

By Senator Aronberg

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1 A bill to be entitled

2 An act relating to mortgage rescue fraud; providing a  
3 short title; providing legislative findings and  
4 declarations; providing intent and purposes; providing  
5 definitions; providing requirements for foreclosure  
6 consultant contracts; providing requirements for notices  
7 of cancellation; providing for rescission of foreclosure  
8 consultant contracts; providing requirements for  
9 foreclosure conveyance contracts; providing for contract  
10 terms; providing requirements for cancellation of  
11 foreclosure conveyance contracts; providing requirements  
12 for notices of cancellation; providing for  
13 unenforceability of waivers of provisions of the act;  
14 providing exceptions; specifying prohibited activities for  
15 foreclosure consultants and foreclosure purchasers;  
16 specifying required activities for foreclosure purchasers;  
17 providing a definition; specifying certain violations as  
18 unlawful practices; providing for remedies under the  
19 Florida Deceptive and Unfair Trade Practices Act;  
20 providing for judgments for damages, attorney's fees and  
21 costs, and equitable relief; providing for awards of  
22 damages; providing limitations on certain actions;  
23 specifying the offense of criminal mortgage rescue fraud;  
24 providing criminal penalties; providing for limiting  
25 contract provisions requiring arbitration; providing for  
26 application; providing severability; providing an  
27 effective date.

28  
29 Be It Enacted by the Legislature of the State of Florida:

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30  
31           Section 1. Short title.--This act may be cited as the  
32 "Mortgage Rescue Fraud Act."

33           Section 2. Legislative findings; declarations; intent and  
34 purposes.--

35           (1) The Legislature finds and declares that homeowners who  
36 are in default on their mortgages, in foreclosure, or at risk of  
37 losing their homes due to nonpayment of taxes may be vulnerable  
38 to fraud, deception, and unfair dealing by foreclosure  
39 consultants or foreclosure purchasers. The rapid escalation of  
40 home values throughout the state has resulted in a significant  
41 increase in home equity, which constitutes the greatest financial  
42 asset held by many homeowners of this state. The recent increase  
43 in interest rates and property taxes throughout the state has  
44 placed a financial burden on homeowners and resulted in this  
45 state having one of the highest foreclosure rates in the country.  
46 During the time period between the default on the mortgage and  
47 the scheduled foreclosure sale date, homeowners in financial  
48 distress, especially poor, elderly, and financially  
49 unsophisticated homeowners, are vulnerable to aggressive  
50 foreclosure consultants and foreclosure purchasers who induce  
51 homeowners to sell their homes for a fraction of their fair  
52 market values, or in some cases even sign away their homes,  
53 through the use of schemes that often involve oral and written  
54 misrepresentations, deceit, intimidation, and other unreasonable  
55 commercial practices.

56           (2) The Legislature declares that it is the express policy  
57 of this state to preserve and guard the social and economic value  
58 of homeownership.

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59       (3) The intent and purposes of this section are to provide  
60 the owner of a residence at risk of loss with information  
61 necessary to make an informed and intelligent decision regarding  
62 any transaction with a foreclosure consultant or foreclosure  
63 purchaser; to require that the agreement be expressed in writing;  
64 to safeguard homeowners against deceit and financial hardship; to  
65 ensure, foster, and encourage fair dealing in consultation and  
66 the sale and purchase of residences at risk of loss; to prohibit  
67 representations that tend to mislead; to prohibit or restrict  
68 unfair contract terms; to provide a cooling-off period for  
69 homeowners who enter into covered contracts; to afford homeowners  
70 a reasonable and meaningful opportunity to rescind sales to  
71 foreclosure purchasers; and to preserve and protect home equity  
72 for the homeowners of this state.

