H.B. NO. 3104

A BILL FOR AN ACT

RELATING TO THE PREVENTION OF MORTGAGE RESCUE FRAUD.

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

1 SECTION 1. This Act shall be known as the "Mortgage Rescue
2 Fraud Prevention Act."
3 SECTION 2. The Hawaii Revised Statutes is amended by
4 adding to title 26 a new chapter to be appropriately designated
5 and to read as follows:
6 **"CHAPTER**
7 **MORTGAGE RESCUE FRAUD PREVENTION ACT**
8 **§ -1 Purpose.** The purpose of this chapter is to
9 protect Hawaii consumers from persons who prey on homeowners
10 facing property foreclosures, liens, or encumbrances. Consumers
11 facing foreclosures, liens, or encumbrances are often in
12 desperate financial situations that can have severe negative
13 consequences for individuals and families even if the consumers
14 have significant equity in their residential real property. The
15 consumers' desperation can make the consumers vulnerable to
16 persons who claim they can stop, prevent, or delay foreclosures,
17 liens, or encumbrances. Persons who make such claims often use
18 the consumers' desperation to foster unequal bargaining

1 positions and withhold or misrepresent vital information and
2 details. As a result, consumers may be convinced to give up
3 their real property interests and valuable equity to such
4 persons while receiving little in return. Requiring full and
5 complete disclosure of vital information will better enable
6 consumers to make informed decisions when dealing with persons
7 claiming to be able to stop foreclosures, liens, or
8 encumbrances. The Mortgage Rescue Fraud Prevention Act
9 addresses possible misrepresentations by compelling persons
10 offering assistance to spell out their services in written
11 contracts and by giving the homeowners the right to cancel at
12 any time before a distressed property consultant has performed
13 all services called for in the contracts.
14 **§ -2 Definitions.** As used in this chapter, unless the
15 context otherwise requires:
16 "Consideration" means any payment or thing of value
17 provided to an owner of a distressed property, including
18 reasonable costs paid to independent third parties necessary to
19 complete the distressed property conveyance or payment of money
20 to satisfy a debt or legal obligation of an owner of the
21 distressed property. "Consideration" shall not include any
22 amounts paid or to be paid directly or indirectly to the

1 distressed property purchaser, including, but not limited to,
2 amounts identified as "gift equity", "fees", "escrow", or "down
3 payment".
4 "Distressed property" means any residential real property
5 that:
6 (1) Is in foreclosure or at risk of foreclosure because
7 payment of any loan that is secured by the residential
8 real property is more than sixty days delinquent;
9 (2) Had a lien or encumbrance charged against it because
10 of nonpayment of any taxes, lease assessments,
11 association fees, or maintenance fees; or
12 (3) Is at risk of having a lien or encumbrance charged
13 against it because the payments of any taxes, lease
14 assessments, association fees, or maintenance fees are
15 more than ninety days delinquent;
16 (4) Secures a loan for which a notice of default has been
17 given; or
18 (5) Secures a loan that has been accelerated.
19 "Distressed property consultant" means any person who makes
20 any solicitation, representation, or offer to or does perform
21 any of the following:

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

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

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

(4) Assist the owner to exercise any cure of default arising under Hawaii law;

(5) Obtain any extension of the period within which the owner may reinstate the owner's rights with respect to the property;

(6) Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed property or contained in the mortgage;

(7) Assist the owner in foreclosure, loan default, or post-tax sale redemption period to obtain a loan or advance of funds;

(8) Avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale or tax sale; or

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

A "distressed property consultant" does not include any of the following:

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

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

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

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

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

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

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

1 "Distressed property conveyance" means the transfer of any
2 interest in a distressed property effected directly or
3 indirectly by or through a distressed property consultant.
4 "Distressed property conveyance contract" means any
5 agreement or obligation affecting a distressed property
6 conveyance.
7 "Distressed property lease" means any agreement or
8 obligation regarding the lease or rental of a distressed
9 property effected directly or indirectly by or through a
10 distressed property consultant or distressed property purchaser.
11 "Distressed property purchaser" means any person who
12 acquires any interest in a distressed property directly or
13 indirectly through a distressed property conveyance or
14 distressed property conveyance contract.
15 "Material fact" means a fact that, if disclosed, might have
16 influenced the distressed property owner to not enter into the
17 agreement or obligation.
18 "Person" means any individual, partnership, corporation,
19 limited liability company, association, or other group or
20 entity, however organized.
21 **§ -3 Distressed property consultant contract.** (a) A
22 distressed property consultant contract shall be in writing and

