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# A BILL FOR AN ACT

RELATING TO MORTGAGE RESCUE FRAUD.

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

1           SECTION 1. Chapter 480E, Hawaii Revised Statutes, is  
2 amended by adding three new sections to be appropriately  
3 designated and to read as follows:

4           "§480E-       Recordkeeping and compliance requirements. (a)

5 Any distressed property consultant shall keep, for a period of  
6 twenty-four months from the date the record is created, the  
7 following records:

8           (1) All contracts or other agreements between the  
9           distressed property consultant and any consumer for  
10           any mortgage assistance relief service;

11           (2) Copies of all written communications between the  
12           distressed property consultant and the distressed  
13           property owner or owners occurring prior to the date  
14           on which the property owner or owners entered into an  
15           agreement with the distressed property consultant for  
16           any mortgage assistance relief service;



1       (3) Copies of all documents or telephone recordings  
2       created in connection with compliance with subsection  
3       (b);

4       (4) All files containing the distressed property owner's  
5       or owners' names and phone numbers, dollar amounts  
6       paid, and descriptions of mortgage assistance relief  
7       services purchased, to the extent the distressed  
8       property consultant keeps such information in the  
9       ordinary course of business;

10       (5) Copies of all materially different sales scripts,  
11       training materials, commercial communications, or  
12       other marketing materials, including web sites and  
13       weblogs, for any mortgage assistance relief service;  
14       and

15       (6) Copies of the documentation provided to the consumer  
16       as specified in section 480E-3.

17       (b) A distressed property consultant shall also:

18       (1) Take reasonable steps sufficient to monitor and ensure  
19       that all employees and independent contractors comply  
20       with this chapter. Such steps shall include the  
21       monitoring of communications directed at specific



1 consumers and shall also include, at a minimum, the  
2 following:

3 (A) If the distressed property consultant is engaged  
4 in the telemarketing of mortgage assistance  
5 relief services, performing random, blind  
6 recording and testing of the oral representations  
7 made by individuals engaged in sales or other  
8 customer service functions;

9 (B) Establishing a procedure for receiving and  
10 responding to any and all complaints regarding or  
11 relating to the distressed property consultant or  
12 mortgage assistance relief service, or both; and

13 (C) Ascertaining the number and nature of any  
14 complaints regarding transactions in which any  
15 employee or independent contractor, or both, is  
16 involved;

17 (2) Investigate promptly and fully each consumer complaint  
18 received;

19 (3) Take corrective action with respect to any employee or  
20 independent contractor whom the distressed property  
21 consultant determines is not complying with this



1 chapter, which action may include training,  
2 disciplining, or terminating the individual; and  
3 (4) Maintain any information and material necessary to  
4 demonstrate the distressed property consultant's  
5 compliance with this subsection.

6 (c) A distressed property consultant may keep the records  
7 required by this section in any form, and in the same manner,  
8 format, or place as it keeps such records in the ordinary course  
9 of business.

10 §480E- Enforcement authority. The attorney general or  
11 the executive director of the office of consumer protection is  
12 authorized to investigate reported or suspected violations of  
13 the federal mortgage assistance relief services rules, set forth  
14 in title 12 Code of Federal Regulations part 1015, and to  
15 enforce such rules by bringing civil actions or proceedings.

16 §480E- Requirements for attorneys licensed in Hawaii.  
17 An attorney licensed in the State engaged in the practice of law  
18 who performs or provides, or attempts to perform or provide, or  
19 who arranges for others to perform or provide, or who assists  
20 others to perform or provide, or who makes any solicitation,



1 representation, or offer to perform or provide, any mortgage  
2 assistance relief service shall:

3 (1) Execute a written contract that identifies each  
4 mortgage assistance relief service to be provided;

5 (2) Maintain a client trust account that complies with all  
6 applicable state laws and rules;

7 (3) Deposit into the attorney's client trust account all  
8 moneys received by or on behalf of the consumer to be  
9 provided with any mortgage assistance relief service;

10 and

11 (4) Keep and maintain all moneys received in deposit in  
12 the client trust account until such time as the  
13 attorney has fully performed each service the attorney  
14 contracted to perform or represented would be  
15 performed."

16 SECTION 2. Section 480E-1, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "[+]§480E-1[+] **Purpose.** The purpose of this chapter is to  
19 protect Hawaii consumers from persons who prey on [~~homeowners~~  
20 ~~who face property foreclosures, liens, or encumbrances.~~]  
21 consumers by offering services that purport to provide relief