73       Section 3. Definitions.--For purposes of this act:

74       (1) (a) "Foreclosure consultant" means any person who,  
75 directly or indirectly, makes any solicitation, representation,  
76 or offer to any owner to perform for compensation, or who  
77 performs for compensation, any service that the person represents  
78 will in any manner accomplish any of the following:

79       1. Stop or postpone the foreclosure sale or the loss of the  
80 home due to nonpayment of taxes;

81       2. Obtain any forbearance from any beneficiary or mortgagee  
82 or relief with respect to a tax sale of the property;

83       3. Assist the owner in exercising any right of  
84 reinstatement or right of redemption;

85       4. Obtain any extension of the period within which the  
86 owner may reinstate the owner's rights with respect to the  
87 property;

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88       5. Obtain any waiver of an acceleration clause contained in  
89 any promissory note or contract secured by a mortgage on a  
90 residence at risk of loss or contained in the mortgage;

91       6. Assist the owner during a foreclosure or loan default or  
92 a tax certificate redemption period in obtaining a loan or  
93 advance of funds;

94       7. Avoid or ameliorate the impairment of the owner's credit  
95 resulting from the filing of a foreclosure or the conduct of a  
96 foreclosure sale or tax sale; or

97       8. Save the owner's residence from foreclosure or loss due  
98 to nonpayment of taxes.

99       (b) The term "foreclosure consultant" does not include:

100       1. A person licensed to practice law in this state when the  
101 person renders service in the course of his or her practice as an  
102 attorney-at-law.

103       2. A person licensed as a real estate broker or sales  
104 associate under s. 475.181, Florida Statutes, when the person  
105 engages in acts the performance of which requires licensure under  
106 chapter 475, Florida Statutes, unless the person is engaged in  
107 offering services designed to, or purportedly designed to, enable  
108 the owner to retain possession of the residence in foreclosure.

109       3. A person licensed as a residential mortgage broker under  
110 s. 494.0031, Florida Statutes, or mortgage lender under s.  
111 494.0061, Florida Statutes, when acting under the authority of  
112 that license.

113       4. A person or the person's authorized agent acting under  
114 the express authority or written approval of the United States  
115 Department of Housing and Urban Development.

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116       5. A person who holds or is owed an obligation secured by a  
117 lien on any residence at risk of loss when the person performs  
118 services in connection with such obligation or lien if the  
119 obligation or lien did not arise as the result of or part of a  
120 conveyance of the proposed residence at risk of loss.

121       6. Banks, savings banks, savings and loan associations, and  
122 credit unions organized, chartered, or holding a certificate of  
123 authority to do business under the laws of this state or the  
124 United States.

125       7. Mortgagees approved by the United States Department of  
126 Housing and Urban Development, any subsidiary or affiliate of  
127 such persons or entities, and any agent or employee of such  
128 persons or entities while engaged in the business of such persons  
129 or entities.

130       8. An agency or organization meeting the qualifications of  
131 s. 501(c)(3) of the United States Internal Revenue Code and doing  
132 business for not less than 5 years that offers counseling or  
133 advice to an owner of a residence at risk of loss if such owner  
134 does not contract for services with a for-profit lender or  
135 foreclosure purchaser or any person who structures or plans such  
136 contractual transactions.

137       9. A judgment creditor of the owner, to the extent the  
138 judgment creditor's claim accrued prior to the recording of the  
139 lis pendens pursuant to s. 48.23, Florida Statutes, but excluding  
140 a person who purchased the claim after such recording.

141       10. A foreclosure purchaser.

142       (2) "Foreclosure conveyance" means a transaction in which  
143 an owner of a residence at risk of loss transfers an interest in  
144 fee in the property, the acquirer of the property allows the

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145 owner of the property to occupy the property, and the acquirer of  
146 the property or a person acting in participation with the  
147 acquirer of the property conveys or promises to convey an  
148 interest in fee back to the owner or gives the owner an option to  
149 purchase the property at a later date.

150 (3) "Foreclosure purchaser" means any person who acquires  
151 any interest in fee in a residence at risk of loss while allowing  
152 the owner to possess, occupy, or retain any present or future  
153 interest in fee in the property or any person who participates in  
154 a joint venture or joint enterprise involving a foreclosure  
155 conveyance.

156 (4) "Owner" means the record owner of the residential real  
157 property in foreclosure at the time a notice of lis pendens was  
158 recorded or a summons and complaint was served or, when  
159 applicable, at the time the loan on the residential real property  
160 is more than 90 days delinquent or the owner of the residential  
161 real property is subject to loss of ownership due to nonpayment  
162 of taxes.

163 (5) "Person" means any individual, partnership,  
164 corporation, limited liability company, association, or other  
165 group, however organized.

166 (6) "Resale" means a bona fide market sale of property  
167 subject to a foreclosure conveyance by a foreclosure purchaser to  
168 an unaffiliated third party.

