
A BILL FOR AN ACT

RELATING TO MORTGAGES.

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

1 SECTION 1. This Act shall be known as the "Mortgage Rescue
2 Fraud Prevention Act."

3 SECTION 2. The Hawaii Revised Statutes is amended by
4 adding a new chapter to title 26 to be appropriately designated
5 and to read as follows:

6 "CHAPTER

7 MORTGAGE RESCUE FRAUD PREVENTION ACT

8 § -1 Purpose. The purpose of this chapter is to protect
9 Hawaii consumers from persons who prey on homeowners who face
10 property foreclosures, liens, or encumbrances. Consumers who
11 face foreclosures, liens, or encumbrances are often in desperate
12 financial situations that can have severe adverse consequences
13 for individuals and families even if the consumers have
14 significant equity in their residential real property. The
15 consumers' desperation makes them vulnerable to persons who
16 claim they can stop, prevent, or delay foreclosures, liens, or
17 encumbrances. Persons who make such claims often use the
18 consumers' desperation to foster unequal bargaining positions



1 and withhold or misrepresent vital information and details. As
2 a result, consumers may be convinced to give up their real
3 property interests and valuable equity to such persons while
4 receiving little in return. Requiring full and complete
5 disclosure of vital information will better enable consumers to
6 make informed decisions when dealing with persons claiming to be
7 able to stop foreclosures, liens, or encumbrances. This Act
8 addresses possible misrepresentations by compelling persons who
9 offer assistance to fully and completely describe their services
10 in written contracts and gives the homeowners the right to
11 cancel at any time before a distressed property consultant has
12 performed all services called for in a contract.

13 § -2 **Definitions.** As used in this chapter, unless the
14 context otherwise requires:

15 "Consideration" means any payment or thing of value
16 provided to an owner of a distressed property, including
17 reasonable costs paid to independent third parties necessary to
18 complete the distressed property conveyance or payment of money
19 to satisfy a debt or legal obligation of an owner of the
20 distressed property. "Consideration" shall not include any
21 amounts paid or to be paid directly or indirectly to the



1 distressed property purchaser, including amounts identified as
2 "gift equity," "fees," "escrow," or "down payment."

3 "Distressed property" means any residential real property
4 that:

- 5 (1) Is in foreclosure or at risk of foreclosure because
6 payment of any loan that is secured by the residential
7 real property is more than sixty days delinquent;
- 8 (2) Had a lien or encumbrance charged against it because
9 of nonpayment of any taxes, lease assessments,
10 association fees, or maintenance fees;
- 11 (3) Is at risk of having a lien or encumbrance charged
12 against it because the payments of any taxes, lease
13 assessments, association fees, or maintenance fees are
14 more than ninety days delinquent;
- 15 (4) Secures a loan for which a notice of default has been
16 given; or
- 17 (5) Secures a loan that has been accelerated.

18 "Distressed property consultant" means:

- 19 (1) Any person who makes any solicitation, representation,
20 or offer to or performs any of the following relating
21 to a distressed property:



- 1 (A) Stop or postpone the foreclosure sale or loss of any
2 distressed property due to the nonpayment of any loan
3 that is secured by the distressed property;
- 4 (B) Stop or postpone the charging of any lien or
5 encumbrance against any distressed property or
6 eliminate any lien or encumbrance charged against any
7 distressed property for the nonpayment of any taxes,
8 lease assessments, association fees, or maintenance
9 fees;
- 10 (C) Obtain any forbearance from any beneficiary or
11 mortgagee, or relief with respect to a tax sale of the
12 property;
- 13 (D) Assist the owner to exercise any cure of default
14 arising under Hawaii law;
- 15 (E) Obtain any extension of the period within which the
16 owner may reinstate the owner's rights with respect to
17 the property;
- 18 (F) Obtain any waiver of an acceleration clause contained
19 in any promissory note or contract secured by a
20 mortgage on a distressed property or contained in the
21 mortgage;



