

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Ford offered the following:

2
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Section 501.1377, Florida Statutes, is created
6 to read:

7 501.1377 Violations involving homeowners during the course
8 of residential foreclosure proceedings.--

9 (1) LEGISLATIVE FINDINGS AND INTENT.--The Legislature
10 finds that homeowners who are in default on their mortgages, in
11 foreclosure, or at risk of losing their homes due to nonpayment
12 of taxes may be vulnerable to fraud, deception, and unfair
13 dealings with foreclosure-rescue consultants or equity
14 purchasers. The intent of this section is to provide a homeowner
15 with information necessary to make an informed decision
16 regarding the sale or transfer of his or her home to an equity

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17 purchaser. It is the further intent of this section to require
18 that foreclosure-related rescue services agreements be expressed
19 in writing in order to safeguard homeowners against deceit and
20 financial hardship; to ensure, foster, and encourage fair
21 dealing in the sale and purchase of homes in foreclosure or
22 default; to prohibit representations that tend to mislead; to
23 prohibit or restrict unfair contract terms; to provide a
24 cooling-off period for homeowners who enter into contracts for
25 services related to saving their homes from foreclosure or
26 preserving their rights to possession of their homes; to afford
27 homeowners a reasonable and meaningful opportunity to rescind
28 sales to equity purchasers; and to preserve and protect home
29 equity for the homeowners of this state.

30 (2) DEFINITIONS.--As used in this section, the term:

31 (a) "Equity purchaser" means any person who acquires a
32 legal, equitable, or beneficial ownership interest in any
33 residential real property as a result of a foreclosure-rescue
34 transaction. The term does not apply to a person who acquires
35 the legal, equitable, or beneficial interest in such property:

36 1. By a certificate of title from a foreclosure sale
37 conducted under chapter 45;

38 2. At a sale of property authorized by statute;

39 3. By order or judgment of any court;

40 4. From a spouse, parent, grandparent, child, grandchild,
41 or sibling of the person or the person's spouse; or

42 5. As a deed in lieu of foreclosure, a workout agreement,
43 a bankruptcy plan, or any other agreement between a foreclosing
44 lender and a homeowner.

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45 (b) "Foreclosure-rescue consultant" means a person who
46 directly or indirectly makes a solicitation, representation, or
47 offer to a homeowner to provide or perform, in return for
48 payment of money or other valuable consideration, foreclosure-
49 related rescue services. The term does not apply to:

50 1. A person excluded under s. 501.212.

51 2. A person acting under the express authority or written
52 approval of the United States Department of Housing and Urban
53 Development or other department or agency of the United States
54 or this state to provide foreclosure-related rescue services.

55 3. A charitable, not-for-profit agency or organization, as
56 determined by the United States Internal Revenue Service under
57 s. 501(c)(3) of the Internal Revenue Code, which offers
58 counseling or advice to an owner of residential real property in
59 foreclosure or loan default if the agency or organization does
60 not contract for foreclosure-related rescue services with a for-
61 profit lender or person facilitating or engaging in foreclosure-
62 rescue transactions.

63 4. A person who holds or is owed an obligation secured by
64 a lien on any residential real property in foreclosure if the
65 person performs foreclosure-related rescue services in
66 connection with this obligation or lien and the obligation or
67 lien was not the result of or part of a proposed foreclosure
68 reconveyance or foreclosure-rescue transaction.

69 5. A financial institution as defined in s. 655.005 and
70 any parent or subsidiary of the financial institution or of the
71 parent or subsidiary.

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72 6. A licensed mortgage broker, mortgage lender, or
73 correspondent mortgage lender that provides mortgage counseling
74 or advice regarding residential real property in foreclosure,
75 which counseling or advice is within the scope of services set
76 forth in chapter 494 and is provided without payment of money or
77 other consideration other than a mortgage brokerage fee as
78 defined in s. 494.001.

79 (c) "Foreclosure-related rescue services" means any good
80 or service related to, or promising assistance in connection
81 with:

82 1. Stopping, avoiding, or delaying foreclosure proceedings
83 concerning residential real property; or

84 2. Curing or otherwise addressing a default or failure to
85 timely pay with respect to a residential mortgage loan
86 obligation.

87 (d) "Foreclosure-rescue transaction" means a transaction:

88 1. By which residential real property in foreclosure is
89 conveyed to an equity purchaser and the homeowner maintains a
90 legal or equitable interest in the residential real property
91 conveyed, including, without limitation, a lease option
92 interest, an option to acquire the property, an interest as
93 beneficiary or trustee to a land trust, or other interest in the
94 property conveyed; and

95 2. That is designed or intended by the parties to stop,
96 avoid, or delay foreclosure proceedings against a homeowner's
97 residential real property.

