

1 A bill to be entitled

2 An act relating to foreclosure fraud; providing
3 legislative findings and intent with respect to the need
4 to protect homeowners who enter into agreements designed
5 to save their homes from foreclosure; providing
6 definitions; prohibiting a foreclosure-rescue consultant
7 from engaging in certain acts or failing to perform
8 contracted services; requiring that all agreements for
9 foreclosure-related rescue services and foreclosure-rescue
10 transactions be in writing; specifying information that
11 must be in the written agreement; requiring that certain
12 statements in the written agreement be in bold type, in
13 uppercase letters, and of a specified size; providing that
14 the homeowner has a right to cancel the agreement for a
15 specified period and the right may not be waived;
16 providing that the homeowner has a specified period during
17 which to cure a default under certain circumstances;
18 requiring equity purchasers to assume or discharge certain
19 liens; requiring that an equity purchaser verify the
20 homeowner's ability to make payments under a repurchase
21 agreement; providing price limitations for repurchase
22 transactions; providing that a foreclosure-rescue
23 transaction involving a lease option or other repurchase
24 agreement creates a rebuttable presumption that the
25 transaction is a loan transaction and the conveyance from

26 | the homeowner to the equity purchaser is a mortgage;
27 | providing that a person who violates certain provisions of
28 | the act commits an unfair and deceptive trade practice as
29 | defined in ch. 501, F.S.; providing penalties; providing
30 | an effective date.

31 |
32 | Be It Enacted by the Legislature of the State of Florida:
33 |

34 | Section 1. Legislative findings and intent.--The
35 | Legislature finds that homeowners who are in default on their
36 | mortgages, in foreclosure, or at risk of losing their homes due
37 | to nonpayment of taxes may be vulnerable to fraud, deception,
38 | and unfair dealings with foreclosure-rescue consultants or
39 | foreclosure purchasers. The intent of this act is to provide a
40 | homeowner with information necessary to make an informed and
41 | intelligent decision regarding the sale or transfer of his or
42 | her home to an equity purchaser. It is the further intent of
43 | this act to require that sales agreements be expressed in
44 | writing in order to safeguard homeowners against deceit and
45 | financial hardship; to ensure, foster, and encourage fair
46 | dealing in the sale and purchase of homes in foreclosure or
47 | default; to prohibit representations that tend to mislead; to
48 | prohibit or restrict unfair contract terms; to provide a
49 | cooling-off period for homeowners who enter into contracts for
50 | services related to saving their homes from foreclosure or

51 preserving their rights to possession of their homes; to afford
52 homeowners a reasonable and meaningful opportunity to rescind
53 sales to equity purchasers; and to preserve and protect home
54 equity for the homeowners of this state.

55 Section 2. Definitions.--As used in this act, the term:

56 (1) "Equity purchaser" means any person who acquires title
57 to any residential real property as a result of a foreclosure-
58 rescue transaction. The term does not apply to a person who
59 acquires the title:

60 (a) To occupy the property as his or her primary
61 residence;

62 (b) By a deed from a foreclosure sale conducted under
63 chapter 45, Florida Statutes;

64 (c) At a sale of property authorized by statute;

65 (d) By order or judgment of any court;

66 (e) From a spouse, parent, grandparent, child, grandchild,
67 or sibling of the person or the person's spouse; or

68 (f) As a deed in lieu of foreclosure, a workout agreement,
69 a bankruptcy plan, or any other agreement between a foreclosing
70 lender and a homeowner.

71 (2) "Foreclosure-rescue consultant" means a person who
72 directly or indirectly makes a solicitation, representation, or
73 offer to a homeowner to provide or perform, in return for
74 payment of money or other valuable consideration, foreclosure-
75 related rescue services. The term does not apply to:

76 (a) A person licensed to practice law in this state when
77 rendering foreclosure-related rescue services in the course of
78 his or her practice as an attorney at law.

79 (b) A person licensed as a real estate broker under
80 chapter 475, Florida Statutes, if the person is acting within
81 the course and scope of a broker as defined in s. 475.01,
82 Florida Statutes.

83 (c) A person licensed as a mortgage broker or mortgage
84 lender under chapter 494, Florida Statutes, if the person is
85 acting within the course and scope of a mortgage broker as
86 defined in part II of chapter 494, Florida Statutes, or a
87 mortgage lender as described in part III of chapter 494, Florida
88 Statutes.

