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## A BILL FOR AN ACT

RELATING TO MORTGAGES.

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

1           SECTION 1. Section 480E-1, Hawaii Revised Statutes, is  
2 amended to read as follows:  
3           " ~~[†] §480E-1 [†]~~ **Purpose.** The purpose of this chapter is to  
4 protect Hawaii consumers from persons who prey on homeowners who  
5 face property foreclosures, liens, or encumbrances. Consumers  
6 who face foreclosures, liens, or encumbrances are often in  
7 desperate financial situations that can have severe adverse  
8 consequences for individuals and families even if the consumers  
9 have significant equity in their residential real property. The  
10 consumers' desperation makes them vulnerable to persons who  
11 claim they can stop, prevent, or delay foreclosures, liens, or  
12 encumbrances. ~~[Persons who make these claims often use the~~  
13 ~~consumers' desperation to foster unequal bargaining positions~~  
14 ~~and withhold or misrepresent vital information and details. As~~  
15 ~~a result, consumers may be convinced to give up their real~~  
16 ~~property interests and valuable equity to these persons while~~  
17 ~~receiving little in return.]~~ Requiring full and complete  
18 disclosure of vital information will better enable consumers to



1 make informed decisions [~~when dealing with persons claiming to~~  
2 ~~be able to stop foreclosures, liens, or encumbrances~~]. This  
3 [+]~~chapter~~[+] addresses possible misrepresentations by  
4 [~~compelling~~] persons who offer assistance to homeowners, by  
5 requiring these persons to fully and completely describe their  
6 services in written contracts and [~~gives~~] giving the homeowners  
7 the right to cancel at any time before [~~a distressed property~~  
8 ~~consultant has performed~~] all services called for in [~~a~~  
9 ~~contract.~~] the contract have been performed."

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

13 "Distressed property consultant" means any person who, for  
14 a fee or commission, performs or makes any solicitation,  
15 representation, or offer to perform any of the following  
16 relating to a distressed property:

- 17 (1) Stop or postpone the foreclosure sale or loss of any  
18 distressed property due to the nonpayment of any loan  
19 that is secured by the distressed property;
- 20 (2) Stop or postpone the charging of any lien or  
21 encumbrance against any distressed property or  
22 eliminate any lien or encumbrance charged against any



- 1           distressed property for the nonpayment of any taxes,  
2           lease assessments, association fees, or maintenance  
3           fees;
- 4           (3) Obtain any forbearance from any beneficiary or  
5           mortgagee, or relief with respect to a tax sale of the  
6           property;
- 7           (4) Assist the owner to exercise any cure of default  
8           arising under Hawaii law;
- 9           (5) Obtain any extension of the period within which the  
10          owner may reinstate the owner's rights with respect to  
11          the property;
- 12          (6) Obtain any waiver of an acceleration clause contained  
13          in any promissory note or contract secured by a  
14          mortgage on a distressed property or contained in the  
15          mortgage;
- 16          (7) Assist the owner in foreclosure, loan default, or  
17          post-tax sale redemption period to obtain a loan or  
18          advance of funds;
- 19          (8) Avoid or ameliorate the impairment of the owner's  
20          credit resulting from the recording or filing of a  
21          notice of default or the conduct of a foreclosure sale  
22          or tax sale; or



1 (9) Save the owner's residence from foreclosure or loss of  
2 home due to nonpayment of taxes.

3 "Distressed property consultant" shall not include any of  
4 the following:

5 (1) A person or the person's authorized agent acting under  
6 the express authority or written approval of the  
7 federal Department of Housing and Urban Development;

8 (2) A person who holds or is owed an obligation secured by  
9 a lien on any distressed property, or a person acting  
10 under the express authorization or written approval of  
11 such person, when the person performs services in  
12 connection with the obligation or lien, if the  
13 obligation or lien did not arise as the result of or  
14 as part of a proposed distressed property conveyance;

15 (3) Banks, savings banks, savings and loan associations,  
16 credit unions, trust companies, depository and  
17 nondepository financial service loan companies, and  
18 insurance companies organized, chartered, or holding a  
19 certificate of authority to do business under the laws  
20 of this State or any other state, or under the laws of  
21 the United States;

22 (4) Licensed attorneys engaged in the practice of law;



1 (5) A federal Department of Housing and Urban Development  
2 approved mortgagee and any subsidiary or affiliate of  
3 these persons or entities, and any agent or employee  
4 of these persons or entities, while engaged in the  
5 business of these persons or entities; [~~or~~]

6 (6) A nonprofit organization that, pursuant to chapter  
7 446, offers counseling or advice to an owner of a  
8 distressed property, if the nonprofit organization has  
9 no contract or agreement for services with lenders,  
10 distressed property purchasers, or any person who  
11 effects loans or distressed property purchases [-] ; or

12 (7) A person licensed in this state as a real estate  
13 broker or real estate salesperson who lists the  
14 property for sale in the normal course of their  
15 business, does not negotiate with lien holders, and is  
16 not a purchaser for the distressed property, directly  
17 or indirectly."