169 (7) "Resale price" means the gross sale price of a property  
170 for resale.

171 (8) "Residence at risk of loss" means:

172 (a) Residential real property consisting of one to six  
173 family dwelling units, including condominiums, against which

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174 there is an outstanding notice of pendency of foreclosure  
175 recorded pursuant to s. 48.23, Florida Statutes, or against which  
176 a summons and complaint has been served under chapter 702,  
177 Florida Statutes, or whose owner is more than 90 days delinquent  
178 on any loan that is secured by the property; or

179 (b) Residential real property consisting of one to six  
180 family dwelling units, including condominiums, at risk of loss of  
181 ownership due to nonpayment of taxes.

182 (9) "Service" means and includes, but is not limited to:

183 (a) Debt, budget, or financial counseling of any type;

184 (b) Receiving money for the purpose of distributing such  
185 money to creditors in payment or partial payment of any  
186 obligation secured by a lien on a residence at risk of loss;

187 (c) Contacting creditors on behalf of an owner of a  
188 residence at risk of loss;

189 (d) Arranging or attempting to arrange for an extension of  
190 the period within which the owner of a residence at risk of loss  
191 may cure the owner's default and reinstate the mortgage or redeem  
192 his or her obligation pursuant to s. 45.0315, Florida Statutes;

193 (e) Arranging or attempting to arrange for any delay or  
194 postponement of the time of sale of a residence at risk of loss;

195 (f) Advising the filing of any document or assisting in any  
196 manner in the preparation of any document for filing with any  
197 bankruptcy court; or

198 (g) Giving any advice, explanation, or instruction to an  
199 owner of a residence at risk of loss that in any manner relates  
200 to the cure of a default or forfeiture or to the postponement or  
201 avoidance of sale of a residence at risk of loss.

202 Section 4. Foreclosure consultant contract requirements.--

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203       (1) A foreclosure consultant contract must be in writing;  
204 must fully disclose, clearly and conspicuously, the exact nature  
205 of the foreclosure consultant's services and the total amount and  
206 terms of compensation; and must include:

207       (a) An accurate description of the goods or services  
208 offered and to be provided by the foreclosure consultant.

209       (b) An accurate description of how the foreclosure  
210 consultant will assist persons in avoiding or delaying  
211 foreclosure or curing or otherwise addressing a default.

212       (2) The following notice, in at least 14-point boldfaced  
213 type if the contract is printed, or in capital letters if the  
214 contract is typed, must be displayed immediately above the  
215 statement required by subsection (3):

216  
217                   NOTICE REQUIRED BY FLORIDA LAW

218  
219       ...(Name of foreclosure consultant)... or anyone  
220 working for him or her CANNOT:

221       (1) Take any money from you or ask you for money  
222 until ...(name of foreclosure consultant)... has  
223 completely finished doing everything he or she said he  
224 or she would do; or

225       (2) Ask you to sign or have you sign any lien,  
226 mortgage, or deed.

227  
228       (3) The foreclosure consultant contract must be written in  
229 the same language as principally used by the foreclosure  
230 consultant to describe his or her services or to negotiate the  
231 contract, must be dated and signed by the owner of the residence



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232 at risk of loss, and must contain, in immediate proximity to the  
233 space reserved for the owner's signature, the following  
234 conspicuous statement in a size equal to at least 14-point  
235 boldfaced type if the contract is printed, or in capital letters  
236 if the contract is typed:

237

238 You, the owner, may cancel this transaction at any time  
239 until after the foreclosure consultant has fully  
240 performed each and every service the foreclosure  
241 consultant contracted to perform or represented he or  
242 she would perform. See the attached notice of  
243 cancellation form for an explanation of this right.

244

245 (4) The foreclosure consultant contract and notice of  
246 cancellation must contain on the first page, in a type size no  
247 smaller than that generally used in the body of the document,  
248 each of the following:

249 (a) The name and address of the foreclosure consultant to  
250 whom the notice of cancellation is to be mailed or otherwise  
251 delivered. A post office box must be accompanied by a physical  
252 address at which the notice could be delivered by a method other  
253 than mail.

254 (b) The date the owner signed the contract.