1 shall fully disclose all services to be performed by the
2 distressed property consultant and all terms of any agreements
3 between the distressed property consultant and all owners of the
4 distressed property including, but not limited to, the total
5 amount and terms of compensation to be directly or indirectly
6 received by the distressed property consultant.
7 (b) A distressed property consultant contract shall
8 contain on its first page in a type size no smaller than
9 fourteen-point boldface type:
10 (1) A description of the distressed property;
11 (2) The name, street address, and telephone number of the
12 distressed property consultant; and
13 (3) The name and address of the distressed property
14 consultant to which notice of cancellation is to be
15 delivered.
16 (c) A distressed property consultant contract shall be
17 dated and signed by the distressed property consultant. If the
18 distressed property consultant is a person other than an
19 individual, the individual executing the distressed property
20 consultant contract on behalf of the distressed property
21 consultant shall identify the title and office held by the
22 individual.

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

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

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

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

1 PERFORMED. SEE THE ATTACHED NOTICE OF CANCELLATION FORM
2 FOR AN EXPLANATION OF THIS RIGHT.
3 (Name of the distressed property consultant) (or
4 anyone working for or with the distressed property
5 consultant) CANNOT:
6 (1) Take any money from you or ask you for money until
7 (Name of the distressed property consultant) has
8 completely finished doing everything the distressed
9 property consultant said it would do; or
10 (2) Ask you to sign or have you sign any lien,
11 encumbrance, mortgage, assignment, or deed unless the
12 lien, encumbrance, mortgage, assignment, or deed is
13 fully described including all disclosures required by
14 law."
15 (b) A distressed property consultant contract shall be
16 accompanied by the following form, in duplicate, attached to the
17 contract and easily detachable, in a type size no smaller than
18 fourteen-point boldface type, completed with the date the
19 contract was last signed, the name of the distressed property
20 consultant and the address where the notice of cancellation is
21 to be delivered:
22 "NOTICE OF CANCELLATION

(Enter date contract last signed)

(Date)

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

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

I HEREBY CANCEL THIS TRANSACTION.

_____

(Date)

_____

(Owner's signature)"

§ -5 Cancellation of a distressed property consultant contract. (a) In addition to any other legal right to rescind

1 a contract, any distressed property owner has the right to
2 cancel a distressed property consultant contract, without any
3 penalty or obligation, at any time before the distressed
4 property consultant has fully performed each and every service
5 the distressed property consultant contracted to perform or
6 represented would be performed.
7 (b) Cancellation occurs when any owner of a distressed
8 property delivers, by any means, written notice of cancellation
9 to the address specified in the distressed property consultant
10 contract.
11 (c) Notice of cancellation, if given by mail, is effective
12 when deposited in the mail with postage prepaid. Notice by
13 certified mail, return receipt requested, addressed to the
14 address specified in the distressed property consultant
15 contract, shall be conclusive proof of notice of cancellation.
16 (d) Notice of cancellation given by any owner of a
17 distressed property need not take the particular form as
18 provided with the distressed property consultant contract and,
19 however expressed, is effective if it indicates the intention of
20 an owner not to be bound by the contract.
21 **§ -6 Distressed property conveyance contract.** (a) A
22 distressed property conveyance contract shall be in writing and

1 shall fully disclose all rights and obligations of the
2 distressed property purchaser and all owners of the distressed
3 property and all terms of any agreements between the distressed
4 property purchaser and all owners of the distressed property.
5 (b) Every distressed property conveyance contract shall
6 specifically include the following terms:
7 (1) The total consideration to be given by the distressed
8 property purchaser or tax lien payor in connection
9 with or incident to the distressed property
10 conveyance;
11 (2) A complete description of the terms of payment or
12 other consideration including, but not limited to, any
13 services of any nature that the distressed property
14 purchaser represents will be performed for any owner
15 of the distressed property before or after the
16 distressed property conveyance;
17 (3) A complete description of the terms of any related
18 agreement designed to allow any owner of the
19 distressed property to remain in the distressed
20 property such as a rental agreement, repurchase
21 agreement, contract for deed, or lease with option to
22 buy;

(4) All notices as provided in this chapter;

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

"NOTICE REQUIRED BY HAWAII LAW

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

and

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

"NOTICE REQUIRED BY HAWAII LAW

AS PART OF THIS TRANSACTION, YOU ARE GIVING UP TITLE TO YOUR HOME."

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

(1) A description of the distressed property;

(2) The name, street address, and telephone number of the distressed property purchaser; and

(3) The name and address of the distressed property purchaser to which notice of cancellation is to be delivered.