1 from consumers' mortgage loan obligations or from other filed or  
2 threatened liens or encumbrances against their properties.  
3 Consumers who face foreclosures, liens, or encumbrances are  
4 often in desperate financial situations that can have severe  
5 adverse consequences for individuals and families even if the  
6 consumers have significant equity in their residential real  
7 property. The consumers' desperation makes them vulnerable to  
8 persons who claim they can stop, prevent, or delay foreclosures,  
9 liens, or encumbrances[-], or claim they can reduce, modify, or  
10 eliminate mortgage loan obligations or other filed or threatened  
11 liens or encumbrances. Persons who make these claims often use  
12 the consumers' desperation to foster unequal bargaining  
13 positions and withhold or misrepresent vital information and  
14 details. As a result, consumers may be convinced to give up  
15 their real property interests and valuable equity to these  
16 persons while receiving little in return. Requiring full and  
17 complete disclosure of vital information will better enable  
18 consumers to make informed decisions when dealing with persons  
19 claiming to be able to stop foreclosures, liens, or  
20 encumbrances. This [+]chapter[+] addresses possible  
21 misrepresentations by compelling persons who offer assistance to



1 fully and completely describe their services in written  
2 contracts and gives [~~the homeowners~~] consumers the right to  
3 cancel at any time before a distressed property consultant has  
4 performed all services called for in a contract."

5 SECTION 3. Section 480E-2, Hawaii Revised Statutes, is  
6 amended as follows:

7 1. By adding nine new definitions to be appropriately  
8 inserted and to read:

9 "Distressed property owner" or "property owner" means the  
10 owner of any distressed property.

11 "Fully performed" means:

12 (1) In the case of relief requiring the consent of any  
13 lending party, the distressed property consultant or  
14 attorney has:

15 (A) Carried out and provided all of the services the  
16 distressed property consultant or attorney  
17 contracted to perform or represented would be  
18 performed; and

19 (B) Obtained from the lending party a written offer  
20 for mortgage assistance relief that the consumer  
21 has accepted by executing the written contract.



- 1        (2) In the case of relief requiring the consent of any  
2        non-lending party, including any person that may hold  
3        a lien or encumbrance against any residential real  
4        property, the distressed property consultant or  
5        attorney has:
- 6        (A) Carried out and provided all of the services the  
7        distressed property consultant or attorney  
8        contracted to perform or represented would be  
9        performed; and
- 10       (B) Obtained from the non-lending party a written  
11       offer for mortgage assistance relief that the  
12       consumer has accepted by executing the written  
13       contract.
- 14       (3) In all other cases, being instances where consent is  
15       not obtained as the result of a mortgage assistance  
16       relief service, the property owner obtains the desired  
17       relief from a court of law, which includes a favorable  
18       determination that the mortgage assistance relief  
19       service conferred a benefit upon the property owner  
20       and is therefore compensable.





1       "Lending party" means the person from whom mortgage  
2 assistance relief is sought and includes the residential loan  
3 holder or servicer.

4       "Material" means likely to affect a consumer's choice of,  
5 or conduct regarding, any mortgage assistance relief service.

6       "Mortgage assistance relief service" means any service,  
7 plan, or program that is offered or provided to the consumer in  
8 exchange for consideration and is represented, expressly or by  
9 implication, to assist or attempt to assist the consumer with  
10 any of the following:

11       (1) Stopping, preventing, or postponing the loss of any  
12 residential real property, whether by mortgage or deed  
13 or trust foreclosure sale or repossession, or  
14 otherwise saving any consumer's residential real  
15 property from foreclosure or repossession;

16       (2) Stopping, preventing, or postponing the charging of  
17 any lien or encumbrance against any residential real  
18 property or reducing or eliminating any lien or  
19 encumbrance charged against any residential real  
20 property for the nonpayment of any taxes, lease  
21 assessments, association fees, or maintenance fees;



- 1        (3) Saving the owner's property from foreclosure or loss
- 2            of home due to nonpayment of taxes;
- 3        (4) Negotiating, obtaining, or arranging any modification
- 4            of any term of a residential loan, including a
- 5            reduction in the amount of interest, principal
- 6            balance, monthly payments, or fees;
- 7        (5) Negotiating, obtaining, or arranging any extension of
- 8            the period of time within which the consumer may:
- 9            (A) Cure the default on a residential loan;
- 10          (B) Reinstate the residential loan;
- 11          (C) Redeem any residential real property; or
- 12          (D) Exercise any right to reinstate a residential
- 13            loan or redeem a residential real property;
- 14        (6) Negotiating, obtaining, or arranging, with respect to
- 15            any residential real property:
- 16            (A) A short sale;
- 17            (B) A deed-in-lieu of foreclosure; or
- 18            (C) Any other disposition of the property other than
- 19            a sale to a third party who is not the
- 20            residential loan holder;



- 1        (7) Obtaining any forbearance or modification in the  
2            timing of payments from any residential loan holder or  
3            servicer;
- 4        (8) Obtaining any forbearance from any beneficiary or  
5            mortgagee, or any relief with respect to a tax sale of  
6            any residential real property;
- 7        (9) Obtaining any waiver of an acceleration clause or  
8            balloon payment contained in any promissory note or  
9            other contract secured by a mortgage on any  
10           residential real property or contained in the  
11           mortgage;
- 12       (10) Obtaining any extension of the period within which the  
13           owner may reinstate the owner's rights with respect to  
14           the owner's property;
- 15       (11) Obtaining a loan or advance of funds while the  
16           consumer is in foreclosure or at risk of foreclosure  
17           due to nonpayment of any obligation related to a  
18           residential real property, including but not limited  
19           to one or more loans, taxes, lease assessments,  
20           association fees, or maintenance fees;