255 (5) The foreclosure consultant contract must be accompanied  
256 by a completed form in duplicate, captioned "Notice of  
257 Cancellation," which must be attached to the contract, must be  
258 easily detachable, and must contain in at least 14-point  
259 boldfaced type if the contract is printed, or in capital letters  
260 if the contract is typed, the following statement written in the

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261 same language as that used in the contract:

262

263 NOTICE OF CANCELLATION

264

265 ...(Enter date of transaction) (Date)...

266

267 You may cancel this transaction, without any penalty or  
268 obligation, at any time until after the foreclosure  
269 consultant has fully performed each and every service  
270 the foreclosure consultant contracted to perform or  
271 represented he or she would perform.

272

273 To cancel this transaction, mail or deliver a signed  
274 and dated copy of this cancellation notice, or any  
275 other written notice, to:

276

277 ...(Name of foreclosure consultant)...

278 ...(Address of foreclosure consultant's place of  
279 business)...

280

281 I hereby cancel this transaction.

282 ...(Date)...

283 ...(Owner's signature)...

284

285 (6) The foreclosure consultant shall provide the owner with  
286 a copy of the contract and the attached notice of cancellation  
287 immediately upon execution of the contract.

288

289 (7) If the foreclosure consultant contract fails to  
substantially comply with the provisions of this section, the

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290 contract is void and unenforceable and any documents signed by  
291 the owner pursuant to the contract are null and void.

292 Section 5. Rescission of foreclosure consultant  
293 contracts.--

294 (1) In addition to any other right under law to rescind a  
295 contract, an owner has the right to cancel a foreclosure  
296 consultant contract at any time until after the foreclosure  
297 consultant has fully performed each service the foreclosure  
298 consultant contracted to perform or represented he or she would  
299 perform.

300 (2) Cancellation occurs when the owner gives written notice  
301 of cancellation to the foreclosure consultant at the address  
302 specified in the foreclosure consultant contract.

303 (3) Notice of cancellation, if given by mail, is effective  
304 when deposited in the mail properly addressed with postage  
305 prepaid.

306 (4) Notice of cancellation given by the owner need not take  
307 the particular form as provided with the foreclosure consultant  
308 contract and, however expressed, is effective if the notice  
309 indicates the intention of the owner not to be bound by the  
310 contract.

311 Section 6. Foreclosure conveyance contract requirements.--A  
312 foreclosure purchaser shall enter into a foreclosure conveyance  
313 in the form of a written contract. Every contract must be written  
314 in letters of a size equal to at least 14-point boldfaced type,  
315 or in capital letters if the contract is typed, in the same  
316 language principally used by the owner to negotiate the sale of  
317 the residence at risk of loss; must be fully completed, signed,  
318 and dated by the owner of the residence at risk of loss and the

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319 foreclosure purchaser; and must be witnessed and acknowledged by  
320 a notary public before the execution of any instrument of  
321 conveyance of the residence at risk of loss. If the contract  
322 fails to substantially comply with this section and section 7,  
323 the contract is void and unenforceable and any documents signed  
324 by the owner pursuant to the contract are null and void.

325 Section 7. Foreclosure conveyance contract terms.--Each  
326 contract required by section 6 must contain the entire agreement  
327 of the parties and must include:

328 (1) The name, business address, and telephone number of the  
329 foreclosure purchaser.

330 (2) The address of the residence at risk of loss.

331 (3) The total consideration to be given by the foreclosure  
332 purchaser or tax lien payor in connection with or incident to the  
333 sale.

334 (4) A complete description of the terms of payment or other  
335 consideration, including, but not limited to, any services of any  
336 nature that the foreclosure purchaser represents he or she will  
337 perform for the owner of the residence at risk of loss before or  
338 after the sale.

339 (5) The time at which possession is to be transferred to  
340 the foreclosure purchaser.

341 (6) A complete description of the terms of any related  
342 agreement designed to allow the owner of the residence at risk of  
343 loss to remain in the residence, such as a rental agreement,  
344 repurchase agreement, contract for deed, or lease with option to  
345 buy.

346 (7) A notice of cancellation as provided in subsection (2)  
347 of section 9.