- 1 (G) Assist the owner in foreclosure, loan default, or
2 post-tax sale redemption period to obtain a loan or
3 advance of funds;
- 4 (H) Avoid or ameliorate the impairment of the owner's
5 credit resulting from the recording or filing of a
6 notice of default or the conduct of a foreclosure sale
7 or tax sale; or
- 8 (I) Save the owner's residence from foreclosure or loss of
9 home due to nonpayment of taxes.
- 10 (2) Shall not include any of the following:
- 11 (A) A person or the person's authorized agent acting under
12 the express authority or written approval of the
13 federal Department of Housing and Urban Development;
- 14 (B) A person who holds or is owed an obligation secured by
15 a lien on any distressed property, or a person acting
16 under the express authorization or written approval of
17 such person, when the person performs services in
18 connection with the obligation or lien, if the
19 obligation or lien did not arise as the result of or
20 as part of a proposed distressed property conveyance;
- 21 (C) Banks, savings banks, savings and loan associations,
22 credit unions, trust companies, depository and



1 nondepository financial service loan companies, and
2 insurance companies organized, chartered, or holding a
3 certificate of authority to do business under the laws
4 of this state or any other state or under the laws of
5 the United States;

6 (D) Licensed attorneys engaged in the practice of law;

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

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

18 "Distressed property consultant contract" means any
19 agreement or obligation between an owner or agent of an owner of
20 a distressed property and a distressed property consultant.



1 "Distressed property conveyance" means the transfer of any
2 interest in a distressed property effected directly or
3 indirectly by or through a distressed property consultant.

4 "Distressed property conveyance contract" means any
5 agreement or obligation affecting a distressed property
6 conveyance.

7 "Distressed property lease" means any agreement or
8 obligation regarding the lease or rental of a distressed
9 property effected directly or indirectly by or through a
10 distressed property consultant or distressed property purchaser.

11 "Distressed property purchaser" means any person who
12 acquires any interest in a distressed property directly or
13 indirectly through a distressed property conveyance or
14 distressed property conveyance contract.

15 "Material fact" means a fact that, if disclosed, might have
16 influenced the distressed property owner to not enter into the
17 agreement or obligation.

18 "Person" means any individual, partnership, corporation,
19 limited liability company, association, or other group or
20 entity, however organized.

21 § -3 Distressed property consultant contract. (a) A
22 distressed property consultant contract shall be in writing and



1 shall fully disclose all services to be performed by the
2 distressed property consultant and all terms of any agreements
3 between the distressed property consultant and all owners of the
4 distressed property, including the total amount and terms of
5 compensation to be directly or indirectly received by the
6 distressed property consultant.

7 (b) A distressed property consultant contract shall
8 contain on its first page in a type size no smaller than
9 fourteen-point boldface type:

- 10 (1) A description of the distressed property;
- 11 (2) The name, street address, and telephone number of the
12 distressed property consultant; and
- 13 (3) The name and address of the distressed property
14 consultant to which notice of cancellation is to be
15 delivered.

16 (c) A distressed property consultant contract shall be
17 dated and signed by the distressed property consultant. If the
18 distressed property consultant is a person other than an
19 individual, the individual executing the distressed property
20 consultant contract on behalf of the distressed property
21 consultant shall identify the title and office held by the
22 individual.



1 (d) A distressed property consultant contract shall be
2 dated and signed by all owners of the distressed property.

3 (e) The distressed property consultant shall provide each
4 distressed property owner with a copy of the distressed property
5 consultant contract and attached notice of cancellation
6 immediately upon execution by all parties to the distressed
7 property consultant contract. A distressed property consultant
8 contract shall not be effective until all parties to the
9 distressed property consultant contract have signed the
10 contract.