89 (d) A person acting under the express authority or written
90 approval of the United States Department of Housing and Urban
91 Development or other department or agency of the United States
92 or this state to provide foreclosure-related rescue services.

93 (e) A charitable, not-for-profit agency or organization,
94 as determined by the United States Internal Revenue Service
95 under s. 501(c)(3) of the Internal Revenue Code, that offers
96 counseling or advice to an owner of residential real property in
97 foreclosure or loan default if the agency or organization does
98 not contract for foreclosure-related rescue services with a for-
99 profit lender or person facilitating or engaging in foreclosure-
100 rescue transactions.

101 (f) A person who holds or is owed an obligation secured by
102 a lien on any residential real property in foreclosure if the
103 person performs foreclosure-related rescue services in
104 connection with this obligation or lien and the obligation or
105 lien was not the result of or part of a proposed foreclosure
106 reconveyance or foreclosure-rescue transaction.

107 (g) A financial institution as defined in s. 655.005,
108 Florida Statutes, or any subsidiary or affiliate thereof.

109 (3) "Foreclosure-related rescue services" means any good
110 or service related to, or promising assistance in connection
111 with:

112 (a) Stopping, avoiding, or delaying actual or anticipated
113 foreclosure proceedings concerning residential real property; or

114 (b) Curing or otherwise addressing a default or failure to
115 timely pay with respect to a residential mortgage loan
116 obligation.

117 (4) "Foreclosure-rescue transaction" means a transaction:

118 (a) By which residential real property is conveyed to an
119 equity purchaser and the homeowner maintains a legal or
120 equitable interest in the residential real property conveyed,
121 including, without limitation, a lease interest, an option to
122 acquire the property, an interest as beneficiary or trustee to a
123 land trust, or other interest in the property conveyed; and

124 (b) That is designed or intended by the parties to stop,
125 avoid, or delay actual or anticipated foreclosure proceedings
126 against a homeowner's residential real property.

127 (5) "Homeowner" means any record title owner of
128 residential real property that is the subject of actual or
129 anticipated foreclosure proceedings.

130 (6) "Residential real property" means real property
131 consisting of one-family to four-family dwelling units, one of
132 which is occupied by the owner as his or her principal place of
133 residence.

134 (7) "Residential real property in foreclosure" means
135 residential real property against which there is an outstanding
136 notice of the pendency of foreclosure recorded pursuant to s.
137 48.23, Florida Statutes, against which a summons and a complaint
138 have been served under chapter 702, Florida Statutes, or that is
139 owned by a person who is more than 90 days delinquent on any
140 loan that is secured by the property.

141 Section 3. Prohibited acts.--In the course of offering or
142 providing foreclosure-related rescue services, a foreclosure-
143 rescue consultant, including the consultant's salespersons,
144 agents, representatives, or independent contractors, may not:

145 (1) Engage in or initiate foreclosure-related rescue
146 services without first executing a written agreement for
147 foreclosure-related rescue services; or

148 (2) Solicit, charge, receive, or attempt to collect or
149 secure payment, directly or indirectly, for foreclosure-related
150 rescue services before successfully completing or performing all
151 services contained in the agreement for foreclosure-related
152 rescue services.

153 Section 4. Foreclosure-related rescue services; written
154 agreement.--

155 (1) The written agreement for foreclosure-related rescue
156 services must be printed in at least 12-point type and signed by
157 both parties. The agreement must include the name and address of
158 the person providing foreclosure-related rescue services, the
159 exact nature and specific detail of each service to be provided,
160 the total amount and terms of charges to be paid by the
161 homeowner for the services, and the date of the agreement. The
162 date of the agreement may not be earlier than the date the
163 homeowner signed the agreement. The foreclosure-rescue
164 consultant must give the homeowner a copy of the agreement to
165 review not less than 24 hours before the homeowner is to sign
166 the agreement.

167 (2) The written agreement must clearly state that the
168 homeowner may cancel the written agreement without any penalty
169 or obligation if the homeowner cancels the agreement within 5
170 business days after signing the written agreement. The right to
171 cancel may not be waived by the homeowner or limited in any
172 manner by the foreclosure-rescue consultant. If the homeowner

173 cancels the agreement, any payments that have been given to the
 174 foreclosure-rescue consultant must be returned to the homeowner
 175 within 10 days after receipt of the notice of cancellation.