18 SECTION 3. Section 480E-3, Hawaii Revised Statutes, is  
19 amended by amending subsections (a) and (b) to read as follows:

20 "(a) A distressed property consultant contract shall be in  
21 writing and shall fully disclose all services to be performed by  
22 the distressed property consultant and all terms of any



1 agreements between the distressed property consultant and all  
2 owners of the distressed property, including the total amount  
3 and terms of compensation to be directly or indirectly received  
4 by the distressed property consultant. The contract shall also  
5 provide distressed property owners the right to cancel the  
6 contract at any time before the distressed property consultant  
7 has fully completed all of the contracted services, and a right  
8 to receive a full refund of any fees paid to the distressed  
9 property consultant.

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

- 13 (1) A description of the distressed property;
- 14 (2) The name, street address, and telephone number of the  
15 distressed property consultant; [~~and~~]
- 16 (3) The name and address of the distressed property  
17 consultant to which notice of cancellation is to be  
18 delivered[~~-~~]; and
- 19 (4) Notice of the distressed property owner's right to  
20 cancel the contract at any time before the distressed  
21 property consultant has fully completed all of the  
22 contracted services and the owner's right to receive a



1           full refund of any fees paid to the distressed  
2           property consultant."

3           SECTION 4. Section 480E-4, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5           "(a) A distressed property consultant contract shall  
6 contain, immediately before the space reserved for all the  
7 distressed property owners' signatures, the following notice of  
8 right to cancel a distressed property consultant contract in a  
9 type size no smaller than fourteen-point boldface type,  
10 completed with the name of the distressed property consultant:

11           "YOU, THE OWNER, MAY CANCEL THIS TRANSACTION AT ANY TIME  
12 BEFORE THE DISTRESSED PROPERTY CONSULTANT HAS FULLY  
13 PERFORMED EACH AND EVERY SERVICE THE DISTRESSED PROPERTY  
14 CONSULTANT CONTRACTED TO PERFORM OR REPRESENTED WOULD BE  
15 PERFORMED. SEE THE ATTACHED NOTICE OF CANCELLATION FORM  
16 FOR AN EXPLANATION OF THIS RIGHT.

17           ~~[(Name of the distressed property consultant) (or~~  
18           ~~anyone working for or with the distressed property~~  
19           ~~consultant) CANNOT:~~

20           ~~(1) Take any money from you or ask you for money until~~  
21           ~~(Name of the distressed property consultant) has~~  
22           ~~completely finished doing everything (Name of the~~



1 ~~distressed property consultant) said he or she would~~

2 ~~do, or~~

3 ~~(2) Ask you to sign or have you sign any lien,~~

4 ~~encumbrance, mortgage, assignment, or deed unless the~~

5 ~~lien, encumbrance, mortgage, assignment, or deed is~~

6 ~~fully described including all disclosures required by~~

7 ~~law."]~~

8 A DISTRESSED PROPERTY CONSULTANT CAN NOT ASK YOU TO SIGN OR

9 HAVE YOU SIGN ANY LIEN, ENCUMBRANCE, MORTGAGE, ASSIGNMENT,

10 OR DEED UNLESS THE LIEN, ENCUMBRANCE, MORTGAGE, ASSIGNMENT,

11 OR DEED IS FULLY DESCRIBED, INCLUDING ALL DISCLOSURES

12 REQUIRED BY LAW."

13 SECTION 5. Section 480E-6, Hawaii Revised Statutes, is

14 amended as follows:

15 1. By amending subsection (b) to read:

16 "(b) Every distressed property conveyance contract shall

17 specifically include the following terms:

18 (1) The total consideration to be given by the distressed

19 property purchaser or tax lien payor in connection

20 with or incident to the distressed property

21 conveyance;





- 1           (2) A complete description of the terms of payment or  
2           other consideration including any services of any  
3           nature that the distressed property purchaser  
4           represents will be performed for any owner of the  
5           distressed property before or after the distressed  
6           property conveyance;
- 7           (3) A complete description of the terms of any related  
8           agreement designed to allow any owner of the  
9           distressed property to remain in the distressed  
10          property, such as a rental agreement, repurchase  
11          agreement, contract for deed, or lease with option to  
12          buy;
- 13          (4) All notices as provided in this chapter;
- 14          (5) The following notice, in a type size no smaller than  
15          fourteen-point boldface type, completed with the name  
16          of the distressed property purchaser, shall appear  
17          immediately above the notice of right to cancel a  
18          distressed property conveyance contract required by  
19          section 480E-7(a):