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98 (e) "Homeowner" means any record title owner of
99 residential real property that is the subject of foreclosure
100 proceedings.

101 (f) "Residential real property" means real property
102 consisting of one-family to four-family dwelling units, one of
103 which is occupied by the owner as his or her principal place of
104 residence.

105 (g) "Residential real property in foreclosure" means
106 residential real property against which there is an outstanding
107 notice of the pendency of foreclosure proceedings recorded
108 pursuant to s. 48.23.

109 (3) PROHIBITED ACTS.--In the course of offering or
110 providing foreclosure-related rescue services, a foreclosure-
111 rescue consultant may not:

112 (a) Engage in or initiate foreclosure-related rescue
113 services without first executing a written agreement with the
114 homeowner for foreclosure-related rescue services; or

115 (b) Solicit, charge, receive, or attempt to collect or
116 secure payment, directly or indirectly, for foreclosure-related
117 rescue services before completing or performing all services
118 contained in the agreement for foreclosure-related rescue
119 services.

120 (4) FORECLOSURE-RELATED RESCUE SERVICES; WRITTEN
121 AGREEMENT.--

122 (a) The written agreement for foreclosure-related rescue
123 services must be printed in at least 12-point uppercase type and
124 signed by both parties. The agreement must include the name and
125 address of the person providing foreclosure-related rescue

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126 services, the exact nature and specific detail of each service
127 to be provided, the total amount and terms of charges to be paid
128 by the homeowner for the services, and the date of the
129 agreement. The date of the agreement may not be earlier than the
130 date the homeowner signed the agreement. The foreclosure-rescue
131 consultant must give the homeowner a copy of the agreement to
132 review not less than 1 business day before the homeowner is to
133 sign the agreement.

134 (b) The homeowner has the right to cancel the written
135 agreement without any penalty or obligation if the homeowner
136 cancels the agreement within 3 business days after signing the
137 written agreement. The right to cancel may not be waived by the
138 homeowner or limited in any manner by the foreclosure-rescue
139 consultant. If the homeowner cancels the agreement, any payments
140 that have been given to the foreclosure-rescue consultant must
141 be returned to the homeowner within 10 business days after
142 receipt of the notice of cancellation.

143 (c) An agreement for foreclosure-related rescue services
144 must contain, immediately above the signature line, a statement
145 in at least 12-point uppercase type that substantially complies
146 with the following:

147
148 HOMEOWNER'S RIGHT OF CANCELLATION

149
150 YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED
151 RESCUE SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3
152 BUSINESS DAYS FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY
153 YOU.

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154
155 THE FORECLOSURE-RESCUE CONSULTANT IS PROHIBITED BY LAW FROM
156 ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT FROM YOU
157 UNTIL ALL PROMISED SERVICES ARE COMPLETE. IF FOR ANY REASON YOU
158 HAVE PAID THE CONSULTANT BEFORE CANCELLATION, YOUR PAYMENT MUST
159 BE RETURNED TO YOU NO LATER THAN 10 BUSINESS DAYS AFTER THE
160 CONSULTANT RECEIVES YOUR CANCELLATION NOTICE.

161
162 TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A
163 STATEMENT THAT YOU ARE CANCELLING THE AGREEMENT SHOULD BE MAILED
164 (POSTMARKED) OR DELIVERED TO _____ (NAME) AT
165 _____ (ADDRESS) NO LATER THAN MIDNIGHT OF
166 _____ (DATE) .

167
168 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR LENDER
169 OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR LENDER
170 OR MORTGAGE SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN
171 OR A RESTRUCTURING WITH YOU FREE OF CHARGE.

172
173 (d) The inclusion of the statement does not prohibit the
174 foreclosure-rescue consultant from giving the homeowner more
175 time in which to cancel the agreement than is set forth in the
176 statement, provided all other requirements of this subsection
177 are met.

178 (e) The foreclosure-rescue consultant must give the
179 homeowner a copy of the signed agreement within 3 hours after
180 the homeowner signs the agreement.