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348       (8) The following notice in at least 14-point boldfaced  
349 type if the contract is printed, or in capital letters if the  
350 contract is typed, and completed with the name of the foreclosure  
351 purchaser, immediately above the statement required by subsection  
352 (1) of section 9:

353  
354                   NOTICE REQUIRED BY FLORIDA LAW

355  
356       Until your right to cancel this contract has ended,  
357 ...(name of foreclosure purchaser)... or anyone working  
358 for ...(name of foreclosure purchaser)... CANNOT ask  
359 you to sign or have you sign any deed or other  
360 document. You are urged to have this contract reviewed  
361 by an attorney of your choice within 5 business days  
362 after signing it.

363  
364       (9) If title to the residence at risk of loss will be  
365 transferred in the conveyance transaction, the following notice  
366 in at least 14-point boldfaced type if the contract is printed,  
367 or in capital letters if the contract is typed, and completed  
368 with the name of the foreclosure purchaser, immediately above the  
369 statement required by this section:

370  
371                   NOTICE REQUIRED BY FLORIDA LAW

372  
373       As part of this transaction, you are giving up title to  
374 your home.

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376 The contract required by this section survives delivery of any  
377 instrument of conveyance of the residence in foreclosure and has  
378 no effect on persons other than the parties to the contract.

379 Section 8. Cancellation of foreclosure conveyance  
380 contracts.--

381 (1) In addition to any other right of rescission, the owner  
382 of a residence at risk of loss has the right to cancel any  
383 contract with a foreclosure purchaser until midnight of the 5th  
384 business day following the day on which the owner of the  
385 residence at risk of loss signs a contract that complies with  
386 this act or until 8:00 a.m. on the last day of the period during  
387 which the owner of the residence at risk of loss has a right of  
388 redemption under s. 45.0315, Florida Statutes, or s. 197.472,  
389 Florida Statutes, whichever occurs first.

390 (2) Cancellation occurs when the owner of the residence at  
391 risk of loss delivers, by any means, written notice of  
392 cancellation to the address specified in the foreclosure  
393 conveyance contract.

394 (3) A notice of cancellation given by the owner of the  
395 residence at risk of loss need not take the particular form as  
396 provided with the foreclosure conveyance contract.

397 (4) Within 10 days following receipt of a notice of  
398 cancellation given in accordance with this section, the  
399 foreclosure purchaser shall return without condition any original  
400 contract and any other documents signed by the owner of the  
401 residence at risk of loss.

402 Section 9. Notice of cancellation of foreclosure conveyance  
403 contract.--

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404       (1) The contract must contain, in immediate proximity to  
405 the space reserved for the signature of the owner of the  
406 residence at risk of loss, a conspicuous statement in a size  
407 equal to at least 14-point boldfaced type if the contract is  
408 printed, or in capital letters if the contract is typed, as  
409 follows:

410  
411       You may cancel this contract for the sale of your house  
412 without any penalty or obligation at any time before  
413 ...(date and time).... See the attached notice of  
414 cancellation form for an explanation of this right.

415  
416 The foreclosure purchaser shall accurately enter the date and  
417 time of day on which the cancellation right ends.

418       (2) The contract must be accompanied by a completed form in  
419 duplicate, captioned "Notice of Cancellation" in a size equal to  
420 a 14-point boldfaced type if the contract is printed, or in  
421 capital letters if the contract is typed, followed by a space in  
422 which the foreclosure purchaser shall enter the date on which the  
423 owner of the residence at risk of loss executes any contract.  
424 This form must be attached to the contract, must be easily  
425 detachable, and must contain in type of at least 14-point  
426 boldfaced type if the contract is printed, or in capital letters  
427 if the contract is typed, the following statement written in the  
428 same language as that used in the contract:

429  
430                               NOTICE OF CANCELLATION

431  
432       ...(Date contract signed)...

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433  
434 You may cancel this contract for the sale of your  
435 house, without any penalty or obligation, at any time  
436 before ...(date and time).... To cancel this  
437 transaction, mail or deliver a signed and dated copy of  
438 this cancellation notice to ...(name of foreclosure  
439 purchaser)... at ...(street address of foreclosure  
440 purchaser's place of business)... NOT LATER THAN  
441 ...(date and time)....

442  
443 I hereby cancel this transaction.  
444 ...(Date)...  
445 ...(Owner's signature)...

446  
447 (3) The foreclosure purchaser shall provide the owner of  
448 the residence at risk of loss with a copy of the contract and the  
449 attached notice of cancellation at the time the contract is  
450 executed by all parties.