176 (3) An agreement for foreclosure-related rescue services
 177 must contain, immediately above the signature line for the
 178 homeowner in bold, uppercase, 14-point or larger type, the
 179 following disclosures:

181 HOMEOWNER'S RIGHT OF CANCELLATION

182 YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED
 183 RESCUE SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 5
 184 BUSINESS DAYS FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY
 185 YOU.

187 THE FORECLOSURE-RESCUE CONSULTANT IS PROHIBITED BY LAW FROM
 188 ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT FROM YOU
 189 UNTIL ALL PROMISED SERVICES ARE COMPLETE. IF FOR ANY REASON YOU
 190 HAVE PAID THE CONSULTANT BEFORE CANCELLATION, YOUR PAYMENT MUST
 191 BE RETURNED TO YOU NO LATER THAN 10 DAYS AFTER THE CONSULTANT
 192 RECEIVES YOUR CANCELLATION NOTICE.

194 TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A
 195 STATEMENT THAT YOU ARE CANCELLING THE AGREEMENT SHOULD BE MAILED
 196 (POSTMARKED) OR DELIVERED TO (NAME) AT
 197 (ADDRESS) NO LATER THAN MIDNIGHT OF

198 (DATE) .

199
200 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR LENDER
201 OR MORTGAGE SERVICE BEFORE SIGNING THIS AGREEMENT. YOUR LENDER
202 OR MORTGAGE SERVICE MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN
203 WITH YOU FREE OF CHARGE.

204
205 (4) The inclusion of the disclosures does not prohibit the
206 foreclosure-rescue consultant from giving the homeowner more
207 time in which to cancel the agreement than is set forth in the
208 disclosures.

209 (5) The foreclosure-rescue consultant must give the
210 homeowner a copy of the signed agreement immediately after the
211 homeowner signs the agreement.

212 Section 5. Foreclosure-rescue transactions; written
213 agreement.--

214 (1)(a) A foreclosure-rescue transaction must include a
215 written agreement prepared in at least 12-point bold type that
216 is fully completed, signed, and dated by the homeowner and the
217 equity purchaser before executing any instrument quitclaiming,
218 assigning, transferring, conveying, or encumbering an interest
219 in the residential real property subject to foreclosure. The
220 equity purchaser must give the homeowner a copy of the completed
221 agreement immediately after the homeowner signs the agreement.

222 The agreement must contain the entire understanding of the
223 parties and must include:

224 1. The name, business address, and telephone number of the
225 equity purchaser.

226 2. The street address and full legal description of the
227 property.

228 3. Clear and conspicuous disclosure of any financial or
229 legal obligations of the homeowner that will be assumed by the
230 equity purchaser.

231 4. The total consideration to be paid by the equity
232 purchaser in connection with or incident to the acquisition of
233 the property by the equity purchaser.

234 5. The terms of payment or other consideration, including,
235 but not limited to, any services that the equity purchaser
236 represents will be performed for the homeowner before or after
237 the sale.

238 6. The date and time when possession of the property is to
239 be transferred to the equity purchaser.

240 (b) Every foreclosure-rescue transaction agreement must
241 contain, above the signature line for the homeowner, a statement
242 in 16-point bold type that complies substantially with the
243 following:

244
245 I understand that under this agreement I am selling my
246 house to the other undersigned party.

247
248 (c) Each foreclosure-rescue transaction agreement must
249 state the specifications of any option or right to repurchase
250 the residential real property in foreclosure, including the
251 specific amounts of any escrow payments or deposit, down
252 payment, purchase price, closing costs, commissions, or other
253 fees or costs.

254 (2) An equity purchaser must give the homeowner, at the
255 time the written agreement is signed, a notice stating that the
256 homeowner may cancel the transaction without penalty if the
257 homeowner cancels the transaction within 5 business days after
258 signing the agreement. The equity purchaser must return to the
259 homeowner any moneys paid by the homeowner within 30 days after
260 the homeowner notifies the equity purchaser of such
261 cancellation. The right to cancel does not limit or otherwise
262 affect the homeowner's right to cancel the transaction under any
263 other law. The right to cancel is not conditioned upon the
264 homeowner's repayment of money paid to the homeowner under the
265 foreclosure-rescue transaction. The right to cancel may not be
266 waived by the homeowner or limited in any way by the equity
267 purchaser. Notice of the right to cancel must serve as the cover
268 sheet to the written agreement to enter into a foreclosure-
269 rescue transaction. The notice must be on a separate sheet of
270 paper with no other written or pictorial material, be in at

271 least 12-point bold, uppercase, double-spaced type, and read as
 272 follows:

274 NOTICE TO THE HOMEOWNER/SELLER

276 PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. IT CONTAINS
 277 VALUABLE INFORMATION REGARDING CANCELLATION RIGHTS.