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

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

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

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

§ -7 Right to cancel a distressed property conveyance contract. (a) A distressed property conveyance contract shall contain, immediately before the space reserved for all the distressed property owners' signatures, the following notice of right to cancel a distressed property conveyance contract in a type size no smaller than fourteen-point boldface type,

1 completed with the correct date and time of day on which the
2 cancellation right ends:
3 "YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOUSE,
4 WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE (Date
5 and time of day). SEE THE ATTACHED NOTICE OF CANCELLATION
6 FORM FOR AN EXPLANATION OF THIS RIGHT."
7 (b) A distressed property conveyance contract shall be
8 accompanied by the following form, in duplicate, attached to the
9 contract and easily detachable, in a type size no smaller than
10 fourteen-point boldface type, completed with the date the
11 contract was last signed, the name of the distressed property
12 purchaser, the address where notice of cancellation is to be
13 delivered and the correct date and time of day on which the
14 cancellation right ends:
15 "NOTICE OF CANCELLATION
16
17 (Enter date contract last signed)
18 (Date)
19
20 YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOME,
21 WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE THE
22 LATER OF MIDNIGHT OF THE FIFTH BUSINESS DAY FOLLOWING THE

DAY ON WHICH THE LAST PARTY TO A DISTRESSED PROPERTY CONVEYANCE CONTRACT SIGNS THE DISTRESSED PROPERTY CONVEYANCE CONTRACT OR 5:00 P.M. ON THE LAST DAY OF THE PERIOD DURING WHICH ANY OWNER OF A DISTRESSED PROPERTY HAS THE RIGHT TO CURE THE DEFAULT UNDER HAWAII LAW.

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

I HEREBY CANCEL THIS TRANSACTION.

_____

(DATE)

_____

(Seller's signature)"

§ -8 Cancellation of a distressed property conveyance contract. (a) In addition to any other legal right to rescind

1 a contract, any distressed property owner has the right to
2 cancel a distressed property conveyance contract, without any
3 penalty or obligation, at any time before the later of midnight
4 of the fifth business day following the day on which the last
5 party to a distressed property conveyance contract signs the
6 distressed property conveyance contract or 5:00 p.m. on the last
7 day of the period during which any owner of a distressed
8 property has the right to cure a default under Hawaii law.
9 (b) The period of five business days following the day on
10 which the last party to a distressed property conveyance
11 contract signs the contract during which any owner of the
12 distressed property may cancel the contract shall not begin to
13 run until all parties to the distressed property conveyance
14 contract have executed the distressed property conveyance
15 contract and the distressed property purchaser has complied with
16 all the requirements of sections -6, -7, and -8.
17 (c) Cancellation occurs when any owner of a distressed
18 property delivers, by any means, written notice of cancellation
19 to the address specified in the distressed property conveyance
20 contract.
21 (d) Notice of cancellation, if given by mail, is effective
22 when deposited in the mail with postage prepaid. Notice by

1 certified mail, return receipt requested, addressed to the
2 address specified in the distressed property conveyance
3 contract, shall be conclusive proof of notice of cancellation.
4 (e) Notice of cancellation given by any owner of a
5 distressed property need not take the particular form as
6 provided with the distressed property conveyance contract and,
7 however expressed, is effective if it indicates the intention of
8 an owner not to be bound by the contract.
9 (f) Within ten days following receipt of a notice of
10 cancellation given in accordance with this section, the
11 distressed property purchaser shall return, without condition,
12 any and all original contracts and documents signed by any owner
13 of the distressed property.
14 **§ -9 Distressed property lease.** (a) A distressed
15 property lease shall be in writing and shall fully disclose:
16 (1) All rights and obligations of the distressed property
17 lessor and distressed property lessee;
18 (2) The exact terms of the agreement between the
19 distressed property lessor and distressed property
20 lessee;
21 (3) The exact period of time the distressed property lease
22 is to be in effect; and

(4) The total amount and terms of compensation to be directly or indirectly received by the distressed property lessor.

(b) Distressed property lessees shall be afforded all rights under the landlord-tenant code of the State. No distressed property lease shall provide a distressed property lessee with rights less than that provided by the State's landlord-tenant code as set forth in chapters 521 and 666.

(c) The first page of a distressed property lease shall contain in a type size no smaller than fourteen-point boldface type:

(1) A description of the distressed property;

(2) The name, street address, and telephone number of the distressed property lessor; and

(3) The name and address of the distressed property lessor to which lease or rental payments, correspondence, and notices are to be mailed.