11 **§ -4 Right to cancel a distressed property consultant**
12 **contract.** (a) A distressed property consultant contract shall
13 contain, immediately before the space reserved for all the
14 distressed property owners' signatures, the following notice of
15 right to cancel a distressed property consultant contract in a
16 type size no smaller than fourteen-point boldface type,
17 completed with the name of the distressed property consultant:

18 "YOU, THE OWNER, MAY CANCEL THIS TRANSACTION AT ANY TIME
19 BEFORE THE DISTRESSED PROPERTY CONSULTANT HAS FULLY
20 PERFORMED EACH AND EVERY SERVICE THE DISTRESSED PROPERTY
21 CONSULTANT CONTRACTED TO PERFORM OR REPRESENTED WOULD BE



1 PERFORMED. SEE THE ATTACHED NOTICE OF CANCELLATION FORM
2 FOR AN EXPLANATION OF THIS RIGHT.

3 (Name of the distressed property consultant) (or
4 anyone working for or with the distressed property
5 consultant) CANNOT:

6 (1) Take any money from you or ask you for money until
7 (Name of the distressed property consultant) has
8 completely finished doing everything (Name of the
9 distressed property consultant) said he or she would
10 do; or

11 (2) Ask you to sign or have you sign any lien,
12 encumbrance, mortgage, assignment, or deed unless the
13 lien, encumbrance, mortgage, assignment, or deed is
14 fully described including all disclosures required by
15 law."

16 (b) A distressed property consultant contract shall be
17 accompanied by the following notice of cancellation form, in
18 duplicate, attached to the contract and easily detachable, in a
19 type size no smaller than fourteen-point boldface type,
20 completed with the date the contract was last signed, the name
21 of the distressed property consultant, and the address where the
22 notice of cancellation is to be delivered:



1 "NOTICE OF CANCELLATION

2 (Enter date contract last signed)

3 (Date)

4 YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR
5 OBLIGATION, AT ANY TIME BEFORE THE DISTRESSED PROPERTY
6 CONSULTANT HAS FULLY PERFORMED EACH AND EVERY SERVICE THE
7 DISTRESSED PROPERTY CONSULTANT CONTRACTED TO PERFORM OR
8 REPRESENTED WOULD BE PERFORMED.

9
10 TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND
11 DATED COPY OF THIS NOTICE OF CANCELLATION, OR ANY OTHER
12 WRITTEN NOTICE OF CANCELLATION TO (Name of distressed
13 property consultant) AT (Address where notice of
14 cancellation is to be delivered).

15
16 I HEREBY CANCEL THIS TRANSACTION.

17 _____

18 (Date)

19
20 _____

21 (Owner's signature)"



1 § -5 Cancellation of a distressed property consultant

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

9 (b) Cancellation occurs when any owner of a distressed
10 property delivers, by any means, written notice of cancellation
11 to the address specified in the distressed property consultant
12 contract.

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

18 (d) Notice of cancellation given by any owner of a
19 distressed property need not take the particular form as
20 provided with the distressed property consultant contract and,
21 however expressed, is effective if it indicates the intention of
22 an owner not to be bound by the contract.



1 § -6 Distressed property conveyance contract. (a) A
2 distressed property conveyance contract shall be in writing and
3 shall fully disclose all rights and obligations of the
4 distressed property purchaser and all owners of the distressed
5 property and all terms of any agreements between the distressed
6 property purchaser and all owners of the distressed property.

7 (b) Every distressed property conveyance contract shall
8 specifically include the following terms:

9 (1) The total consideration to be given by the distressed
10 property purchaser or tax lien payor in connection
11 with or incident to the distressed property
12 conveyance;

13 (2) A complete description of the terms of payment or
14 other consideration including any services of any
15 nature that the distressed property purchaser
16 represents will be performed for any owner of the
17 distressed property before or after the distressed
18 property conveyance;

19 (3) A complete description of the terms of any related
20 agreement designed to allow any owner of the
21 distressed property to remain in the distressed
22 property such as a rental agreement, repurchase



1 agreement, contract for deed, or lease with option to
2 buy;

3 (4) All notices as provided in this chapter;

4 (5) The following notice, in a type size no smaller than
5 fourteen-point boldface type, completed with the name
6 of the distressed property purchaser, shall appear
7 immediately above the notice of right to cancel a
8 distressed property conveyance contract required by
9 section -7(a):