279 BY THIS CONTRACT, YOU ARE AGREEING TO SELL YOUR HOME. YOU
 280 MAY CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. OF THE
 281 FIFTH BUSINESS DAY FOLLOWING RECEIPT OF THIS NOTICE.

283 THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY
 284 YOU OR BY THE PURCHASERS.

286 ANY MONEY PAID TO YOU MUST BE RETURNED TO THE PURCHASER
 287 WITHIN 30 DAYS AFTER CANCELLATION.

289 TO CANCEL, SIGN THIS FORM AND RETURN IT TO THE PURCHASER BY
 290 5:00 P.M. ON _____ (DATE) AT _____
 291 (ADDRESS) . IT IS BEST TO MAIL IT BY CERTIFIED MAIL OR OVERNIGHT
 292 DELIVERY, RETURN RECEIPT REQUESTED, AND TO KEEP A PHOTOCOPY OF
 293 THE SIGNED FORM AND YOUR POST OFFICE RECEIPT.

295 I (we) hereby cancel this transaction.

296 _____ Seller's Signature
 297 _____ Printed Name of Seller
 298 _____ Seller's Signature
 299 _____ Printed Name of Seller
 300 _____ Date

302 (3) In any foreclosure-rescue transaction in which the
 303 homeowner is provided the right to repurchase the residential
 304 real property, the homeowner has a 30-day right to cure any
 305 default of the terms of the contract, and this right to cure may
 306 be exercised on at least three separate occasions during the
 307 life of the foreclosure-rescue transaction or any agreement by
 308 the parties. The homeowner's right to cure must be included in
 309 any written agreement required by this section.

310 (4) In any foreclosure-rescue transaction, before or at
 311 the time of conveyance, the equity purchaser must fully assume
 312 or discharge any lien in foreclosure as well as any prior liens
 313 that will not be extinguished by the foreclosure, which
 314 assumption or discharge must be accomplished without violating
 315 the terms and conditions of the liens being assumed or
 316 discharged.

317 (5) If the homeowner has the right to repurchase the
 318 residential real property, the equity purchaser must verify and
 319 be able to demonstrate that the homeowner has or will have a
 320 reasonable ability to make the required payments to exercise the

321 option to repurchase under the written agreement. For purposes
322 of this section, there is a rebuttable presumption that the
323 homeowner has a reasonable ability to make payments and to
324 repurchase the property if the homeowner's payments for primary
325 housing expenses and regular principal and interest payments on
326 other personal debt do not exceed 60 percent of the homeowner's
327 monthly gross income.

328 (6) If the homeowner has the right to repurchase the
329 residential real property, the price the homeowner pays may not
330 be unconscionable, unfair, or commercially unreasonable. A
331 repurchase price offered within 2 years after the sale of the
332 residential real property in foreclosure that exceeds 25 percent
333 of the price at which the equity purchaser acquired the property
334 creates a rebuttable presumption that the foreclosure-rescue
335 transaction was unconscionable. The acquisition price paid by
336 the equity purchaser may include any actual costs incurred by
337 the purchaser in acquiring the property.

338 Section 6. Rebuttable presumption.--Any foreclosure-rescue
339 transaction involving a lease option or other repurchase
340 agreement creates a rebuttable presumption that the transaction
341 is a loan transaction and the conveyance from the homeowner to
342 the equity purchaser is a mortgage.

343 Section 7. Violations.--A person who violates any
344 provision of this act commits an unfair and deceptive trade
345 practice as defined in part II of chapter 501, Florida Statutes.

HB 643

2008

346 | Violators are subject to the penalties and remedies provided in
347 | part II of chapter 501, Florida Statutes, including a monetary
348 | penalty not to exceed \$15,000 per violation.

349 | Section 8. This act shall take effect July 1, 2008.