- 1        (12) Obtaining a loan or advance of funds during any post-  
2            tax sale redemption period;
- 3        (13) Considering or deciding whether a consumer should  
4            continue making payments on any loan, taxes, lease  
5            assessments, association fees, or maintenance fees or  
6            any other obligation related to a residential real  
7            property;
- 8        (14) Exercising any cure of default;
- 9        (15) Avoiding or ameliorating the impairment of the  
10           property owner's credit resulting from the recording  
11           or filing of a notice of default or the conduct of a  
12           foreclosure sale or tax sale;
- 13       (16) Drafting, preparing, performing, creating, or  
14           otherwise obtaining a forensic loan audit, a forensic  
15           securitization audit, or any other type of audit,  
16           report, summary, affidavit, or declaration involving  
17           an opinion, determination, or analysis of whether a  
18           lending party has an enforceable mortgage or lien,  
19           predicated upon claims that a lending party that is a  
20           party to a pooling and service agreement failed to  
21           adhere to the terms of that agreement, or that errors



1 occurred after the signing of the mortgage loan, or  
2 disputing whether the lending party is the holder of  
3 the promissory note, or any argument that the lending  
4 party has failed to comply with federal or state  
5 mortgage lending laws;

6 (17) Drafting, preparing, performing, creating, or  
7 otherwise obtaining any documentation used or intended  
8 to be used to advance any legal theory in defense of a  
9 foreclosure or ejectment action, regardless of any  
10 disclaimer as to providing legal advice; or

11 (18) Understanding any legal theory that may be used in  
12 defense of a foreclosure or ejectment action,  
13 regardless of any disclaimer as to providing legal  
14 advice.

15 "Residential loan" means any loan that is secured by a  
16 mortgage against residential real property, regardless of  
17 whether the property owner lacks sufficient equity in the  
18 property so as to render the loan partially or entirely  
19 unsecured.



1       "Residential loan holder" means any person who holds the  
2 residential loan that is the subject of the offer to provide  
3 mortgage assistance relief services.

4       "Residential real property" means any fee simple or  
5 leasehold real property wherever located, the primary use of  
6 which is occupancy as a residence by any natural person or  
7 persons, regardless of whether the property owner resides on the  
8 property.

9       "Servicer" means the person responsible for:

10       (1) Receiving any scheduled periodic payments pursuant to  
11 the terms of the residential loan that is the subject  
12 of the offer to provide mortgage assistance relief  
13 services; and

14       (2) Making the payments of principal and interest and such  
15 other payments with respect to the amounts received  
16 from the consumer as may be required pursuant to the  
17 terms of the mortgage servicing loan documents or  
18 servicing contract."

19       2. By amending the definition of "distressed property" to  
20 read:



1           ""Distressed property" means any residential real property  
2 that:

- 3           (1) Is in foreclosure or at risk of foreclosure because  
4           payment of any loan that is secured by the residential  
5           real property is more than sixty days delinquent;
- 6           (2) Had a lien or encumbrance charged against it because  
7           of nonpayment of any taxes, lease assessments,  
8           association fees, or maintenance fees;
- 9           (3) Is at risk of having a lien or encumbrance charged  
10           against it because the payments of any taxes, lease  
11           assessments, association fees, or maintenance fees are  
12           more than ninety days delinquent;
- 13           (4) Secures a loan for which a notice of default has been  
14           given; [~~or~~]
- 15           (5) Secures a loan that has been accelerated[~~ed~~]; or
- 16           (6) Is the subject of any solicitation, representation,  
17           offer, agreement, promise, or contract to perform any  
18           mortgage assistance relief service."

19           3. By amending the definition of "distressed property  
20 consultant" to read:



1        "Distressed property consultant" means any person who  
2 performs or provides, or attempts to perform or provide, or who  
3 arranges for others to perform or provide, or who assists others  
4 to perform or provide, or who makes any solicitation,  
5 representation, or offer to perform or provide, any [~~of the~~  
6 ~~following relating to a distressed property:~~] mortgage  
7 assistance relief service.

- 8        ~~(1) Stop or postpone the foreclosure sale or loss of any~~  
9        ~~distressed property due to the nonpayment of any loan~~  
10       ~~that is secured by the distressed property;~~
- 11       ~~(2) Stop or postpone the charging of any lien or~~  
12       ~~encumbrance against any distressed property or~~  
13       ~~eliminate any lien or encumbrance charged against any~~  
14       ~~distressed property for the nonpayment of any taxes,~~  
15       ~~lease assessments, association fees, or maintenance~~  
16       ~~fees;~~
- 17       ~~(3) Obtain any forbearance from any beneficiary or~~  
18       ~~mortgagee, or relief with respect to a tax sale of the~~  
19       ~~property;~~
- 20       ~~(4) Assist the owner to exercise any cure of default~~  
21       ~~arising under Hawaii law;~~