10 "NOTICE REQUIRED BY HAWAII LAW

11 UNTIL YOUR RIGHT TO CANCEL THIS CONTRACT HAS ENDED, (Name
12 of distressed property purchaser) OR ANYONE WORKING FOR
13 (Name of distressed property purchaser) CANNOT ASK YOU TO
14 SIGN OR HAVE YOU SIGN ANY DEED OR ANY OTHER DOCUMENT. YOU
15 ARE URGED TO HAVE THIS CONTRACT REVIEWED BY AN ATTORNEY OF
16 YOUR CHOICE WITHIN FIVE BUSINESS DAYS OF SIGNING IT.";

17 and

18 (6) If title to the distressed property will be
19 transferred in the conveyance transaction, the
20 following notice, in a type size no smaller than
21 fourteen-point boldface type, completed with the name
22 of the distressed property purchaser, shall appear



1 immediately below the notice required by paragraph
2 (5):

3 "NOTICE REQUIRED BY HAWAII LAW
4 AS PART OF THIS TRANSACTION, YOU ARE GIVING UP TITLE TO
5 YOUR HOME."

6 (c) A distressed property conveyance contract shall
7 contain on its first page in a type size no smaller than
8 fourteen-point boldface type:

- 9 (1) A description of the distressed property;
10 (2) The name, street address, and telephone number of the
11 distressed property purchaser; and
12 (3) The name and address of the distressed property
13 purchaser to which notice of cancellation is to be
14 delivered.

15 (d) A distressed property conveyance contract shall be
16 dated and signed by the distressed property purchaser. If the
17 distressed property purchaser is a person other than an
18 individual, the individual executing the distressed property
19 conveyance contract on behalf of the distressed property
20 purchaser shall identify the title and office held by the
21 individual.



1 (e) A distressed property conveyance contract shall be
2 dated and signed by all owners of the distressed property.

3 (f) The distressed property purchaser shall provide each
4 distressed property owner with a copy of the distressed property
5 conveyance contract and attached notice of cancellation form
6 immediately upon execution by all parties to the distressed
7 property conveyance contract. A distressed property conveyance
8 contract shall not be effective until all parties to the
9 distressed property conveyance contract have signed the
10 contract.

11 (g) Pursuant to chapter 501 or 502, the distressed
12 property purchaser shall record the distressed property
13 conveyance contract no earlier than five days after its
14 execution but no later than ten days after its execution;
15 provided that the contract has not been canceled, or no later
16 than ten days after the last day any distressed property owner
17 has the right to cure a default under Hawaii law, whichever is
18 later.

19 **§ -7 Right to cancel a distressed property conveyance**
20 **contract.** (a) A distressed property conveyance contract shall
21 contain, immediately before the space reserved for all the
22 distressed property owners' signatures, the following notice of



1 right to cancel a distressed property conveyance contract in a
2 type size no smaller than fourteen-point boldface type,
3 completed with the correct date and time of day on which the
4 cancellation right ends:

5 "YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOUSE,
6 WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE (Date
7 and time of day). SEE THE ATTACHED NOTICE OF CANCELLATION
8 FORM FOR AN EXPLANATION OF THIS RIGHT."

9 (b) A distressed property conveyance contract shall be
10 accompanied by the following notice of cancellation form, in
11 duplicate, attached to the contract and easily detachable, in a
12 type size no smaller than fourteen-point boldface type,
13 completed with the date the contract was last signed, the name
14 of the distressed property purchaser, the address where notice
15 of cancellation is to be delivered, and the correct date and
16 time of day on which the cancellation right ends:

17 "NOTICE OF CANCELLATION

18
19 (Enter date contract last signed)

20 (Date)



1 YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOME,
 2 WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE THE
 3 LATER OF MIDNIGHT OF THE FIFTH BUSINESS DAY FOLLOWING THE
 4 DAY ON WHICH THE LAST PARTY TO A DISTRESSED PROPERTY
 5 CONVEYANCE CONTRACT SIGNS THE DISTRESSED PROPERTY
 6 CONVEYANCE CONTRACT OR 5:00 P.M. ON THE LAST DAY OF THE
 7 PERIOD DURING WHICH ANY OWNER OF A DISTRESSED PROPERTY HAS
 8 THE RIGHT TO CURE THE DEFAULT UNDER HAWAII LAW.