451 (4) The 5 business days during which the owner of the  
452 residence at risk of loss may cancel the contract shall not begin  
453 to run until all parties to the contract have executed the  
454 contract and the foreclosure purchaser has complied with this  
455 section.

456 Section 10. Waiver.--Any waiver of the provisions of this  
457 act by an owner of a residence at risk of loss is void and  
458 unenforceable as contrary to public policy, except that such an  
459 owner may waive the 5-business-day right to cancel provided in  
460 section 8 if the property is subject to a foreclosure sale within  
461 the 5-business-day period, and the owner agrees to waive his or



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462 her right to cancel in a handwritten statement signed by all  
463 parties holding title to the residence at risk of loss.

464 Section 11. Prohibited activities.--

465 (1) A foreclosure consultant may not:

466 (a) Claim, demand, charge, collect, or receive any  
467 compensation until after the foreclosure consultant has fully  
468 performed every service the foreclosure consultant contracted to  
469 perform or represented he or she would perform;

470 (b) Claim, demand, charge, collect, or receive for any  
471 reason any fee, interest, or other compensation that exceeds two  
472 monthly mortgage payments of principal and interest or the most  
473 recent tax installment on the residence at risk of loss,  
474 whichever is less;

475 (c) Take any wage assignment, a lien of any type on real or  
476 personal property, or any other security to secure the payment of  
477 compensation. Any such security is void and unenforceable;

478 (d) Receive any consideration from any third party in  
479 connection with services rendered to an owner of a residence at  
480 risk of loss unless the consideration is first fully disclosed to  
481 the owner;

482 (e) Acquire any interest, directly or indirectly or by  
483 means of a subsidiary or affiliate, in a residence at risk of  
484 loss from an owner of the residence with whom the foreclosure  
485 consultant has contracted;

486 (f) Take any power of attorney from an owner for any  
487 purpose, except to inspect documents as provided by law; or

488 (g) Induce or attempt to induce any owner to enter into a  
489 contract that does not comply in all respects with this act.

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490       (2) A foreclosure purchaser, in the course of a conveyance  
491 of a residence at risk of loss, may not:

492       (a) Enter into, or attempt to enter into, a foreclosure  
493 conveyance with an owner of a residence at risk of loss unless:

494       1. The foreclosure purchaser verifies and can demonstrate  
495 that the owner of the residence at risk of loss has a reasonable  
496 ability to pay for the subsequent conveyance of an interest back  
497 to the owner and to make monthly or any other payments due prior  
498 to that time. In the case of a lease with an option to purchase,  
499 payment ability also includes the reasonable ability to purchase  
500 the property within the term of the option to purchase. There is  
501 a rebuttable presumption that the foreclosure purchaser has not  
502 verified reasonable payment ability if the foreclosure purchaser  
503 has not obtained documents other than a statement by the owner of  
504 assets, liabilities, and income.

505       2. The foreclosure purchaser and the owner of the residence  
506 at risk of loss complete a closing for any foreclosure conveyance  
507 in which the foreclosure purchaser obtains a deed or mortgage  
508 from an owner. For purposes of this section, "closing" means an  
509 in-person meeting to complete final documents incident to the  
510 sale of the real property or creation of a mortgage on the real  
511 property conducted by a person who is not employed by or an  
512 affiliate of the foreclosure purchaser.

513       3. The foreclosure purchaser obtains the written consent of  
514 the owner of the residence at risk of loss to a grant by the  
515 foreclosure purchaser of any interest in the property during such  
516 times as the owner maintains any interest in the property.

517       4. The foreclosure purchaser complies with the requirements  
518 for disclosure, loan terms, and conduct in the federal Home

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519 Ownership Equity Protection Act, 15 U.S.C. s. 1639, or its  
520 implementing regulation, 12 C.F.R. ss. 226.31, 226.32, and  
521 226.34, for any foreclosure conveyance in which the owner of a  
522 residence at risk of loss obtains a vendee interest in a contract  
523 for deed, regardless of whether the terms of the contract for  
524 deed meet the annual percentage rate or points and fees  
525 requirements for a covered loan in 12 C.F.R. s. 226.32(a) and  
526 (b);

527 (b) Fail to:

528 1. Ensure that title to the subject dwelling has been  
529 conveyed to the owner of the residence at risk of loss;