(d) A distressed property lease shall be dated and signed by the distressed property lessor. If the distressed property lessor is a person other than an individual, the individual executing the distressed property lease on behalf of the

1 distressed property lessor shall identify the title and office
2 held by the individual.
3 (e) A distressed property lease shall be dated and signed
4 by all lessees of the distressed property.
5 (f) The distressed property lessor shall provide each
6 distressed property lessee with a copy of the distressed
7 property lease immediately upon execution by all parties to the
8 distressed property lease. A distressed property lease shall
9 not be effective until all parties to the distressed property
10 lease have signed the lease.
11 **§ -10 Prohibitions.** (a) A distressed property
12 consultant shall not:
13 (1) Misrepresent or conceal any material fact;
14 (2) Induce or attempt to induce a distressed property
15 owner to waive any provision of this chapter;
16 (3) Make any promise or guarantee not fully disclosed in
17 the distressed property consultant contract;
18 (4) Engage or attempt to engage in any activity or act
19 concerning the distressed property not fully disclosed
20 in the distressed property consultant contract;
21 (5) Induce or attempt to induce a distressed property
22 owner to engage in any activity or act not fully

1 disclosed in the distressed property consultant
2 contract;
3 (6) Take, ask for, claim, demand, charge, collect, or
4 receive any compensation until after the distressed
5 property consultant has fully performed each service
6 the distressed property consultant contracted to
7 perform or represented would be performed;
8 (7) Take, ask for, claim, demand, charge, collect, or
9 receive any fee, interest, or any other compensation
10 for any reason that exceeds the two most recent
11 monthly mortgage installments of principal and
12 interest due on the loan first secured by the
13 distressed property or the most recent annual real
14 property tax charged against the distressed property,
15 whichever is less;
16 (8) Take or ask for a wage assignment, a lien of any type
17 on real or personal property, or other security to
18 secure the payment of compensation. Any such security
19 is void and not enforceable;
20 (9) Receive any consideration from any third party in
21 connection with services rendered to a distressed
22 property owner unless the consideration is fully

disclosed in the distressed property consultant contract;

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

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

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

(b) A distressed property purchaser shall not:

(1) Misrepresent or conceal any material fact;

(2) Induce or attempt to induce a distressed property owner to waive any provision of this chapter;

(3) Make any promise or guarantee not fully disclosed in the distressed property conveyance contact;

(4) Engage or attempt to engage in any activity or act concerning the distressed property not fully disclosed in the distressed property conveyance contract;

(5) Induce or attempt to induce a distressed property owner to engage in any activity or act not fully disclosed in the distressed property conveyance contract;

(6) Enter into, or attempt to enter into, a distressed property conveyance unless the distressed property purchaser verifies and can demonstrate that an owner of the distressed property has a reasonable ability to pay any amounts due to reacquire an interest in the distressed property or to make monthly or any other payments due under a distressed property conveyance contract or distressed property lease, if the distressed property purchaser allows any owner of a distressed property to remain in, occupy, use, or repurchase the distressed property;

(7) Fail to make a payment to the owner of the distressed property at the time the title is conveyed so that the owner of the distressed property has received consideration in an amount of at least eighty-two per

cent of the property's fair market value, or, in the alternative, fail to pay the owner of the distressed property no more than the costs necessary to extinguish all of the existing obligations on the distressed property, as set forth in this chapter; provided that the owner's costs to repurchase the distressed property pursuant to the terms of the distressed property conveyance contract do not exceed one hundred twenty-five per cent of the distressed property purchaser's costs to purchase the property. If an owner is unable to repurchase the property pursuant to the terms of the distressed property conveyance contract, the distressed property purchaser shall not fail to make a payment to the owner of the distressed property so that the owner of the distressed property has received consideration in an amount of at least eighty-two per cent of the property's fair market value at the time of conveyance or at the expiration of the owner's option to repurchase;

(8) Enter into any repurchase or lease agreement as part of a distressed property conveyance contract or

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

(C) Pursuant to chapter 501 or 502, record any document signed by an owner of a distressed property, including but not limited to, any instrument of conveyance;

(12) Fail to re-convey title in a distressed property to the distressed property owner or owners when the terms of the distressed property conveyance contract have been fulfilled if the distressed property consultant or distressed property purchaser contracted or represented that title in the distressed property would be re-conveyed to the distressed property owner or owners when the terms of the distressed property conveyance contract have been fulfilled;

(13) Induce or attempt to induce an owner of the distressed property to execute a quit claim deed concerning a distressed property;

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

(15) Immediately following the conveyance of the distressed property, fail to extinguish all liens encumbering the distressed property at the time of the distressed

