

JAN 26 2009

A BILL FOR AN ACT

RELATING TO THE APPLICABILITY OF THE MORTGAGE RESCUE FRAUD
PREVENTION ACT TO REAL ESTATE LICENSEES.

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

1 SECTION 1. Section 467-14, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§467-14 Revocation, suspension, and fine.** In addition to
4 any other actions authorized by law, the commission may revoke
5 any license issued under this chapter, suspend the right of the
6 licensee to use the license, fine any person holding a license,
7 registration, or certificate issued under this chapter, or
8 terminate any registration or certificate issued under this
9 chapter, for any cause authorized by law, including but not
10 limited to the following:

- 11 (1) Making any misrepresentation concerning any real
12 estate transaction;
- 13 (2) Making any false promises concerning any real estate
14 transaction of a character likely to mislead another;
- 15 (3) Pursuing a continued and flagrant course of
16 misrepresentation, or making of false promises through
17 advertising or otherwise;

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- 1 (4) Without first having obtained the written consent to
2 do so of both parties involved in any real estate
3 transaction, acting for both the parties in connection
4 with the transaction, or collecting or attempting to
5 collect commissions or other compensation for the
6 licensee's services from both of the parties;
- 7 (5) When the licensee, being a real estate salesperson,
8 accepts any commission or other compensation for the
9 performance of any of the acts enumerated in the
10 definition set forth in section 467-1 of real estate
11 salesperson from any person other than the real estate
12 salesperson's employer or the real estate broker with
13 whom the real estate salesperson associates or, being
14 a real estate broker or salesperson, compensates one
15 not licensed under this chapter to perform any such
16 act;
- 17 (6) When the licensee, being a real estate salesperson,
18 acts or attempts to act as a real estate broker or
19 represents, or attempts to represent, any real estate
20 broker other than the real estate salesperson's
21 employer or the real estate broker with whom the real
22 estate salesperson is associated;

- 1 (7) Failing, within a reasonable time, to account for any
2 moneys belonging to others which may be in the
3 possession or under the control of the licensee;
- 4 (8) Any other conduct constituting fraudulent or dishonest
5 dealings;
- 6 (9) When the licensee, being a partnership, permits any
7 member of the partnership who does not hold a real
8 estate broker's license to actively participate in the
9 real estate brokerage business thereof or permits any
10 employee thereof who does not hold a real estate
11 salesperson's license to act as a real estate
12 salesperson [~~therefore,~~] therefor;
- 13 (10) When the licensee, being a corporation, permits any
14 officer or employee of the corporation who does not
15 hold a real estate broker's license to have the direct
16 management of the real estate brokerage business
17 thereof or permits any officer or employee thereof who
18 does not hold a real estate salesperson's license to
19 act as a real estate salesperson [~~therefore,~~]
20 therefor;
- 21 (11) When the licensee, being a real estate salesperson,
22 fails to file with the commission a written statement

1 setting forth the name of the real estate broker by
2 whom the licensee is employed or with whom the
3 licensee is associated;

4 (12) When the licensee fails to obtain on the contract
5 between the parties to the real estate transaction
6 confirmation of who the real estate broker represents;

7 (13) Violating this chapter; chapter 484, 514A, 514B, 514E,
8 or 515; section 516-71; or the rules adopted pursuant
9 thereto;

10 (14) Splitting fees with or otherwise compensating others
11 not licensed hereunder for referring business;
12 provided that notwithstanding paragraph (5), a real
13 estate broker may pay a commission to:

14 (A) A licensed real estate broker of another state,
15 territory, or possession of the United States if
16 that real estate broker does not conduct in this
17 State any of the negotiations for which a
18 commission is paid;

19 (B) A real estate broker lawfully engaged in real
20 estate brokerage activity under the laws of a
21 foreign country if that real estate broker does

1 not conduct in this State any of the negotiations
2 for which a commission is paid; or

