

1                   A bill to be entitled  
2       An act relating to foreclosure fraud; amending s.  
3       501.2078, F.S.; providing legislative findings and intent  
4       with respect to the need to protect homeowners who enter  
5       into agreements designed to save their homes from  
6       foreclosure; providing definitions; prohibiting a  
7       foreclosure-rescue consultant from engaging in certain  
8       acts or failing to perform contracted services; requiring  
9       that all agreements for foreclosure-related rescue  
10      services and foreclosure-rescue transactions be in  
11      writing; specifying information that must be in the  
12      written agreement; requiring that certain statements in  
13      the written agreement be in uppercase letters and of a  
14      specified size; providing that the homeowner has a right  
15      to cancel the agreement for a specified period and the  
16      right may not be waived; providing that the homeowner has  
17      a specified period during which to cure a default under  
18      certain circumstances; requiring equity purchasers to  
19      assume or discharge certain liens; requiring that an  
20      equity purchaser verify the homeowner's ability to make  
21      payments under a repurchase agreement; providing price  
22      limitations for repurchase transactions; providing for a  
23      rebuttable presumption of certain transactions being  
24      unconscionable under certain circumstances; providing for  
25      limited application of the presumption; providing an  
26      exclusion; providing that a foreclosure-rescue transaction  
27      involving a lease option or other repurchase agreement  
28      creates a rebuttable presumption that the transaction is a

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loan transaction and the conveyance from the homeowner to the equity purchaser is a mortgage; providing limited application of the presumption; providing an exclusion; providing that a person who violates certain provisions commits an unfair and deceptive trade practice as defined in part II of ch. 501, F.S.; providing penalties; providing an effective date.

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

Section 1. Section 501.2078, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 501.2078, F.S., for current text.)

501.2078 Violations involving homeowners during the course of residential foreclosure proceedings.--

(1) LEGISLATIVE FINDINGS AND INTENT.--The Legislature finds that homeowners who are in default on their mortgages, in foreclosure, or at risk of losing their homes due to nonpayment of taxes may be vulnerable to fraud, deception, and unfair dealings with foreclosure-rescue consultants or equity purchasers. The intent of this section is to provide a homeowner with information necessary to make an informed decision regarding the sale or transfer of his or her home to an equity purchaser. It is the further intent of this section to require that foreclosure-related rescue services agreements be expressed in writing in order to safeguard homeowners against deceit and financial hardship; to ensure, foster, and encourage fair

57 dealing in the sale and purchase of homes in foreclosure or  
58 default; to prohibit representations that tend to mislead; to  
59 prohibit or restrict unfair contract terms; to provide a  
60 cooling-off period for homeowners who enter into contracts for  
61 services related to saving their homes from foreclosure or  
62 preserving their rights to possession of their homes; to afford  
63 homeowners a reasonable and meaningful opportunity to rescind  
64 sales to equity purchasers; and to preserve and protect home  
65 equity for the homeowners of this state.

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

67 (a) "Equity purchaser" means any person who acquires a  
68 legal, equitable, or beneficial ownership interest in any  
69 residential real property as a result of a foreclosure-rescue  
70 transaction. The term does not apply to a person who acquires  
71 the legal, equitable, or beneficial interest in such property:

72 1. By a certificate of title from a foreclosure sale  
73 conducted under chapter 45;

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

75 3. By order or judgment of any court;

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

78 5. As a deed in lieu of foreclosure, a workout agreement,  
79 a bankruptcy plan, or any other agreement between a foreclosing  
80 lender and a homeowner.

81 (b) "Foreclosure-rescue consultant" means a person who  
82 directly or indirectly makes a solicitation, representation, or  
83 offer to a homeowner to provide or perform, in return for

84 payment of money or other valuable consideration, foreclosure-  
85 related rescue services. The term does not apply to:

86 1. A person excluded under s. 501.212.

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

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

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

105 5. A financial institution as defined in s. 655.005 and  
106 any parent or subsidiary of the financial institution or of the  
107 parent or subsidiary.

108 6. A licensed mortgage broker, mortgage lender, or  
109 correspondent mortgage lender that provides mortgage counseling  
110 or advice regarding residential real property in foreclosure,  
111 which counseling or advice is within the scope of services set

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112 forth in chapter 494 and is provided without payment of money or  
113 other consideration other than a mortgage brokerage fee as  
114 defined in s. 494.001.