181 (5) FORECLOSURE-RESCUE TRANSACTIONS; WRITTEN AGREEMENT.--

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182 (a)1. A foreclosure-rescue transaction must include a
183 written agreement prepared in at least 12-point uppercase type
184 that is completed, signed, and dated by the homeowner and the
185 equity purchaser before executing any instrument from the
186 homeowner to the equity purchaser quitclaiming, assigning,
187 transferring, conveying, or encumbering an interest in the
188 residential real property in foreclosure. The equity purchaser
189 must give the homeowner a copy of the completed agreement within
190 3 hours after the homeowner signs the agreement. The agreement
191 must contain the entire understanding of the parties and must
192 include:

193 a. The name, business address, and telephone number of the
194 equity purchaser.

195 b. The street address and full legal description of the
196 property.

197 c. Clear and conspicuous disclosure of any financial or
198 legal obligations of the homeowner that will be assumed by the
199 equity purchaser.

200 d. The total consideration to be paid by the equity
201 purchaser in connection with or incident to the acquisition of
202 the property by the equity purchaser.

203 e. The terms of payment or other consideration, including,
204 but not limited to, any services that the equity purchaser
205 represents will be performed for the homeowner before or after
206 the sale.

207 f. The date and time when possession of the property is to
208 be transferred to the equity purchaser.

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209 2. A foreclosure-rescue transaction agreement must
210 contain, above the signature line, a statement in at least 12-
211 point uppercase type that substantially complies with the
212 following:

213
214 I UNDERSTAND THAT UNDER THIS AGREEMENT I AM SELLING MY HOME
215 TO THE OTHER UNDERSIGNED PARTY.

216
217 3. A foreclosure-rescue transaction agreement must state
218 the specifications of any option or right to repurchase the
219 residential real property in foreclosure, including the specific
220 amounts of any escrow payments or deposit, down payment,
221 purchase price, closing costs, commissions, or other fees or
222 costs.

223 4. A foreclosure-rescue transaction agreement must comply
224 with all applicable provisions of 15 U.S.C. ss. 1600 et seq. and
225 related regulations.

226 (b) The homeowner may cancel the foreclosure-rescue
227 transaction agreement without penalty if the homeowner notifies
228 the equity purchaser of such cancellation no later than 5 p.m.
229 on the 3rd business day after signing the written agreement. Any
230 moneys paid by the equity purchaser to the homeowner or by the
231 homeowner to the equity purchaser must be returned at
232 cancellation. The right to cancel does not limit or otherwise
233 affect the homeowner's right to cancel the transaction under any
234 other law. The right to cancel may not be waived by the
235 homeowner or limited in any way by the equity purchaser. The
236 equity purchaser must give the homeowner, at the time the

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237 written agreement is signed, a notice of the homeowner's right
238 to cancel the foreclosure-rescue transaction as set forth in
239 this subsection. The notice, which must be set forth on a
240 separate cover sheet to the written agreement that contains no
241 other written or pictorial material, must be in at least 12-
242 point uppercase type, double-spaced, and read as follows:

243
244 NOTICE TO THE HOMEOWNER/SELLER

245
246 PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. IT CONTAINS
247 VALUABLE INFORMATION REGARDING CANCELLATION RIGHTS.

248
249 BY THIS CONTRACT, YOU ARE AGREEING TO SELL YOUR HOME. YOU
250 MAY CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. OF THE
251 THIRD BUSINESS DAY FOLLOWING RECEIPT OF THIS NOTICE.

252
253 THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY
254 YOU OR BY THE PURCHASER.

255
256 ANY MONEY PAID DIRECTLY TO YOU BY THE PURCHASER MUST BE
257 RETURNED TO THE PURCHASER AT CANCELLATION. ANY MONEY PAID BY YOU
258 TO THE PURCHASER MUST BE RETURNED TO YOU AT CANCELLATION.

259
260 TO CANCEL, SIGN THIS FORM AND RETURN IT TO THE PURCHASER BY
261 5:00 P.M. ON _____ (DATE) AT _____
262 (ADDRESS) . IT IS BEST TO MAIL IT BY CERTIFIED MAIL OR OVERNIGHT
263 DELIVERY, RETURN RECEIPT REQUESTED, AND TO KEEP A PHOTOCOPY OF
264 THE SIGNED FORM AND YOUR POST OFFICE RECEIPT.

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I (we) hereby cancel this transaction.

Seller's Signature

Printed Name of Seller

Seller's Signature

Printed Name of Seller

Date

(c) In any foreclosure-rescue transaction in which the homeowner is provided the right to repurchase the residential real property, the homeowner has a 30-day right to cure any default of the terms of the contract with the equity purchaser, and this right to cure may be exercised on up to three separate occasions. The homeowner's right to cure must be included in any written agreement required by this subsection.