20                               "NOTICE REQUIRED BY HAWAII LAW

21                               UNTIL YOUR RIGHT TO CANCEL THIS CONTRACT HAS ENDED,

22                               (Name of distressed property purchaser) OR ANYONE



1 WORKING FOR (Name of distressed property purchaser)  
 2 CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN ANY DEED OR  
 3 ANY OTHER DOCUMENT. YOU ARE URGED TO HAVE THIS  
 4 CONTRACT REVIEWED BY AN ATTORNEY OF YOUR CHOICE WITHIN  
 5 [~~FIFTEEN~~] FIVE BUSINESS DAYS OF SIGNING IT."; and

6 (6) If title to the distressed property will be  
 7 transferred in the conveyance transaction, the  
 8 following notice, in a type size no smaller than  
 9 fourteen-point boldface type, completed with the name  
 10 of the distressed property purchaser, shall appear  
 11 immediately below the notice required by paragraph  
 12 (5):

13 "NOTICE REQUIRED BY HAWAII LAW  
 14 AS PART OF THIS TRANSACTION, YOU ARE GIVING UP TITLE  
 15 TO YOUR HOME."

16 2. By amending subsection (g) to read as follows:

17 "(g) Pursuant to chapter 501 or 502, the distressed  
 18 property purchaser shall record the distressed property  
 19 conveyance contract no earlier than [~~fifteen~~] six days after its  
 20 execution [~~but no later than twenty days after its execution~~];  
 21 provided that the contract has not been canceled[, ~~or no later~~  
 22 ~~than fifteen days after the last day any distressed property~~



1 owner has the right to cure a default under state law, whichever  
2 is later]."

3 SECTION 6. Section 480E-7, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

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

13 "NOTICE OF CANCELLATION

14  
15 (Enter date contract last signed)

16 (Date)

17 YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOME,  
18 WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE [THE  
19 ~~LATER OF~~] MIDNIGHT OF THE [~~FIFTEENTH~~] FIFTH BUSINESS DAY  
20 FOLLOWING THE DAY ON WHICH THE LAST PARTY TO A DISTRESSED  
21 PROPERTY CONVEYANCE CONTRACT SIGNS THE DISTRESSED PROPERTY  
22 CONVEYANCE CONTRACT [~~OR 5:00 P.M. ON THE LAST DAY OF THE~~



1 ~~PERIOD DURING WHICH ANY OWNER OF A DISTRESSED PROPERTY HAS~~  
2 ~~THE RIGHT TO CURE THE DEFAULT UNDER HAWAII LAW]~~.

3  
4 TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND  
5 DATED COPY OF THIS NOTICE OF CANCELLATION, OR ANY OTHER  
6 WRITTEN NOTICE OF CANCELLATION, TO (Name of distressed  
7 property purchaser) AT (Address where notice of  
8 cancellation is to be delivered) NOT LATER THAN (Enter date  
9 and time of day).

10  
11 I HEREBY CANCEL THIS TRANSACTION.

12  
13 \_\_\_\_\_  
14 (DATE)

15 \_\_\_\_\_  
16 (Seller's signature)""

17 SECTION 7. Section 480E-8, Hawaii Revised Statutes, is  
18 amended by amending subsections (a) and (b) to read as follows:

19 "(a) In addition to any other legal right to rescind a  
20 contract, any distressed property owner has the right to cancel  
21 a distressed property conveyance contract, without any penalty  
22 or obligation, at any time before [~~the later of~~] midnight of the



1 [fifteenth] fifth business day following the day on which the  
2 last party to a distressed property conveyance contract signs  
3 the distressed property conveyance contract [~~or 5:00 p.m. on the~~  
4 ~~last day of the period during which any owner of a distressed~~  
5 ~~property has the right to cure a default under state law]~~.

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

15 SECTION 8. Section 480E-10, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "[~~+~~] **§480E-10** [~~+~~] **Prohibitions.** (a) A distressed property  
18 consultant shall not:

- 19 (1) Misrepresent or conceal any material fact;  
20 (2) Induce or attempt to induce a distressed property  
21 owner to waive any provision of this chapter;