530 2. Make a payment to the owner of the residence at risk of  
531 loss such that the owner has received consideration in an amount  
532 of at least 82 percent of the fair market value of the property  
533 within 150 days after the eviction or voluntary relinquishment of  
534 possession of the dwelling by the owner. The foreclosure  
535 purchaser shall make a detailed accounting of the basis for the  
536 payment amount, or a detailed accounting of the reasons for  
537 failure to make a payment, including providing written  
538 documentation of expenses, within such 150-day period. The  
539 accounting with documentation attached shall be provided to the  
540 owner of the residence at risk of loss when payment is made. For  
541 purposes of this subparagraph, the following apply:

542 a. There is a rebuttable presumption that an appraisal by a  
543 person licensed or certified by an agency of the Federal  
544 Government or this state to appraise real estate constitutes the  
545 fair market value of the property.

546 b. The time for determining the fair market value shall be  
547 determined in the foreclosure conveyance contract at the time of

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548 the execution of the foreclosure conveyance contract or at  
549 resale. If the contract states that the fair market value shall  
550 be determined at the time of resale, the fair market value shall  
551 be the resale price if the property is sold within 120 days after  
552 the eviction or voluntary relinquishment of the property by the  
553 owner. If the contract states that the fair market value shall be  
554 determined at the time of resale and the resale is not completed  
555 within 120 days after the eviction or voluntary relinquishment of  
556 the property by the owner, the fair market value shall be  
557 determined by an appraisal conducted during such 120-day period,  
558 and payment, if required, shall be made to the owner of the  
559 residence at risk of loss. However:

560 (I) The fair market value shall be recalculated as the  
561 resale price on resale, and an additional payment amount, if  
562 appropriate based on the resale price, shall be made to the owner  
563 of the residence at risk of loss within 15 days after resale; and

564 (II) A detailed accounting of the basis for the payment  
565 amount, or a detailed accounting of the reasons for failure to  
566 make additional payment, shall be made within 15 days after  
567 resale, including providing written documentation of expenses.

568 c. The accounting shall be a separate document showing the  
569 fair market value of the property at the time indicated in the  
570 foreclosure conveyance contract; showing 82 percent of the fair  
571 market value; specifying individually all consideration actually  
572 paid; showing amounts and to whom paid; and providing the total  
573 amount to be paid to the owner of the residence at risk of loss,  
574 where appropriate.

575 d.(I) For purposes of this subparagraph, the term  
576 "consideration" means any payment or thing of value provided to

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577 the owner of the residence at risk of loss, including unpaid rent  
578 or contract for deed payments owed by the owner of the residence  
579 at risk of loss prior to the date of eviction or voluntary  
580 relinquishment of the property, reasonable costs paid to third  
581 parties necessary to complete the foreclosure conveyance  
582 transaction, payment of money to satisfy a debt or legal  
583 obligation of the owner of the residence at risk of loss, or the  
584 reasonable cost of repairs for damage to the dwelling caused by  
585 the owner of the residence at risk of loss.

586 (II) The term "consideration" does not include amounts  
587 imputed as a down payment or fee to the foreclosure purchaser, or  
588 a person acting in participation with the foreclosure purchaser,  
589 incident to a contract for deed, lease, or option to purchase  
590 entered into as part of the foreclosure conveyance, except for  
591 reasonable costs paid to third parties necessary to complete the  
592 foreclosure conveyance; or

593 3. Enter into repurchase or lease terms as part of the  
594 subsequent conveyance that are unfair or commercially  
595 unreasonable, or engage in any other unfair or unconscionable  
596 conduct;

597 (c) Represent, directly or indirectly, that:

598 1. The foreclosure purchaser is acting as an advisor or a  
599 consultant or in any other manner represent that the foreclosure  
600 purchaser is acting on behalf of the owner of the residence at  
601 risk of loss;

602 2. The foreclosure purchaser possesses certification,  
603 registration, or licensure that the foreclosure purchaser does  
604 not possess;

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605       3. The foreclosure purchaser is not a member of a licensed  
606 profession, if that is untrue; or

607       4. The foreclosure purchaser is assisting the owner of the  
608 residence at risk of loss in "saving the house," or a  
609 substantially similar phrase, if the result of the transaction  
610 will be that the owner of the residence at risk of loss does not  
611 complete a redemption of the property;