115 (c) "Foreclosure-related rescue services" means any good  
116 or service related to, or promising assistance in connection  
117 with:

118 1. Stopping, avoiding, or delaying foreclosure proceedings  
119 concerning residential real property; or

120 2. Curing or otherwise addressing a default or failure to  
121 timely pay with respect to a residential mortgage loan  
122 obligation.

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

124 1. By which residential real property in foreclosure is  
125 conveyed to an equity purchaser and the homeowner maintains a  
126 legal or equitable interest in the residential real property  
127 conveyed, including, without limitation, a lease option  
128 interest, an option to acquire the property, an interest as  
129 beneficiary or trustee to a land trust, or other interest in the  
130 property conveyed; and

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

134 (e) "Homeowner" means any record title owner of  
135 residential real property that is the subject of foreclosure  
136 proceedings.

137 (f) "Residential real property" means real property  
138 consisting of one-family to four-family dwelling units, one of

139 which is occupied by the owner as his or her principal place of  
140 residence.

141 (g) "Residential real property in foreclosure" means  
142 residential real property against which there is an outstanding  
143 notice of the pendency of foreclosure proceedings recorded  
144 pursuant to s. 48.23.

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

148 (a) Engage in or initiate foreclosure-related rescue  
149 services without first executing a written agreement with the  
150 homeowner for foreclosure-related rescue services; or

151 (b) Solicit, charge, receive, or attempt to collect or  
152 secure payment, directly or indirectly, for foreclosure-related  
153 rescue services before completing or performing all services  
154 contained in the agreement for foreclosure-related rescue  
155 services.

156 (4) FORECLOSURE-RELATED RESCUE SERVICES; WRITTEN  
157 AGREEMENT.--

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

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167 consultant must give the homeowner a copy of the agreement to  
168 review not less than 1 business day before the homeowner is to  
169 sign the agreement.

170 (b) The homeowner has the right to cancel the written  
171 agreement without any penalty or obligation if the homeowner  
172 cancels the agreement within 3 business days after signing the  
173 written agreement. The right to cancel may not be waived by the  
174 homeowner or limited in any manner by the foreclosure-rescue  
175 consultant. If the homeowner cancels the agreement, any payments  
176 that have been given to the foreclosure-rescue consultant must  
177 be returned to the homeowner within 10 business days after  
178 receipt of the notice of cancellation.

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

183  
184 HOMEOWNER'S RIGHT OF CANCELLATION

185  
186 YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED  
187 RESCUE SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3  
188 BUSINESS DAYS FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY  
189 YOU.

190  
191 THE FORECLOSURE-RESCUE CONSULTANT IS PROHIBITED BY LAW FROM  
192 ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT FROM YOU  
193 UNTIL ALL PROMISED SERVICES ARE COMPLETE. IF FOR ANY REASON YOU  
194 HAVE PAID THE CONSULTANT BEFORE CANCELLATION, YOUR PAYMENT MUST

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195 BE RETURNED TO YOU NO LATER THAN 10 BUSINESS DAYS AFTER THE  
196 CONSULTANT RECEIVES YOUR CANCELLATION NOTICE.

197  
198 TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A  
199 STATEMENT THAT YOU ARE CANCELLING THE AGREEMENT SHOULD BE MAILED  
200 (POSTMARKED) OR DELIVERED TO \_\_\_\_\_ (NAME) AT  
201 \_\_\_\_\_ (ADDRESS) NO LATER THAN MIDNIGHT OF  
202 \_\_\_\_\_ (DATE) .

203  
204 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR LENDER  
205 OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR LENDER  
206 OR MORTGAGE SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN  
207 OR A RESTRUCTURING WITH YOU FREE OF CHARGE.

208  
209 (d) The inclusion of the statement does not prohibit the  
210 foreclosure-rescue consultant from giving the homeowner more  
211 time in which to cancel the agreement than is set forth in the  
212 statement, provided all other requirements of this subsection  
213 are met.

214 (e) The foreclosure-rescue consultant must give the  
215 homeowner a copy of the signed agreement within 1 business day  
216 after the homeowner signs the agreement.

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

218 (a)1. A foreclosure-rescue transaction must include a  
219 written agreement prepared in at least 12-point uppercase type  
220 that is completed, signed, and dated by the homeowner and the  
221 equity purchaser before executing any instrument from the  
222 homeowner to the equity purchaser quitclaiming, assigning,

223 transferring, conveying, or encumbering an interest in the  
224 residential real property in foreclosure. The equity purchaser  
225 must give the homeowner a copy of the completed agreement within  
226 1 business day after the homeowner signs the agreement. The  
227 agreement must contain the entire understanding of the parties  
228 and must include:

229 a. The name, business address, and telephone number of the  
230 equity purchaser.

