

SB2825

Measure Title: RELATING TO MORTGAGE RESCUE FRAUD.

Report Title: Mortgage Rescue Fraud Prevention; Distressed Property Consultant; Attorney Exception

Description: Clarifies definition of "distressed property consultant" and specifies that attorneys must be licensed by, and engaged in the practice of law in, the State of Hawaii in order to fall within the class of exceptions to the definition of "distressed property consultant".

Companion: [HB2275](#)

Package: Governor

Current Referral: CPN, JDL

Introducer(s): KIM (Introduced by request of another party)



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OFFICE OF CONSUMER PROTECTION

TO THE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

THE TWENTY-SEVENTH
REGULAR SESSION OF 2014

JANUARY 29, 2014
9:00 AM

TESTIMONY IN SUPPORT OF S.B. 2825, RELATING TO MORTGAGE RESCUE
FRAUD.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE BRIAN T. TANIGUCHI, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs, Office of Consumer Protection ("OCP") appreciates the opportunity to appear today and testify in strong support of this administration measure, S. B. 2825, Relating to Mortgage Rescue Fraud. My name is Bruce B. Kim and I am the Executive Director of OCP.

S.B. 2825 amends Hawaii's mortgage rescue law by (1) narrowing an attorney exemption in the chapter to only Hawaii licensed attorneys; and (2) defining "distressed property consultant" to include persons or entities that attempt to provide, arrange for others to provide, or assists others to provide mortgage rescue services.

The changes pertaining to the definition of "distressed property consultant" under § 480E-2 of the Hawaii Revised Statutes ("HRS") are intended to make clear that persons or entities who offers services to distressed property owners ostensibly as agents of another person or entity are acting as "distressed property consultants" under that section. This will greatly assist the Office of Consumer Protection in enforcing the law against all persons who were involved in the mortgage rescue scheme. The requested change to the section exempting attorneys engaged in the practice of law from the provisions of the Act makes clear that only attorneys licensed to practice law in the State of Hawaii are exempt. This revision will align Chap. 480E's attorney exemption with the Federal Trade Commission's Mortgage Assistance Relief Services ("MARS") rule, 16 CFR Part 322, which was adopted on December 1, 2010. The MARS rule provides that "an attorney is exempt from this part, . . ., if the attorney: . . . (2) is licensed to practice law in the state in which the consumer for whom the attorney is providing mortgage assistance relief services resides or in the state which the consumer's dwelling is located; . . ." 16 CFR Part 322 § 322.7(a)(2).

This change will ensure that all attorneys performing distressed property consulting in Hawaii are subject to the Hawaii Rules of Professional Conduct and fall within the jurisdiction of Hawaii's Office of the Disciplinary Counsel.

Thank you for the opportunity to submit testimony in strong support of S.B. 2825. I would be happy to answer any questions members of the committee may have.