(d) In any foreclosure-rescue transaction, before or at the time of conveyance, the equity purchaser must fully assume or discharge any lien in foreclosure as well as any prior liens that will not be extinguished by the foreclosure.

(e) If the homeowner has the right to repurchase the residential real property, the equity purchaser must verify and be able to demonstrate that the homeowner has or will have a reasonable ability to make the required payments to exercise the option to repurchase under the written agreement. For purposes of this subsection, there is a rebuttable presumption that the homeowner has a reasonable ability to make the payments required to repurchase the property if the homeowner's monthly payments for primary housing expenses and regular monthly principal and

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293 interest payments on other personal debt do not exceed 60
294 percent of the homeowner's monthly gross income.

295 (f) If the homeowner has the right to repurchase the
296 residential real property, the price the homeowner pays may not
297 be unconscionable, unfair, or commercially unreasonable. A
298 rebuttable presumption, solely between the equity purchaser and
299 the homeowner, arises that the foreclosure-rescue transaction
300 was unconscionable if the homeowner's repurchase price is
301 greater than 17 percent per annum more than the total amount
302 paid by the equity purchaser to acquire, improve, maintain, and
303 hold the property. Unless the repurchase agreement or a
304 memorandum of the repurchase agreement is recorded in accordance
305 with s. 695.01, the presumption arising under this subsection
306 shall not apply against creditors or subsequent purchasers for a
307 valuable consideration and without notice.

308 (6) REBUTTABLE PRESUMPTION.--Any foreclosure-rescue
309 transaction involving a lease option or other repurchase
310 agreement creates a rebuttable presumption, solely between the
311 equity purchaser and the homeowner, that the transaction is a
312 loan transaction and the conveyance from the homeowner to the
313 equity purchaser is a mortgage under s. 697.01. Unless the lease
314 option or other repurchase agreement, or a memorandum of the
315 lease option or other repurchase agreement, is recorded in
316 accordance with s. 695.01, the presumption created under this
317 subsection shall not apply against creditors or subsequent
318 purchasers for a valuable consideration and without notice.

319 (7) VIOLATIONS.--A person who violates any provision of
320 this section commits an unfair and deceptive trade practice as

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321 defined in part II of this chapter. Violators are subject to the
322 penalties and remedies provided in part II of this chapter,
323 including a monetary penalty not to exceed \$15,000 per
324 violation.

325 Section 2. Section 501.2078, Florida Statutes, is
326 repealed.

327 Section 3. This act shall take effect October 1, 2008.
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331 -----

332 **T I T L E A M E N D M E N T**

333 Remove the entire title and insert:

334 A bill to be entitled
335 An act relating to foreclosure fraud; creating s. 501.1377,
336 F.S.; providing legislative findings and intent with respect to
337 the need to protect homeowners who enter into agreements
338 designed to save their homes from foreclosure; providing
339 definitions; prohibiting a foreclosure-rescue consultant from
340 engaging in certain acts or failing to perform contracted
341 services; requiring that all agreements for foreclosure-related
342 rescue services and foreclosure-rescue transactions be in
343 writing; specifying information that must be in the written
344 agreement; requiring that certain statements in the written
345 agreement be in uppercase letters and of a specified size;
346 providing that the homeowner has a right to cancel the agreement
347 for a specified period and the right may not be waived;
348 providing that the homeowner has a specified period during which

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349 to cure a default under certain circumstances; requiring equity
350 purchasers to assume or discharge certain liens; requiring that
351 an equity purchaser verify the homeowner's ability to make
352 payments under a repurchase agreement; providing price
353 limitations for repurchase transactions; providing for a
354 rebuttable presumption of certain transactions being
355 unconscionable under certain circumstances; providing for
356 limited application of the presumption; providing an exclusion;
357 providing that a foreclosure-rescue transaction involving a
358 lease option or other repurchase agreement creates a rebuttable
359 presumption that the transaction is a loan transaction and the
360 conveyance from the homeowner to the equity purchaser is a
361 mortgage; providing limited application of the presumption;
362 providing an exclusion; providing that a person who violates
363 certain provisions commits an unfair and deceptive trade
364 practice as defined in part II of ch. 501, F.S.; providing
365 penalties; repealing s. 501.2078, F.S., relating to violations
366 involving individual homeowners during the course of residential
367 foreclosure proceedings; providing an effective date.

368