612       (d) Engage in any other conduct or make any other  
613 statements, directly or by implication, that are false,  
614 deceptive, or misleading or that are likely to cause confusion or  
615 misunderstanding, including, but not limited to, statements  
616 regarding the value of the residence at risk of loss, the amount  
617 of proceeds the owner of the residence at risk of loss will  
618 receive after a foreclosure sale, any contract term, or the  
619 rights or obligations of the owner of the residence at risk of  
620 loss incident to or arising out of the foreclosure conveyance; or

621       (e) Do any of the following until the period during which  
622 the owner of the residence at risk of loss may cancel the  
623 transaction has fully expired:

624       1. Accept from the owner of the residence at risk of loss  
625 an execution of, or induce the owner of the residence at risk of  
626 loss to execute, any instrument of conveyance of any interest in  
627 the residence at risk of loss;

628       2. Record in the public records maintained by the clerk of  
629 the court in the county or counties in which the real property is  
630 located any document, including, but not limited to, any  
631 instrument of conveyance, signed by the owner of the residence at  
632 risk of loss;

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633       3. Transfer or encumber, or purport to transfer or  
634 encumber, any interest in the residence at risk of loss to any  
635 third party. A grant of any interest or encumbrance is not  
636 defeated or affected as against a bona fide purchaser or  
637 encumbrance for value and without notice of a violation of this  
638 act. Knowledge on the part of any such person or entity that the  
639 property was residential real property in foreclosure does not  
640 constitute a notice of a violation of this act. This section does  
641 not abrogate any duty of inquiry that exists as to rights or  
642 interests of persons in possession of the residential real  
643 property in foreclosure; or

644       4. Pay any consideration to the owner of the residence at  
645 risk of loss.

646       Section 12. Civil remedies.--

647       (1) A violation of this act constitutes an unlawful  
648 practice under the Florida Deceptive and Unfair Trade Practices  
649 Act, and all remedies under that act are available for an action  
650 under that act. An owner of a residence at risk of loss may bring  
651 an action against a foreclosure consultant or foreclosure  
652 purchaser for any violation of this act. Judgment must be entered  
653 for actual damages and consequential damages, reasonable  
654 attorney's fees and costs, and appropriate equitable relief,  
655 including, but not limited to, the rescission of any deed,  
656 mortgage, or other instrument signed by the owner or foreclosure  
657 purchaser. The rights and remedies provided in this act are  
658 cumulative with, and not a limitation of, any other rights and  
659 remedies provided by law. Any action brought pursuant to this  
660 section must be commenced within 4 years from the date of the  
661 alleged violation.

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662       (2) In addition to any other damages available to an owner  
663 of a residence at risk of loss:

664       (a) For a violation of paragraph (1) (a), paragraph (1) (b),  
665 or paragraph (1) (d) of section 11, the court may award damages up  
666 to one and one-half times the compensation charged by the  
667 foreclosure consultant if the court finds that the foreclosure  
668 consultant's conduct was in bad faith.

669       (b) For a violation of the provisions of subsection (2) of  
670 section 11, the court may award damages no less than one and one-  
671 half times the actual damages.

672       (3) Notwithstanding any other provision of this section, no  
673 action may be brought on the basis of a violation of this act  
674 except by an owner against whom the violation was committed or by  
675 the attorney general.

676       Section 13. Criminal mortgage rescue fraud; penalties.--A  
677 person commits the offense of criminal mortgage rescue fraud when  
678 he or she intentionally violates any provision of section 11. A  
679 person who engages in any activity that constitutes criminal  
680 mortgage rescue fraud commits a felony of the third degree,  
681 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
682 Florida Statutes.

683       Section 14. Liability.--

684       (1) Any provision in a contract that attempts or purports  
685 to require arbitration of any dispute arising under this act is  
686 void at the option of the owner.

687       (2) This section applies to any foreclosure consultant  
688 contract or foreclosure conveyance contract entered into on or  
689 after October 1, 2008.



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690           Section 15. Severability.--If any provision of this act or  
691 its application to any person or circumstance is held invalid,  
692 the invalidity does not affect other provisions or applications  
693 of the act which can be given effect without the invalid  
694 provision or application, and to this end the provisions of this  
695 act are declared severable.

696           Section 16. This act shall take effect October 1, 2008.