9
 10 TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND
 11 DATED COPY OF THIS NOTICE OF CANCELLATION, OR ANY OTHER
 12 WRITTEN NOTICE OF CANCELLATION, TO (Name of distressed
 13 property purchaser) AT (Address where notice of
 14 cancellation is to be delivered) NOT LATER THAN (Enter date
 15 and time of day).

16
 17 I HEREBY CANCEL THIS TRANSACTION.

18
 19 _____
 20 (DATE)

21 _____
 22 (Seller's signature)"

1 § -8 Cancellation of a distressed property conveyance

2 contract. (a) In addition to any other legal right to rescind
3 a contract, any distressed property owner has the right to
4 cancel a distressed property conveyance contract, without any
5 penalty or obligation, at any time before the later of midnight
6 of the fifth business day following the day on which the last
7 party to a distressed property conveyance contract signs the
8 distressed property conveyance contract or 5:00 p.m. on the last
9 day of the period during which any owner of a distressed
10 property has the right to cure a default under Hawaii law.

11 (b) The period of five business days following the day on
12 which the last party to a distressed property conveyance
13 contract signs the contract during which any owner of the
14 distressed property may cancel the contract shall not begin to
15 run until all parties to the distressed property conveyance
16 contract have executed the distressed property conveyance
17 contract and the distressed property purchaser has complied with
18 all the requirements of sections -6, -7, and this section.

19 (c) Cancellation occurs when any owner of a distressed
20 property delivers, by any means, and within the time specified
21 under subsection (a), written notice of cancellation to the



1 address specified in the distressed property conveyance
2 contract.

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

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

13 (f) Within ten days following receipt of a notice of
14 cancellation given in accordance with this section, the
15 distressed property purchaser shall return, without condition,
16 any and all original contracts and documents signed by any owner
17 of the distressed property.

18 **§ -9 Distressed property lease.** (a) A distressed
19 property lease shall be in writing and shall fully disclose:

20 (1) All rights and obligations of the distressed property
21 lessor and distressed property lessee;



- 1 (2) The exact terms of the agreement between the
2 distressed property lessor and distressed property
3 lessee;
- 4 (3) The exact period of time the distressed property lease
5 is to be in effect; and
- 6 (4) The total amount and terms of compensation to be
7 directly or indirectly received by the distressed
8 property lessor.
- 9 (b) Distressed property lessees shall be afforded all
10 rights under the landlord-tenant law of the State. No
11 distressed property lease shall provide a distressed property
12 lessee with rights less than those provided by the State's
13 landlord-tenant law as set forth in chapters 521 and 666.
- 14 (c) The first page of a distressed property lease shall
15 contain in a type size no smaller than fourteen-point boldface
16 type:
- 17 (1) A description of the distressed property;
- 18 (2) The name, street address, and telephone number of the
19 distressed property lessor; and
- 20 (3) The name and address of the distressed property lessor
21 to which lease or rental payments, correspondence, and
22 notices are to be mailed.



1 (d) A distressed property lease shall be dated and signed
2 by the distressed property lessor. If the distressed property
3 lessor is a person other than an individual, the individual
4 executing the distressed property lease on behalf of the
5 distressed property lessor shall identify the title and office
6 held by the individual.

7 (e) A distressed property lease shall be dated and signed
8 by all lessees of the distressed property.

9 (f) The distressed property lessor shall provide each
10 distressed property lessee with a copy of the distressed
11 property lease immediately upon execution by all parties to the
12 distressed property lease. A distressed property lease shall
13 not be effective until all parties to the distressed property
14 lease have signed the lease.