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

17       "Distressed property consultant" shall not include any of  
18 the following:

- 19       (1) A person or the person's authorized agent acting under  
20           the express authority or written approval of the  
21           federal Department of Housing and Urban Development;



- 1           (2) A person who holds or is owed an obligation secured by
- 2           a lien on any distressed property, or a person acting
- 3           under the express authorization or written approval of
- 4           such person, when the person performs services in
- 5           connection with the obligation or lien, if the
- 6           obligation or lien did not arise as the result of or
- 7           as part of a proposed distressed property conveyance;
- 8           (3) Banks, savings banks, savings and loan associations,
- 9           credit unions, trust companies, depository and
- 10          nondepository financial service loan companies, and
- 11          insurance companies organized, chartered, or holding a
- 12          certificate of authority to do business under the laws
- 13          of this State or any other state, or under the laws of
- 14          the United States;
- 15          (4) Attorneys licensed in the State of Hawaii engaged in
- 16          the practice of law;
- 17          (5) Certified public accountants licensed under chapter
- 18          466, persons holding a permit to practice public
- 19          accountancy in the State of Hawaii, and persons
- 20          holding a valid certified public accountant license
- 21          issued under the laws of another state or territory



- 1 who are lawfully practicing in the State of Hawaii  
2 with a temporary permit to practice pursuant to rules  
3 established by the board of public accountancy and who  
4 are subject to regulation by the board of public  
5 accountancy while engaged in the practice of public  
6 accountancy;
- 7 (6) 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;
- 12 (7) 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; or
- 18 (8) A person currently licensed as an active real estate  
19 broker or real estate salesperson in Hawaii pursuant  
20 to chapter 467, when acting in the capacity of a real



1 estate broker or real estate salesperson in accordance  
2 with customary industry standards."

3 4. By deleting the definition of "material fact".

4 [~~"Material fact" means a fact that, if disclosed, might~~  
5 ~~have influenced the distressed property owner to not enter into~~  
6 ~~the agreement or obligation."]~~

7 SECTION 4. Section 480E-2.5, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "**[+]§480E-2.5[+] Mortgage rescue fraud; consumer**  
10 **education.** The office of consumer protection shall educate  
11 consumers about [~~fraudulent activities~~] abusive practices that  
12 may be committed against [~~homeowners~~] consumers who may be  
13 offered mortgage assistance relief services or who face property  
14 foreclosures, liens, or encumbrances, as appropriate."

15 SECTION 5. Section 480E-3, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "**[+]§480E-3[+] Distressed property consultant contract.**

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



1 ~~[owners of the]~~ distressed property~~[r]~~ owners, including the  
2 total amount and terms of compensation to be directly or  
3 indirectly received by the distressed property consultant.

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

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

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



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

4 (e) A distressed property consultant contract shall  
5 disclose the following information, and shall be substantially  
6 in the following form and printed in not less than fourteen-  
7 point type:

8 "You may stop doing business with us at any time. You  
9 may accept or reject the offer of mortgage assistance  
10 we obtain from your lender (or servicer). If you  
11 reject the offer, you do not have to pay us. If you  
12 accept the offer, you will have to pay us [insert  
13 amount or method of calculating the amount] for our  
14 services.

15 [Name of the company] is not associated with the  
16 government, and our service is not approved by the  
17 government or your lender.

18 Even if you agree to use our service in an attempt to  
19 obtain mortgage assistance relief from the lending  
20 party, your lender may not agree to change your loan.



1           IF YOU STOP PAYING YOUR MORTGAGE, YOU COULD LOSE YOUR  
2           HOME AND DAMAGE YOUR CREDIT RATING."

3   For the purposes of this subsection, the amount "you will have  
4   to pay" shall consist of the total amount the consumer must pay  
5   to purchase, receive, and use all of the mortgage assistance  
6   relief services that are the subject of the sales offer,  
7   including but not limited to all fees and charges.

8           [~~(e)~~] (f) The distressed property consultant shall provide  
9 each distressed property owner with a copy of the distressed  
10 property consultant contract and attached notice of cancellation  
11 immediately upon execution by all parties to the distressed  
12 property consultant contract. A distressed property consultant  
13 contract shall not be effective until all parties to the  
14 distressed property consultant contract have signed the  
15 contract.

16           (g) For forms of mortgage assistance relief that can only  
17 be obtained from a lending party, the objective of every such  
18 distressed property consultant contract shall be to obtain from  
19 the lending party a written offer to the distressed property  
20 owner for mortgage assistance relief on terms acceptable to the  
21 property owners. Any such agreement with the lending party for



1 mortgage assistance relief shall be in writing, and shall become  
2 binding upon the distressed property owners only after all  
3 property owners have accepted the offer by executing the written  
4 contract."

5 SECTION 6. Section 480E-5, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "[+]§480E-5[+] **Cancellation of a distressed property**

8 **consultant contract.** (a) In addition to any other legal right  
9 to rescind a contract, any distressed property owner has the  
10 right to cancel a distressed property consultant contract,  
11 without any penalty or obligation, at any time before the  
12 distressed property consultant has fully performed each and  
13 every service the distressed property consultant contracted to  
14 perform or represented would be performed.

