

## ENROLLED

CS/HB 643, Engrossed 1

2008 Legislature

1                   A bill to be entitled  
2           An act relating to foreclosure fraud; creating s.  
3           501.1377, 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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29 loan transaction and the conveyance from the homeowner to  
 30 the equity purchaser is a mortgage; providing limited  
 31 application of the presumption; providing an exclusion;  
 32 providing that a person who violates certain provisions  
 33 commits an unfair and deceptive trade practice as defined  
 34 in part II of ch. 501, F.S.; providing penalties;  
 35 repealing s. 501.2078, F.S., relating to violations  
 36 involving individual homeowners during the course of  
 37 residential foreclosure proceedings; providing an  
 38 effective date.

39

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

41

42 Section 1. Section 501.1377, Florida Statutes, is created  
 43 to read:

44 501.1377 Violations involving homeowners during the course  
 45 of residential foreclosure proceedings.--

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

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

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

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

- 73 1. By a certificate of title from a foreclosure sale  
 74 conducted under chapter 45;
- 75 2. At a sale of property authorized by statute;
- 76 3. By order or judgment of any court;
- 77 4. From a spouse, parent, grandparent, child, grandchild,  
 78 or sibling of the person or the person's spouse; or
- 79 5. As a deed in lieu of foreclosure, a workout agreement,  
 80 a bankruptcy plan, or any other agreement between a foreclosing  
 81 lender and a homeowner.

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

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85 payment of money or other valuable consideration, foreclosure-  
 86 related rescue services. The term does not apply to:  
 87 1. A person excluded under s. 501.212.  
 88 2. A person acting under the express authority or written  
 89 approval of the United States Department of Housing and Urban  
 90 Development or other department or agency of the United States  
 91 or this state to provide foreclosure-related rescue services.  
 92 3. A charitable, not-for-profit agency or organization, as  
 93 determined by the United States Internal Revenue Service under  
 94 s. 501(c)(3) of the Internal Revenue Code, which offers  
 95 counseling or advice to an owner of residential real property in  
 96 foreclosure or loan default if the agency or organization does  
 97 not contract for foreclosure-related rescue services with a for-  
 98 profit lender or person facilitating or engaging in foreclosure-  
 99 rescue transactions.  
 100 4. A person who holds or is owed an obligation secured by  
 101 a lien on any residential real property in foreclosure if the  
 102 person performs foreclosure-related rescue services in  
 103 connection with this obligation or lien and the obligation or  
 104 lien was not the result of or part of a proposed foreclosure  
 105 reconveyance or foreclosure-rescue transaction.  
 106 5. A financial institution as defined in s. 655.005 and  
 107 any parent or subsidiary of the financial institution or of the  
 108 parent or subsidiary.  
 109 6. A licensed mortgage broker, mortgage lender, or  
 110 correspondent mortgage lender that provides mortgage counseling  
 111 or advice regarding residential real property in foreclosure,  
 112 which counseling or advice is within the scope of services set

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

184  
 185 HOMEOWNER'S RIGHT OF CANCELLATION

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

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

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

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

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

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

215 (e) The foreclosure-rescue consultant must give the  
 216 homeowner a copy of the signed agreement within 3 hours after  
 217 the homeowner signs the agreement.

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

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



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224 transferring, conveying, or encumbering an interest in the  
225 residential real property in foreclosure. The equity purchaser  
226 must give the homeowner a copy of the completed agreement within  
227 3 hours after the homeowner signs the agreement. The agreement  
228 must contain the entire understanding of the parties and must  
229 include:

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

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

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

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

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

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

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

250

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

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

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

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

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

281 NOTICE TO THE HOMEOWNER/SELLER

282  
 283 PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. IT CONTAINS  
 284 VALUABLE INFORMATION REGARDING CANCELLATION RIGHTS.

285  
 286 BY THIS CONTRACT, YOU ARE AGREEING TO SELL YOUR HOME. YOU  
 287 MAY CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. OF THE  
 288 THIRD BUSINESS DAY FOLLOWING RECEIPT OF THIS NOTICE.

289  
 290 THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY  
 291 YOU OR BY THE PURCHASER.

292  
 293 ANY MONEY PAID DIRECTLY TO YOU BY THE PURCHASER MUST BE  
 294 RETURNED TO THE PURCHASER AT CANCELLATION. ANY MONEY PAID BY YOU  
 295 TO THE PURCHASER MUST BE RETURNED TO YOU AT CANCELLATION.

296  
 297 TO CANCEL, SIGN THIS FORM AND RETURN IT TO THE PURCHASER BY  
 298 5:00 P.M. ON \_\_\_\_\_ (DATE) AT \_\_\_\_\_  
 299 (ADDRESS) . IT IS BEST TO MAIL IT BY CERTIFIED MAIL OR OVERNIGHT  
 300 DELIVERY, RETURN RECEIPT REQUESTED, AND TO KEEP A PHOTOCOPY OF  
 301 THE SIGNED FORM AND YOUR POST OFFICE RECEIPT.

302  
 303 I (we) hereby cancel this transaction.

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

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

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306 \_\_\_\_\_ Seller's Signature  
 307 \_\_\_\_\_ Printed Name of Seller  
 308 \_\_\_\_\_ Date

309  
 310 (c) In any foreclosure-rescue transaction in which the  
 311 homeowner is provided the right to repurchase the residential  
 312 real property, the homeowner has a 30-day right to cure any  
 313 default of the terms of the contract with the equity purchaser,  
 314 and this right to cure may be exercised on up to three separate  
 315 occasions. The homeowner's right to cure must be included in any  
 316 written agreement required by this subsection.

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

321 (e) If the homeowner has the right to repurchase the  
 322 residential real property, the equity purchaser must verify and  
 323 be able to demonstrate that the homeowner has or will have a  
 324 reasonable ability to make the required payments to exercise the  
 325 option to repurchase under the written agreement. For purposes  
 326 of this subsection, there is a rebuttable presumption that the  
 327 homeowner has a reasonable ability to make the payments required  
 328 to repurchase the property if the homeowner's monthly payments  
 329 for primary housing expenses and regular monthly principal and  
 330 interest payments on other personal debt do not exceed 60  
 331 percent of the homeowner's monthly gross income.

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

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

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

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

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362           Section 2.   Section 501.2078, Florida Statutes, is  
363 repealed.  
364           Section 3.   This act shall take effect October 1, 2008.