclosure reconveyance
14 may be cancelled, without notice of those facts, receives good
15 title to the residence in foreclosure, free and clear of the
16 right of the parties to the foreclosure consulting contract or
17 the right of the homeowner to rescind the foreclosure
18 reconveyance.

19 (d) This part shall not be construed to impose any duty on
20 a purchaser, title insurer, or title insurance producer with
21 respect to the application of the proceeds of a sale of
22 residence in foreclosure by a foreclosure purchaser.



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PART IV. ENFORCEMENT

§ -31 Department of commerce and consumer affairs;
administration; enforcement. (a) The department of commerce
and consumer affairs may investigate compliance with this
chapter regardless of whether a complaint is filed.
Investigations not otherwise resolved through the department's
initial investigation may be referred by the department to the
attorney general for further proceedings. The department may
adopt rules, pursuant to chapter 91, for purposes of this
chapter.

PART V. REMEDIES

§ -41 Remedies, penalties, and violation of order or
injunction. (a) A person engages in a deceptive trade practice
and is subject to the remedies available in chapter 480,
including section 480-13.5 in the case of an elder, as the term
is defined in that section, when, in the course, of a person's
business, vocation, or occupation, the person violates any
provision of this chapter.
(b) Any homeowner who brings an action under this chapter
may be awarded monetary damages by a court of competent
jurisdiction pursuant to section 480-13.

1 (c) A person who violates any provision of this chapter
2 shall be guilty of a misdemeanor."

3 SECTION 2. The legislature finds that this Act does not
4 subject heretofore unregulated professions to licensing,
5 certification, or registration in the manner contemplated by the
6 "Sunrise Law", section 26H-6, Hawaii Revised Statutes. Rather,
7 this Act applies certain restrictions to persons who engage in
8 certain acts that are defined as constituting foreclosure
9 consulting. Accordingly, the legislature finds that the Sunrise
10 Law does not apply, and that this Act is therefore exempt from
11 the requirements of section 26H-6, Hawaii Revised Statutes.

12 SECTION 3. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun, before its effective date.

15 SECTION 4. This Act shall take effect upon its approval.
16

INTRODUCED BY: Kirk Caldwell

JAN 15 2008



Report Title:

Real Property; Mortgage Foreclosure

Description:

Imposes certain restrictions on foreclosure consultants. Requires foreclosure consulting contracts to be in writing containing full disclosure of nature of consulting services to be provided, along with right to cancel. Prohibits certain acts by foreclosure consultants. Requires disclosures relating to foreclosure reconveyances and right to rescind any transfer of deed or title by homeowner. Exempts measure from "Sunrise Law" review.