15 (b) Cancellation occurs when any [~~owner of a~~] distressed  
16 property owner delivers, by any means, written notice of  
17 cancellation to the address specified in the distressed property  
18 consultant contract.

19 (c) Notice of cancellation, if given by mail, is effective  
20 when deposited in the mail with postage prepaid. Notice by  
21 certified mail, return receipt requested, addressed to the





1 address specified in the distressed property consultant  
2 contract, shall be conclusive proof of notice of cancellation.

3 (d) Notice of cancellation given by any [~~owner of a~~  
4 distressed property owner need not take the particular form as  
5 provided with the distressed property consultant contract and,  
6 however expressed, is effective if it indicates the intention of  
7 [~~an owner~~] the distressed property owner not to be bound by the  
8 contract."

9 SECTION 7. Section 480E-6, Hawaii Revised Statutes, is  
10 amended by amending subsections (a) and (b) to read as follows:

11 "(a) A distressed property conveyance contract shall be in  
12 writing and shall fully disclose all rights and obligations of  
13 the distressed property purchaser and all [~~owners of the~~  
14 distressed property owners and all terms of any agreements  
15 between the distressed property purchaser and all [~~owners of the~~  
16 ~~distressed property.~~] distressed property owners.

17 (b) Every distressed property conveyance contract shall  
18 specifically include the following terms:

19 (1) The total consideration to be given by the distressed  
20 property purchaser or tax lien payor in connection



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



1                   "NOTICE REQUIRED BY HAWAII LAW  
2                   UNTIL YOUR RIGHT TO CANCEL THIS CONTRACT HAS ENDED,  
3                   (Name of distressed property purchaser) OR ANYONE  
4                   WORKING FOR (Name of distressed property purchaser)  
5                   CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN ANY DEED OR  
6                   ANY OTHER DOCUMENT. YOU ARE URGED TO HAVE THIS  
7                   CONTRACT REVIEWED BY AN ATTORNEY OF YOUR CHOICE WITHIN  
8                   FIFTEEN BUSINESS DAYS OF SIGNING IT."; and

9                   (6) If title to the distressed property will be  
10                   transferred in the conveyance transaction, the  
11                   following notice, in a type size no smaller than  
12                   fourteen-point boldface type, completed with the name  
13                   of the distressed property purchaser, shall appear  
14                   immediately below the notice required by paragraph  
15                   (5):

16                   "NOTICE REQUIRED BY HAWAII LAW  
17                   AS PART OF THIS TRANSACTION, YOU ARE GIVING UP TITLE  
18                   TO YOUR HOME.""

19                   SECTION 8. Section 480E-8, Hawaii Revised Statutes, is  
20                   amended to read as follows:



1           " ~~[+]~~§480E-8~~[+]~~ **Cancellation of a distressed property**  
2 **conveyance contract.** (a) In addition to any other legal right  
3 to rescind a contract, any distressed property owner has the  
4 right to cancel a distressed property conveyance contract,  
5 without any penalty or obligation, at any time before the later  
6 of midnight of the fifteenth business day following the day on  
7 which the last party to a distressed property conveyance  
8 contract signs the distressed property conveyance contract or  
9 5:00 p.m. on the last day of the period during which any ~~owner~~  
10 ~~of a~~] distressed property owner has the right to cure a default  
11 under state law.

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



1 (c) Cancellation occurs when any [~~owner of a~~] distressed  
2 property owner delivers, by any means, and within the time  
3 specified under subsection (a), written notice of cancellation  
4 to the address specified in the distressed property conveyance  
5 contract.

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

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

17 (f) Within fifteen days following receipt of a notice of  
18 cancellation given in accordance with this section, the  
19 distressed property purchaser shall return, without condition,  
20 any and all original contracts and documents signed by any  
21 [~~owner of the distressed property.~~] distressed property owner."



1 SECTION 9. Section 480E-10, Hawaii Revised Statutes, is  
2 amended by amending its title and subsections (a) and (b) to  
3 read as follows:

4 "[+]§480E-10[+] **Prohibitions.** (a) A distressed property  
5 consultant shall not:

6 (1) Represent, expressly or by implication, in connection  
7 with the advertising, marketing, promotion, offering  
8 for sale, or performance of any mortgage assistance  
9 relief service, that a distressed property owner  
10 cannot or should not contact or communicate with the  
11 distressed property owner's lender or servicer;

12 (2) Misrepresent, expressly or by implication, any  
13 material aspect of any mortgage assistance relief  
14 service, including but not limited to:

15 (A) The likelihood of negotiating, obtaining, or  
16 arranging any represented service or result, such  
17 as those set forth in the definition of mortgage  
18 assistance relief service;

19 (B) The amount of time it will take the distressed  
20 property consultant to accomplish any represented