15 **§ -10 Prohibitions.** (a) A distressed property
16 consultant shall not:

- 17 (1) Misrepresent or conceal any material fact;
18 (2) Induce or attempt to induce a distressed property
19 owner to waive any provision of this chapter;
20 (3) Make any promise or guarantee not fully disclosed in
21 the distressed property consultant contract;



- 1 (4) Engage or attempt to engage in any activity or act
2 concerning the distressed property not fully disclosed
3 in the distressed property consultant contract;
- 4 (5) Induce or attempt to induce a distressed property
5 owner to engage in any activity or act not fully
6 disclosed in the distressed property consultant
7 contract;
- 8 (6) Take, ask for, claim, demand, charge, collect, or
9 receive any compensation until after the distressed
10 property consultant has fully performed each service
11 the distressed property consultant contracted to
12 perform or represented would be performed;
- 13 (7) Take, ask for, claim, demand, charge, collect, or
14 receive for any reason, any fee, interest, or any
15 other compensation that exceeds the two most recent
16 monthly mortgage installments of principal and
17 interest due on the loan first secured by the
18 distressed property or the most recent annual real
19 property tax charged against the distressed property,
20 whichever is less;
- 21 (8) Take or ask for a wage assignment, a lien of any type
22 on real or personal property, or other security to



1 secure the payment of compensation. Any such security
2 is void and not enforceable;

3 (9) Receive any consideration from any third party in
4 connection with services rendered to a distressed
5 property owner unless the consideration is fully
6 disclosed in the distressed property consultant
7 contract;

8 (10) Acquire any interest, directly or indirectly, or by
9 means of a subsidiary or affiliate, in a distressed
10 property from a distressed property owner with whom
11 the distressed property consultant has contracted;

12 (11) Require or ask a distressed property owner to sign any
13 lien, encumbrance, mortgage, assignment, or deed
14 unless the lien, encumbrance, mortgage, assignment, or
15 deed is fully described in the distressed property
16 consultant contract, including all disclosures
17 required by this chapter; or

18 (12) Take any power of attorney from a distressed property
19 owner for any purpose, except to inspect documents
20 concerning the distressed property as allowed by law.

21 (b) A distressed property purchaser shall not:

22 (1) Misrepresent or conceal any material fact;



- 1 (2) Induce or attempt to induce a distressed property
2 owner to waive any provision of this chapter;
- 3 (3) Make any promise or guarantee not fully disclosed in
4 the distressed property conveyance contact;
- 5 (4) Engage or attempt to engage in any activity or act
6 concerning the distressed property not fully disclosed
7 in the distressed property conveyance contract;
- 8 (5) Induce or attempt to induce a distressed property
9 owner to engage in any activity or act not fully
10 disclosed in the distressed property conveyance
11 contract;
- 12 (6) Enter into, or attempt to enter into, a distressed
13 property conveyance unless the distressed property
14 purchaser verifies and can demonstrate that an owner
15 of the distressed property has a reasonable ability to
16 pay any amounts due to reacquire an interest in the
17 distressed property or to make monthly or any other
18 payments due under a distressed property conveyance
19 contract or distressed property lease, if the
20 distressed property purchaser allows any owner of a
21 distressed property to remain in, occupy, use, or
22 repurchase the distressed property;



1 (7) Fail to make a payment to the owner of the distressed
2 property at the time the title is conveyed so that the
3 owner of the distressed property has received
4 consideration in an amount of at least eighty-two per
5 cent of the property's fair market value, or, in the
6 alternative, fail to pay the owner of the distressed
7 property no more than the costs necessary to
8 extinguish all of the existing obligations on the
9 distressed property, as set forth in this chapter;
10 provided that the owner's costs to repurchase the
11 distressed property pursuant to the terms of the
12 distressed property conveyance contract do not exceed
13 one hundred twenty-five per cent of the distressed
14 property purchaser's costs to purchase the property.
15 If an owner is unable to repurchase the property
16 pursuant to the terms of the distressed property
17 conveyance contract, the distressed property purchaser
18 shall not fail to make a payment to the owner of the
19 distressed property so that the owner of the
20 distressed property has received consideration in an
21 amount of at least eighty-two per cent of the
22 property's fair market value at the time of conveyance