231 b. The street address and full legal description of the  
232 property.

233 c. Clear and conspicuous disclosure of any financial or  
234 legal obligations of the homeowner that will be assumed by the  
235 equity purchaser.

236 d. The total consideration to be paid by the equity  
237 purchaser in connection with or incident to the acquisition of  
238 the property by the equity purchaser.

239 e. The terms of payment or other consideration, including,  
240 but not limited to, any services that the equity purchaser  
241 represents will be performed for the homeowner before or after  
242 the sale.

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

245 2. A foreclosure-rescue transaction agreement must  
246 contain, above the signature line, a statement in at least 12-  
247 point uppercase type that substantially complies with the  
248 following:

250 I UNDERSTAND THAT UNDER THIS AGREEMENT I AM SELLING MY HOME  
251 TO THE OTHER UNDERSIGNED PARTY.

252  
253 3. A foreclosure-rescue transaction agreement must state  
254 the specifications of any option or right to repurchase the  
255 residential real property in foreclosure, including the specific  
256 amounts of any escrow payments or deposit, down payment,  
257 purchase price, closing costs, commissions, or other fees or  
258 costs.

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

262 (b) The homeowner may cancel the foreclosure-rescue  
263 transaction agreement without penalty if the homeowner notifies  
264 the equity purchaser of such cancellation no later than 5:00  
265 p.m. on the 3rd business day after signing the written  
266 agreement. Any moneys paid by the equity purchaser to the  
267 homeowner or by the homeowner to the equity purchaser must be  
268 returned at cancellation. The right to cancel does not limit or  
269 otherwise affect the homeowner's right to cancel the transaction  
270 under any other law. The right to cancel may not be waived by  
271 the homeowner or limited in any way by the equity purchaser. The  
272 equity purchaser must give the homeowner, at the time the  
273 written agreement is signed, a notice of the homeowner's right  
274 to cancel the foreclosure-rescue transaction as set forth in  
275 this subsection. The notice, which must be set forth on a  
276 separate cover sheet to the written agreement that contains no

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other written or pictorial material, must be in at least 12-point uppercase type, double-spaced, and read as follows:

NOTICE TO THE HOMEOWNER/SELLER

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

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

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

ANY MONEY PAID DIRECTLY TO YOU BY THE PURCHASER MUST BE RETURNED TO THE PURCHASER AT CANCELLATION. ANY MONEY PAID BY YOU TO THE PURCHASER MUST BE RETURNED TO YOU AT CANCELLATION.

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

I (we) hereby cancel this transaction.

\_\_\_\_\_  
Seller's Signature

\_\_\_\_\_  
Printed Name of Seller

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Seller's SignaturePrinted Name of SellerDate

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

(f) If the homeowner has the right to repurchase the residential real property, the price the homeowner pays may not

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333 be unconscionable, unfair, or commercially unreasonable. A  
334 rebuttable presumption, solely between the equity purchaser and  
335 the homeowner, arises that the foreclosure-rescue transaction  
336 was unconscionable if the homeowner's repurchase price is  
337 greater than 17 percent per annum more than the total amount  
338 paid by the equity purchaser to acquire, improve, maintain, and  
339 hold the property. Unless the repurchase agreement or a  
340 memorandum of the repurchase agreement is recorded in accordance  
341 with s. 695.01, the presumption arising under this subsection  
342 shall not apply against creditors or subsequent purchasers for a  
343 valuable consideration and without notice.

344 (6) REBUTTABLE PRESUMPTION.--Any foreclosure-rescue  
345 transaction involving a lease option or other repurchase  
346 agreement creates a rebuttable presumption, solely between the  
347 equity purchaser and the homeowner, that the transaction is a  
348 loan transaction and the conveyance from the homeowner to the  
349 equity purchaser is a mortgage under s. 697.01. Unless the lease  
350 option or other repurchase agreement, or a memorandum of the  
351 lease option or other repurchase agreement, is recorded in  
352 accordance with s. 695.01, the presumption created under this  
353 subsection shall not apply against creditors or subsequent  
354 purchasers for a valuable consideration and without notice.

355 (7) VIOLATIONS.--A person who violates any provision of  
356 this section commits an unfair and deceptive trade practice as  
357 defined in part II of this chapter. Violators are subject to the  
358 penalties and remedies provided in part II of this chapter,  
359 including a monetary penalty not to exceed \$15,000 per  
360 violation.

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361        Section 2.   This act shall take effect October 1, 2008.