1           service or result, such as those set forth in the  
2           definition of mortgage assistance relief service;  
3       (C) That a mortgage assistance relief service is  
4           affiliated with, endorsed or approved by, or  
5           otherwise associated with:  
6           (i) The United States government;  
7           (ii) Any governmental homeowner assistance plan;  
8           (iii) Any federal, state, or local government  
9           agency, unit, or department;  
10          (iv) Any nonprofit housing counselor agency or  
11          program;  
12          (v) The maker, holder, or servicer of the  
13          consumer's residential loan; or  
14          (vi) Any other individual, entity, or program;  
15       (D) The distressed property owner's obligation to  
16           make scheduled periodic payments or any other  
17           payments pursuant to the terms of the distressed  
18           property owner's residential loan;  
19       (E) The terms or conditions of the distressed  
20           property owner's residential loan, including but  
21           not limited to the amount of the debt owed;



- 1           (F) The terms or conditions of any refund,  
2                   cancellation, exchange, or repurchase policy for  
3                   any mortgage assistance relief service, including  
4                   but not limited to the likelihood of obtaining a  
5                   full or partial refund, or the circumstances in  
6                   which a full or partial refund will be granted,  
7                   for a mortgage assistance relief service;
- 8           (G) That the distressed property consultant has  
9                   completed the represented services or has a right  
10                  to claim, demand, charge, collect, or receive  
11                  payment or other consideration;
- 12           (H) That the distressed property owner will receive  
13                  legal representation;
- 14           (I) The availability, performance, cost, or  
15                  characteristics of any alternative to for-profit  
16                  mortgage assistance relief services through which  
17                  the distressed property owner can obtain mortgage  
18                  assistance relief, including negotiating directly  
19                  with the residential loan holder or servicer, or  
20                  using any nonprofit housing counselor agency or  
21                  program;





- 1           (J) The amount of money or the percentage of the debt  
2           amount that a distressed property owner may save  
3           by using any mortgage assistance relief service;
- 4           (K) The total cost to purchase any mortgage  
5           assistance relief service; or
- 6           (L) The terms, conditions, or limitation of any offer  
7           of mortgage assistance relief the distressed  
8           property consultant obtains from the distressed  
9           property owner's residential loan holder or  
10           servicer, including the time period in which the  
11           distressed property owner must decide to accept  
12           the offer;
- 13           (3) Make any representation, expressly or by implication,  
14           about the benefits, performance, or efficacy of any  
15           mortgage assistance relief service unless, at the time  
16           such representation is made, the provider possesses  
17           and relies upon competent and reliable evidence that  
18           substantiates that the representation is true. For  
19           the purposes of this paragraph, "competent and  
20           reliable evidence" means tests, analyses, research,  
21           studies, or other evidence based on the expertise of



1           professionals in the relevant area, that have been  
2           conducted and evaluated in an objective manner by  
3           individuals qualified to do so, using procedures  
4           generally accepted in the profession to yield accurate  
5           and reliable results;  
6       ~~[-1] Misrepresent or conceal~~ (4) Conceal any material  
7           fact;  
8       ~~[-2]~~ (5) Induce or attempt to induce a distressed property  
9           owner to waive any provision of this chapter;  
10       ~~[-3]~~ (6) Make any promise or guarantee not fully disclosed  
11           in the distressed property consultant contract;  
12       ~~[-4]~~ (7) Engage or attempt to engage in any activity or  
13           act concerning the distressed property not fully  
14           disclosed in the distressed property consultant  
15           contract;  
16       ~~[-5]~~ (8) Induce or attempt to induce a distressed property  
17           owner to engage in any activity or act not fully  
18           disclosed in the distressed property consultant  
19           contract;  
20       ~~[-6]~~ (9) Take, ask for, claim, demand, charge, collect, or  
21           receive any compensation until after the distressed



1 property consultant has fully performed each service  
2 the distressed property consultant contracted to  
3 perform or represented would be performed;

4 [~~7~~] (10) Take, ask for, claim, demand, charge, collect,  
5 or receive for any reason, any fee, interest, or any  
6 other compensation that exceeds the two most recent  
7 monthly mortgage installments of principal and  
8 interest due on the loan first secured by the  
9 distressed property or the most recent annual real  
10 property tax charged against the distressed property,  
11 whichever is less;

12 [~~8~~] (11) Take or ask for a wage assignment, a lien of any  
13 type on real or personal property, or other security  
14 to secure the payment of compensation. This type of  
15 security is void and not enforceable;

16 [~~9~~] (12) Receive any consideration from any third party  
17 in connection with services rendered to a distressed  
18 property owner unless the consideration is fully  
19 disclosed in the distressed property consultant  
20 contract;