- 1 or at the expiration of the owner's option to
2 repurchase;
- 3 (8) Enter into any repurchase or lease agreement as part
4 of a distressed property conveyance contract or
5 subsequent conveyance of an interest in the distressed
6 property back to a distressed property owner that is
7 unfair or commercially unreasonable or engage in any
8 other unfair conduct;
- 9 (9) Represent, directly or indirectly, that the distressed
10 property purchaser is acting as an advisor or a
11 consultant or is acting on behalf of or assisting an
12 owner of a distressed property to "remain in the
13 house," "save the house," "buy time," or "stop the
14 foreclosure" or is doing anything other than
15 purchasing the distressed property;
- 16 (10) Misrepresent the distressed property purchaser's
17 status as to licensure or certification;
- 18 (11) Do any of the following until after the time during
19 which an owner of a distressed property may cancel the
20 distressed property conveyance contract:



- 1 (A) Accept from an owner of the distressed property
- 2 execution of any instrument of conveyance of any
- 3 interest in the distressed property;
- 4 (B) Execute an instrument of conveyance of any
- 5 interest in the distressed property; or
- 6 (C) Pursuant to chapter 501 or 502, record any
- 7 document signed by an owner of a distressed
- 8 property, including any instrument of conveyance;
- 9 (12) Fail to re-convey title in a distressed property to
- 10 the distressed property owner or owners when the terms
- 11 of the distressed property conveyance contract have
- 12 been fulfilled if the distressed property consultant
- 13 or distressed property purchaser contracted or
- 14 represented that title in the distressed property
- 15 would be re-conveyed to the distressed property owner
- 16 or owners when the terms of the distressed property
- 17 conveyance contract have been fulfilled;
- 18 (13) Induce or attempt to induce an owner of the distressed
- 19 property to execute a quitclaim deed concerning a
- 20 distressed property;

1 (14) Enter into a distressed property conveyance contract
2 where any party to the contract is represented by
3 power of attorney;

4 (15) Immediately following the conveyance of the distressed
5 property, fail to extinguish all liens encumbering the
6 distressed property at the time of the distressed
7 property conveyance or fail to assume all liability
8 with respect to all liens encumbering the distressed
9 property at the time of the distressed property
10 conveyance, which assumption shall be accomplished
11 without violations of the terms and conditions of the
12 lien or liens being assumed. Nothing herein shall
13 preclude a lender from enforcing any provision in a
14 contract that is not otherwise prohibited by law;

15 (16) Fail to complete a distressed property conveyance
16 through:

17 (A) An escrow depository licensed by the department
18 of commerce and consumer affairs;

19 (B) A bank, trust company, or savings and loan
20 association authorized under any law of this
21 state or of the United States to do business in
22 the state;



1 (C) A person licensed as a real estate broker in the
2 state who is the broker for a party to the
3 escrow; provided that the person does not charge
4 any escrow fee; or

5 (D) A person licensed to practice law in the state
6 who, in escrow, is not acting as the employee of
7 a corporation; provided that the person does not
8 charge any escrow fee;

9 or

10 (17) Cause the property to be conveyed or encumbered
11 without the knowledge or permission of all owners of a
12 distressed property or in any way frustrate the
13 ability of a distressed property owner to reacquire
14 the distressed property.

15 (c) There shall be a rebuttable presumption that an
16 appraisal by a person licensed or certified as a real property
17 appraiser by the State or the federal government is an accurate
18 determination of the fair market value of the property.

19 (d) An evaluation of "reasonable ability to pay" under
20 this chapter shall include debt to income ratio, fair market
21 value of the distressed property, and the distressed property
22 owner's payment history.



1 § -11 Violation, penalties. (a) Any person who
2 violates any provision of this chapter shall be deemed to have
3 engaged in an unfair or deceptive act or practice in the conduct
4 of any trade or commerce within the meaning of section 480-2.

5 (b) The penalties provided in this section shall be
6 cumulative to the remedies or penalties available under all
7 other laws of this State."

8 SECTION 3. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun, before its effective date.

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



Report Title:

Real Property; Mortgage Foreclosure

Description:

Requires mortgage foreclosure rescuers to provide specific information and disclosures to distressed property owners and imposes specific prohibitions on mortgage foreclosure rescuers.
(HB2326 HD2)