3 (C) A travel agency that in the course of business as
4 a travel agency or sales representative, arranges
5 for compensation the rental of transient vacation
6 rental; provided that for purposes of this
7 paragraph "travel agency" means any person, which
8 for compensation or other consideration, acts or
9 attempts to act as an intermediary between a
10 person seeking to purchase travel services and
11 any person seeking to sell travel services,
12 including an air or ocean carrier;

13 (15) Commingling the money or other property of the
14 licensee's principal with the licensee's own;

15 (16) Converting other people's money to the licensee's own
16 use;

17 (17) The licensee is adjudicated insane or incompetent;

18 (18) Failing to ascertain and disclose all material facts
19 concerning every property for which the licensee
20 accepts the agency, so that the licensee may fulfill
21 the licensee's obligation to avoid error,
22 misrepresentation, or concealment of material facts;

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1 provided that for the purposes of this paragraph, the
2 fact that an occupant has AIDS or AIDS Related Complex
3 (ARC) or has been tested for HIV (human
4 immunodeficiency virus) infection shall not be
5 considered a material fact;

6 (19) When the licensee obtains or causes to be obtained,
7 directly or indirectly, any licensing examination or
8 licensing examination question for the purpose of
9 disseminating the information to future takers of the
10 examination for the benefit or gain of the licensee;
11 [~~or~~]

12 (20) Failure to maintain a reputation for or record of
13 competency, honesty, truthfulness, financial
14 integrity, and fair dealing[~~-~~]; or

15 (21) Acquiring an ownership interest, directly or
16 indirectly, or by means of a subsidiary or affiliate,
17 in any distressed property that is listed with the
18 licensee or within 365 days after the licensee's
19 listing agreement for the distressed property is
20 terminated. As used in this paragraph, "distressed
21 property" has the same meaning as set forth in section
22 480E-2."

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1 Disciplinary action may be taken by the commission whether the
2 licensee is acting as a real estate broker, or real estate
3 salesperson, or on the licensee's own behalf."

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

7 "Distressed property consultant" means any person who
8 performs or makes any solicitation, representation, or offer to
9 perform any of the following relating to a distressed property:

10 (1) Stop or postpone the foreclosure sale or loss of any
11 distressed property due to the nonpayment of any loan
12 that is secured by the distressed property;

13 (2) Stop or postpone the charging of any lien or
14 encumbrance against any distressed property or
15 eliminate any lien or encumbrance charged against any
16 distressed property for the nonpayment of any taxes,
17 lease assessments, association fees, or maintenance
18 fees;

19 (3) Obtain any forbearance from any beneficiary or
20 mortgagee, or relief with respect to a tax sale of the
21 property;

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

19 "Distressed property consultant" shall not include any of
20 the following:


- 1 (1) A person or the person's authorized agent acting under
- 2 the express authority or written approval of the
- 3 federal Department of Housing and Urban Development;
- 4 (2) A person who holds or is owed an obligation secured by
- 5 a lien on any distressed property, or a person acting
- 6 under the express authorization or written approval of
- 7 such person, when the person performs services in
- 8 connection with the obligation or lien, if the
- 9 obligation or lien did not arise as the result of or
- 10 as part of a proposed distressed property conveyance;
- 11 (3) Banks, savings banks, savings and loan associations,
- 12 credit unions, trust companies, depository and
- 13 nondepository financial service loan companies, and
- 14 insurance companies organized, chartered, or holding a
- 15 certificate of authority to do business under the laws
- 16 of this State or any other state, or under the laws of
- 17 the United States;
- 18 (4) Licensed attorneys engaged in the practice of law;
- 19 (5) A federal Department of Housing and Urban Development
- 20 approved mortgagee and any subsidiary or affiliate of
- 21 these persons or entities, and any agent or employee

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1 of these persons or entities, while engaged in the
 2 business of these persons or entities; [~~or~~]
 3 (6) A nonprofit organization that, pursuant to chapter
 4 446, offers counseling or advice to an owner of a
 5 distressed property, if the nonprofit organization has
 6 no contract or agreement for services with lenders,
 7 distressed property purchasers, or any person who
 8 effects loans or distressed property purchases[~~-~~]; or
 9 (7) A person licensed as a real estate broker or
 10 salesperson in this State when acting as a real estate
 11 broker or salesperson."