1 property conveyance or fail to assume all liability
2 with respect to all liens encumbering the distressed
3 property at the time of the distressed property
4 conveyance, which assumption shall be accomplished
5 without violations of the terms and conditions of the
6 lien or liens being assumed. Nothing herein shall
7 preclude a lender from enforcing any provision in a
8 contract that is not otherwise prohibited by law;
9 (16) Fail to complete a distressed property conveyance
10 through:
11 (A) An escrow depository licensed by the department
12 of commerce and consumer affairs;
13 (B) A bank, trust company, or savings and loan
14 association authorized under any law of this
15 State or of the United States to do business in
16 the State;
17 (C) A person licensed as a real estate broker in the
18 State who is the broker for a party to the
19 escrow; provided that the person does not charge
20 any escrow fee; or
21 (D) A person licensed to practice law in the State
22 who, in escrow, is not acting as the employee of

a corporation; provided that the person does not charge any escrow fee; or

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

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

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

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

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

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

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

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

H.B. NO. 3104

Report Title:
Mortgage Foreclosure Rescue Fraud Prevention Act

Description:
Requires mortgage foreclosure rescuers to provide specific information and disclosures to distressed property owners as well as impose specific prohibitions on mortgage foreclosure rescuers.

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JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

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

PURPOSE: Create a new chapter in the Hawaii Revised Statutes designed to protect Hawaii consumers from distressed property consultants who offer help to homeowners in distress by negotiating with the homeowners' creditors. This bill will force the consultants to provide homeowners with a written contract spelling out the services and give them the right to cancel at any time before the services are actually performed.

MEANS: Add a new chapter to title 26 of the Hawaii Revised Statutes.

JUSTIFICATION: This bill seeks to protect Hawaii consumers from scammers who prey on homeowners facing foreclosure. These so-called mortgage rescuers offer phantom help to homeowners, taking a fee of a few thousand dollars for supposedly negotiating with the homeowners' creditors. After collecting the money, many do little or no work and essentially abandon the homeowners. In the most insidious cases, the consultant will persuade families to deed their house to investors for a year. The homeowners supposedly can use that time to clear up their credit and refinance the property, then take back title free and clear. In many cases the homeowners wind up becoming tenants and then being evicted. The Mortgage Rescue Fraud Prevention Act addresses both forms of trickery by forcing the consultants to provide homeowners with a written contract spelling out the services and by giving the homeowners the right to cancel at any time before the services are actually performed.

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The bill further limits the amount a mortgage rescuer can make if the homeowner is successful in buying back the home to one hundred twenty-five percent of the total debt on the home paid by the rescuer and requires that the mortgage rescuer provide the homeowner with at least eighty-two percent of the value of their home if the homeowner is eventually unable to buy back the home from the mortgage rescuer. These percentages are based on similar statutes enacted in other states, including Illinois and New York.

The bill is modeled after the Illinois statute which governs the distressed property consultant, purchaser and lessor.

Nine other states (California, Georgia, Illinois, Maryland, Michigan, Minnesota, Missouri, New York and Washington) have enacted special statutes providing protection against foreclosure rescue fraud. The New York legislature recognized that, "The recent rapid escalation of home values throughout urban and rural areas has resulted in a significant increase in home equity, which constitutes the greatest financial asset held by many homeowners of this state." The New York legislature further declared that "homeowners in financial distress" "are vulnerable to aggressive 'equity purchasers' who induce homeowners to sell their homes for a small fraction of their fair market values, or in some cases even sign away their homes . . . ." The California legislature found that "homeowners whose residences are in foreclosure are subject to fraud, deception, harassment, and unfair dealing by foreclosure consultants from the time a Notice of Default is recorded . . . ." The Colorado legislature determined that "too many home owners in financial distress, especially the poor, elderly, and financially unsophisticated, are vulnerable to a variety of deceptive or unconscionable

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business practices designed to dispossess them or otherwise strip the equity from their homes."

This measure will protect homeowners from scammers who seek to take advantage of desperate homeowners trying to save their property from foreclosure.

This bill will assist the department and law enforcement in prosecuting scammers who fraudulently take advantage of homeowners.

Impact on the public: There should be a positive impact on the public as the protections provided by this bill are intended to assist consumers in making knowing decisions based on relevant and material disclosures required under the bill.

Impact on the department and other agencies: The department already investigates cases involving alleged mortgage foreclosure rescue fraud. The bill should assist the department and other agencies in prosecuting cases involving mortgage foreclosure rescue fraud by imposing clear requirements and prohibitions on mortgage foreclosure rescuers.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-110.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.