- 1        [~~(10)~~] (13) Acquire any interest, directly or indirectly, or  
2                    by means of a subsidiary or affiliate, in a distressed  
3                    property from a distressed property owner with whom  
4                    the distressed property consultant has contracted;
- 5        [~~(11)~~] (14) Require or ask a distressed property owner to  
6                    sign any lien, encumbrance, mortgage, assignment, or  
7                    deed unless the lien, encumbrance, mortgage,  
8                    assignment, or deed is fully described in the  
9                    distressed property consultant contract, including all  
10                    disclosures required by this chapter; [~~or~~
- 11        ~~(12)~~] (15) Take any power of attorney from a distressed  
12                    property owner for any purpose, except to inspect  
13                    documents concerning the distressed property as  
14                    allowed by law~~(-)~~;
- 15        (16) Advise or instruct a distressed property owner to stop  
16                    making payments to any lending party if that property  
17                    owner is not in receipt of a written notice that the  
18                    property owner's residential loan has been  
19                    accelerated;
- 20        (17) Fail to disclose, at the time the distressed property  
21                    consultant furnishes the distressed property owner



1 with the lending party's written offer for mortgage  
2 assistance relief, the following information:

3 "This is an offer of mortgage assistance we  
4 obtained from your lender [or servicer]. You may  
5 accept or reject the offer. If you reject the  
6 offer, you do not have to pay us. If you accept  
7 the offer, you will have to pay us [same amount  
8 as disclosed in the distressed property  
9 consultant contract] for our services."

10 The disclosure required by this paragraph shall be  
11 made in a clear and prominent manner, on a separate  
12 written page, and preceded by the heading:

13 "IMPORTANT NOTICE: Before buying this service,  
14 consider the following information."

15 The heading shall be in bold face type that is two-  
16 point type larger than the type size of the required  
17 disclosure;

18 (18) Fail to provide, at the time the distressed property  
19 consultant furnishes the distressed property owner  
20 with the written agreement specified in paragraph  
21 (17), a notice from the lending party that describes



1           all material differences between the terms,  
2           conditions, and limitations associated with the  
3           distressed property owner's current residential loan  
4           and the terms, conditions, and limitations associated  
5           with the distressed property owner's residential loan  
6           if the owner accepts the lending party's offer,  
7           including but not limited to differences in the  
8           loan's:

- 9           (A) Principal balance;
- 10          (B) Contract interest rate, including the maximum  
11          rate and any adjustable rates, if applicable;
- 12          (C) Amount and number of the owner's scheduled  
13          periodic payments on the loan;
- 14          (D) Monthly amounts owed for principal, interest,  
15          taxes, and any mortgage insurance on the loan;
- 16          (E) Amount of any delinquent payments owing or  
17          outstanding;
- 18          (F) Assessed fees or penalties; and
- 19          (G) Term;

20           The notice required by this paragraph shall be made in  
21           a clear and prominent manner, on a separate written



1 page, and preceded by the heading: "IMPORTANT  
 2 INFORMATION FROM YOUR [name of lender or servicer]  
 3 ABOUT THIS OFFER." The heading shall be in bold face  
 4 type that is two-point type larger than the type size  
 5 of the required disclosure;

6 (19) Fail to disclose in the notice specified in paragraph  
 7 (18), in cases where the offer of mortgage assistance  
 8 relief obtained by the distressed property consultant  
 9 from the lending party is a trial residential loan  
 10 modification, the terms, conditions, and limitations  
 11 of the offer, including but not limited to:

12 (A) The fact that the distressed property owner may  
 13 not qualify for a permanent loan modification;  
 14 and

15 (B) The likely amount of the scheduled periodic  
 16 payments and any arrears, payments, or fees that  
 17 the distressed property owner would owe in  
 18 failing to qualify; or

19 (20) File any document in the bureau of conveyances of the  
 20 State of Hawaii that purports to modify, reduce,  
 21 eliminate, discharge, contest, or otherwise affect any



1 mortgage, lien, or encumbrance of record without  
2 either the express written consent of the lending  
3 party or lienholder or a court order permitting or  
4 directing the document to be filed, with the exception  
5 of a notice of pendency of action or lis pendens.

- 6 (b) A distressed property purchaser shall not:
  - 7 (1) Misrepresent or conceal any material fact;
  - 8 (2) Induce or attempt to induce a distressed property  
9 owner to waive any provision of this chapter;
  - 10 (3) Make any promise or guarantee not fully disclosed in  
11 the distressed property conveyance [†]contract[†];
  - 12 (4) Engage or attempt to engage in any activity or act  
13 concerning the distressed property not fully disclosed  
14 in the distressed property conveyance contract;
  - 15 (5) Induce or attempt to induce a distressed property  
16 owner to engage in any activity or act not fully  
17 disclosed in the distressed property conveyance  
18 contract;
  - 19 (6) Enter into or attempt to enter into a distressed  
20 property conveyance unless the distressed property  
21 purchaser verifies and can demonstrate that [~~an owner~~





1           ~~e~~] the distressed property owner has a reasonable  
2           ability to pay any amounts due to reacquire an  
3           interest in the distressed property or to make monthly  
4           or any other payments due under a distressed property  
5           conveyance contract or distressed property lease, if  
6           the distressed property purchaser allows any [~~owner of~~  
7           a] distressed property owner to remain in, occupy,  
8           use, or repurchase the distressed property;