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

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

15
 16 INTRODUCED BY: _____ 
 17 BY REQUEST

Report Title:

Mortgage Rescue Fraud Prevention Act; Real Estate Licensees

Description:

Excludes real estate licensees from the definition of distressed property consultant in Act 137, Session Laws of Hawaii 2008, the Mortgage Foreclosure Rescue Fraud Prevention Act, and adds to section 467-14, Hawaii Revised Statutes, prohibitions against certain conduct by real estate licensees that specifically relate to distressed property.

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JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO THE
APPLICABILITY OF THE MORTGAGE RESCUE FRAUD
PREVENTION ACT TO REAL ESTATE LICENSEES.

PURPOSE: Authorize the real estate commission to
discipline real estate brokers and
salespersons for prohibited acts pertaining
to distressed properties.

MEANS: Amend sections 467-14 and 480E-2, Hawaii
Revised Statutes (HRS).

JUSTIFICATION: Chapter 480E, HRS, the Mortgage Rescue Fraud
Prevention Act, was enacted in 2008 to
protect Hawaii consumers from scammers who
prey on homeowners facing foreclosure. The
Act is modeled after the Illinois statute
which governs distressed property
consultants, purchasers, and lessors.

This bill seeks to exclude Hawaii licensed
real estate brokers and salespersons from
the definition of and provisions governing
distressed property consultants in chapter
480E, HRS, only when the real estate
licensees are engaged in acts of real estate
brokering or sales. The Illinois statute
has a similar exclusion. In conjunction
with the proposed exclusion, section 467-14,
HRS, would be amended to prohibit a real
estate licensee from obtaining an interest
in a distressed property for which the
licensee has or had a listing agreement.

In Hawaii, persons acting as real estate
brokers or salespersons are required to have
a license and their conduct is governed
under chapter 467, HRS. Section 467-14, HRS,
authorizes the real estate commission to
discipline a real estate broker or
salesperson for acts identified therein. In
conjunction with the proposed amendment to

exclude real estate licensees from chapter 480E, HRS, this bill seeks to amend HRS section 467-14 by prohibiting a real estate licensee who has or had a listing agreement for a distressed property from obtaining an interest in said property within 365 days after the termination of the listing agreement.

Real estate brokers or salespersons licensed in Hawaii have acquired title to distressed properties directly from distressed property owners while holding themselves out as licensed real estate agents. As a real estate sales professional, a licensee can readily gain confidential information and client trust. Distressed property homeowners, however, are often confused about the responsibilities the real estate licensee is supposed to fulfill. What might begin with an agreement to assist the homeowner in the sale of his or her home to avoid foreclosure may end up with the real estate licensee taking title and charging the homeowner to rent his or her own home.

This measure attempts to protect homeowners from real estate licensees who hold themselves out as such and seek to take advantage of homeowners desperate to save their homes from foreclosure by limiting the real estate licensees to the single purpose of selling the distressed property owner's home and earning a commission. The limitation period allows the licensee to acquire an interest in a distressed property after sufficient time has elapsed to avoid confusion, and prevents a real estate licensee from terminating the listing agreement and immediately obtaining title to a distressed property.

Impact on the public: There should be a positive impact on the public as the provisions of this bill are intended to protect homeowners by clarifying the

responsibilities of a real estate licensee in relation to distressed properties.

Impact on the department and other agencies:

The department already investigates cases involving alleged mortgage foreclosure rescue fraud and improper acts committed by real estate licensees. The bill should assist the department and other agencies in prosecuting cases involving mortgage foreclosure rescue fraud by imposing specific prohibitions against real estate licensees in distressed property transactions.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-10.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.