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



- 1       ~~[(8)]~~ (7) Take or ask for a wage assignment, a lien of any  
2           type on real or personal property, or other security  
3           to secure the payment of compensation. This type of  
4           security is void and not enforceable;
- 5       ~~[(9)]~~ (8) Receive any consideration from any third party in  
6           connection with services rendered to a distressed  
7           property owner unless the consideration is fully  
8           disclosed in the distressed property consultant  
9           contract; or
- 10      ~~[(10)]~~ ~~Acquire any interest, directly or indirectly, or by~~  
11           ~~means of a subsidiary or affiliate, in a distressed~~  
12           ~~property from a distressed property owner with whom~~  
13           ~~the distressed property consultant has contracted;~~
- 14      ~~[(11)]~~ (9) Require or ask a distressed property owner to  
15           sign any lien, encumbrance, mortgage, assignment, or  
16           deed unless the lien, encumbrance, mortgage,  
17           assignment, or deed is fully described in the  
18           distressed property consultant contract, including all  
19           disclosures required by this chapter ~~[, or]~~.
- 20      ~~[(12)]~~ ~~Take any power of attorney from a distressed property~~  
21           ~~owner for any purpose, except to inspect documents~~  
22           ~~concerning the distressed property as allowed by law.]~~



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





1 ~~distressed property to remain in, occupy, use, or~~  
2 ~~repurchase the distressed property,] lease with option~~  
3 ~~that would allow the owner to remain in the property~~  
4 ~~or allow the owner to repurchase the property;~~

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



1 ~~distressed property so that the owner of the~~  
2 ~~distressed property has received consideration in an~~  
3 ~~amount of at least eighty two per cent of the~~  
4 ~~property's fair market value at the time of conveyance~~  
5 ~~or at the expiration of the owner's option to~~  
6 ~~repurchase,] in accordance with the terms of the~~  
7 ~~distressed property contract;~~

8 (8) Enter into any repurchase or lease agreement as part  
9 of a distressed property conveyance contract or  
10 subsequent conveyance of an interest in the distressed  
11 property back to a distressed property owner [~~that is~~  
12 ~~unfair or commercially unreasonable or engage in any~~  
13 ~~other unfair conduct];~~

14 (9) Represent, directly or indirectly, that the distressed  
15 property purchaser is acting as an advisor or a  
16 consultant or is acting on behalf of or assisting an  
17 owner of a distressed property to "remain in the  
18 house", "save the house", "buy time", or "stop the  
19 foreclosure" or is doing anything other than  
20 purchasing the distressed property;

21 (10) Misrepresent the distressed property purchaser's  
22 status as to licensure or certification;



- 1           (11) Do any of the following until after the time during  
2                    which an owner of a distressed property may cancel the  
3                    distressed property conveyance contract:
- 4                    (A) Accept from an owner of the distressed property  
5                            execution of any instrument of conveyance of any  
6                            interest in the distressed property;
- 7                    (B) Execute an instrument of conveyance of any  
8                            interest in the distressed property; or
- 9                    (C) Pursuant to chapter 501 or 502, record any  
10                           document signed by an owner of a distressed  
11                           property, including any instrument of conveyance;
- 12       ~~[(12) Fail to re convey title in a distressed property to~~  
13       ~~the distressed property owner or owners when the terms~~  
14       ~~of the distressed property conveyance contract have~~  
15       ~~been fulfilled if the distressed property consultant~~  
16       ~~or distressed property purchaser contracted or~~  
17       ~~represented that title in the distressed property~~  
18       ~~would be re conveyed to the distressed property owner~~  
19       ~~or owners when the terms of the distressed property~~  
20       ~~conveyance contract have been fulfilled;~~



1       ~~(13)~~ Induce or attempt to induce an owner of the distressed  
2                   property to execute a quitclaim deed concerning a  
3                   distressed property;

4       ~~(14)]~~ (12) Enter into a distressed property conveyance  
5                   contract where any party to the contract is  
6                   represented by power of attorney;

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

18       ~~(16)]~~ (13) Fail to complete a distressed property conveyance  
19                   through:

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



1 (B) A bank, trust company, or savings and loan  
2 association authorized under any law of this  
3 State or of the United States to do business in  
4 the State;

5 (C) A person licensed as a real estate broker in this  
6 State who is the broker for a party to the  
7 escrow; provided that the person does not charge  
8 any escrow fee; or

9 (D) A person licensed to practice law in this State  
10 who, in escrow, is not acting as the employee of  
11 a corporation; provided that the person does not  
12 charge any escrow fee; or

13 [~~17~~] (14) Cause the property to be conveyed or encumbered  
14 without the knowledge or permission of all owners of a  
15 distressed property or in any way frustrate the  
16 ability of a distressed property owner to reacquire  
17 the distressed property.

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



1           ~~[(d) An evaluation of "reasonable ability to pay" under~~  
2 ~~this chapter shall include debt to income ratio, fair market~~  
3 ~~value of the distressed property, and the distressed property~~  
4 ~~owner's payment history.] "~~

5           SECTION 9. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7           SECTION 10. This Act shall take effect upon its approval.

8

INTRODUCED BY: \_\_\_\_\_



JAN 28 2009



**Report Title:**

Mortgage Rescue Services

**Description:**

Makes various amendments to the Mortgage Rescue Fraud Prevention Act.