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



1 five per cent of the distressed property purchaser's  
2 costs to purchase the property. If [~~an owner~~] a  
3 distressed property owner is unable to repurchase the  
4 property pursuant to the terms of the distressed  
5 property conveyance contract, the distressed property  
6 purchaser shall not fail to make a payment to the  
7 [~~owner of the~~] distressed property owner so that the  
8 [~~owner of the~~] distressed property owner has received  
9 consideration in an amount of at least eighty-two per  
10 cent of the property's fair market value at the time  
11 of conveyance or at the expiration of the distressed  
12 property owner's option to repurchase;

13 (8) Enter into any repurchase or lease agreement as part  
14 of a distressed property conveyance contract or  
15 subsequent conveyance of an interest in the distressed  
16 property back to a distressed property owner that is  
17 unfair or commercially unreasonable or engage in any  
18 other unfair conduct;

19 (9) Represent, directly or indirectly, that the distressed  
20 property purchaser is acting as an advisor or a  
21 consultant or is acting on behalf of or assisting [~~an~~



- 1           ~~owner of~~] a distressed property owner to "remain in  
2           the house", "save the house", "buy time", or "stop the  
3           foreclosure" or is doing anything other than  
4           purchasing the distressed property;
- 5           (10) Misrepresent the distressed property purchaser's  
6           status as to licensure or certification;
- 7           (11) Do any of the following until after the time during  
8           which [~~an owner of~~] a distressed property owner may  
9           cancel the distressed property conveyance contract:
- 10           (A) Accept from [~~an owner of the~~] a distressed  
11           property owner execution of any instrument of  
12           conveyance of any interest in the distressed  
13           property;
- 14           (B) Execute an instrument of conveyance of any  
15           interest in the distressed property; or
- 16           (C) Pursuant to chapter 501 or 502, record any  
17           document signed by [~~an owner of~~] a distressed  
18           property[~~r~~] owner, including any instrument of  
19           conveyance;
- 20           (12) Fail to re-convey title in a distressed property to  
21           the distressed property owner or owners when the terms



1 of the distressed property conveyance contract have  
2 been fulfilled if the distressed property consultant  
3 or distressed property purchaser contracted or  
4 represented that title in the distressed property  
5 would be re-conveyed to the distressed property owner  
6 or owners when the terms of the distressed property  
7 conveyance contract have been fulfilled;

8 (13) Induce or attempt to induce [~~an owner of the~~] a  
9 distressed property owner to execute a quitclaim deed  
10 concerning a distressed property;

11 (14) Enter into a distressed property conveyance contract  
12 where any party to the contract is represented by  
13 power of attorney;

14 (15) Immediately following the conveyance of the distressed  
15 property, fail to extinguish all liens encumbering the  
16 distressed property at the time of the distressed  
17 property conveyance or fail to assume all liability  
18 with respect to all liens encumbering the distressed  
19 property at the time of the distressed property  
20 conveyance, which assumption shall be accomplished  
21 without violations of the terms and conditions of the



1           lien or liens being assumed. Nothing herein shall  
2           preclude a lender from enforcing any provision in a  
3           contract that is not otherwise prohibited by law;

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

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

8           (B) A bank, trust company, or savings and loan  
9                 association authorized under any law of this  
10                State or of the United States to do business in  
11                the State;

12          (C) A person licensed as a real estate broker in this  
13                State who is the broker for a party to the  
14                escrow; provided that the person does not charge  
15                any escrow fee; or

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

20       (17) Cause the property to be conveyed or encumbered  
21           without the knowledge or permission of all ~~owners of~~



1           a] distressed property owners or in any way frustrate  
2           the ability of [a] any distressed property owner to  
3           reacquire the distressed property."

4           SECTION 10. Section 480E-11, Hawaii Revised Statutes, is  
5 amended to read as follows:

6           "**§480E-11 Unfair or deceptive act or practice; penalties.**

7           (a) Any person who violates any provision of this chapter shall  
8 be deemed to have engaged in an unfair or deceptive act or  
9 practice in the conduct of any trade or commerce within the  
10 meaning of section 480-2.

11           (b) Any person who violates any provision of title 12 Code  
12 of Federal Regulations part 1015, pertaining to mortgage  
13 assistance relief services, shall be deemed to have engaged in  
14 an unfair or deceptive act or practice in the conduct of any  
15 trade or commerce within the meaning of section 480-2.

16           [~~(b)~~] (c) The penalties provided in this section shall be  
17 cumulative to the remedies or penalties available under all  
18 other laws of this State."

19           SECTION 11. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21           SECTION 12. This Act shall take effect upon its approval.



**Report Title:**

Mortgage Rescue Fraud Prevention Act; Mortgage Rescue Fraud;  
Mortgage Assistance Relief Services; Distressed Property Owners

**Description:**

Makes numerous amendments to Hawaii's mortgage rescue fraud prevention act, chapter 480E, Hawaii Revised Statutes, for consistency with the federal Mortgage Assistance Relief Services Rule. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

