



402946

CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
3/18/2008	.	
	.	
	.	

1 The Committee on Banking and Insurance (Bennett) recommended the  
 2 following **amendment**:

3  
 4 **Senate Amendment (with title amendment)**

5 Delete everything after the enacting clause  
 6 and insert:

7 Section 1. Section 501.1377, Florida Statutes, is created  
 8 to read:

9 501.1377 Violations involving homeowners during the course  
 10 of residential foreclosure proceedings.--

11 (1) LEGISLATIVE FINDINGS AND INTENT.--The Legislature  
 12 finds that homeowners who are in default on their mortgages, in  
 13 foreclosure, or at risk of losing their homes due to nonpayment  
 14 of taxes may be vulnerable to fraud, deception, and unfair  
 15 dealings with foreclosure-rescue consultants or equity

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

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

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

38 1. By a certificate of title from a foreclosure sale  
39 conducted under chapter 45;

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

41 3. By order or judgment of any court;

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



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

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

52       1. A person excluded under s. 501.212.

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

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

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

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

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

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

84       1. Stopping, avoiding, or delaying foreclosure proceedings  
85 concerning residential real property; or

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

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

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



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

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

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

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

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

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

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

122        (4) FORECLOSURE-RELATED RESCUE SERVICES; WRITTEN  
123 AGREEMENT.--



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124       (a) The written agreement for foreclosure-related rescue  
125 services must be printed in at least 12-point uppercase type and  
126 signed by both parties. The agreement must include the name and  
127 address of the person providing foreclosure-related rescue  
128 services, the exact nature and specific detail of each service  
129 to be provided, the total amount and terms of charges to be paid  
130 by the homeowner for the services, and the date of the  
131 agreement. The date of the agreement may not be earlier than the  
132 date the homeowner signed the agreement. The foreclosure-rescue  
133 consultant must give the homeowner a copy of the agreement to  
134 review not less than 1 business day before the homeowner is to  
135 sign the agreement.

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

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

150                   HOMEOWNER'S RIGHT OF CANCELLATION  
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152 YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED  
153 RESCUE SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3  
154 BUSINESS DAYS FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY  
155 YOU.

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

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

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

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

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

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

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

195       a. The name, business address, and telephone number of the  
196 equity purchaser.

197       b. The street address and full legal description of the  
198 property.

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

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

205       e. The terms of payment or other consideration, including,  
206 but not limited to, any services that the equity purchaser





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207 represents will be performed for the homeowner before or after  
208 the sale.

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

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

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

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

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

228 (b) The homeowner may cancel the foreclosure-rescue  
229 transaction agreement without penalty if the homeowner notifies  
230 the equity purchaser of such cancellation no later than 5 p.m.  
231 on the 3rd business day after signing the written agreement. Any  
232 moneys paid by the equity purchaser to the homeowner or by the  
233 homeowner to the equity purchaser must be returned at  
234 cancellation. The right to cancel does not limit or otherwise



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235 affect the homeowner's right to cancel the transaction under any  
236 other law. The right to cancel may not be waived by the  
237 homeowner or limited in any way by the equity purchaser. The  
238 equity purchaser must give the homeowner, at the time the  
239 written agreement is signed, a notice of the homeowner's right  
240 to cancel the foreclosure-rescue transaction as set forth in  
241 this subsection. The notice, which must be set forth on a  
242 separate cover sheet to the written agreement that contains no  
243 other written or pictorial material, must be in at least 12-  
244 point uppercase type, double-spaced, and read as follows:

245  
246 NOTICE TO THE HOMEOWNER/SELLER

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

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

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

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

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

267  
268 I (we) hereby cancel this transaction.

269 \_\_\_\_\_ Seller's Signature  
 270 \_\_\_\_\_ Printed Name of Seller  
 271 \_\_\_\_\_ Seller's Signature  
 272 \_\_\_\_\_ Printed Name of Seller  
 273 \_\_\_\_\_ Date

274  
 275 (c) In any foreclosure-rescue transaction in which the  
 276 homeowner is provided the right to repurchase the residential  
 277 real property, the homeowner has a 30-day right to cure any  
 278 default of the terms of the contract with the equity purchaser,  
 279 and this right to cure may be exercised on up to three separate  
 280 occasions. The homeowner's right to cure must be included in any  
 281 written agreement required by this subsection.

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

286 (e) If the homeowner has the right to repurchase the  
 287 residential real property, the equity purchaser must verify and  
 288 be able to demonstrate that the homeowner has or will have a  
 289 reasonable ability to make the required payments to exercise the



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290 option to repurchase under the written agreement. For purposes  
291 of this subsection, there is a rebuttable presumption that the  
292 homeowner has a reasonable ability to make the payments required  
293 to repurchase the property if the homeowner's monthly payments  
294 for primary housing expenses and regular monthly principal and  
295 interest payments on other personal debt do not exceed 60  
296 percent of the homeowner's monthly gross income.

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

310 (6) REBUTTABLE PRESUMPTION.--Any foreclosure-rescue  
311 transaction involving a lease option or other repurchase  
312 agreement creates a rebuttable presumption, solely between the  
313 equity purchaser and the homeowner, that the transaction is a  
314 loan transaction and the conveyance from the homeowner to the  
315 equity purchaser is a mortgage under s. 697.01. Unless the lease  
316 option or other repurchase agreement, or a memorandum of the  
317 lease option or other repurchase agreement, is recorded in



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318 accordance with s. 695.01, the presumption created under this  
319 subsection shall not apply against creditors or subsequent  
320 purchasers for a valuable consideration and without notice.

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

327 Section 2. Section 501.2078, Florida Statutes, is  
328 repealed.

329 Section 3. This act shall take effect October 1, 2008.

330

331 ===== T I T L E A M E N D M E N T =====

332 And the title is amended as follows:

333 Delete everything before the enacting clause  
334 and insert:

335 A bill to be entitled  
336 An act relating to foreclosure fraud; creating s.  
337 501.1377, F.S.; providing legislative findings and intent  
338 with respect to the need to protect homeowners who enter  
339 into agreements designed to save their homes from  
340 foreclosure; providing definitions; prohibiting a  
341 foreclosure-rescue consultant from engaging in certain  
342 acts or failing to perform contracted services; requiring  
343 that all agreements for foreclosure-related rescue  
344 services and foreclosure-rescue transactions be in  
345 writing; specifying information that must be in the

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346 written agreement; requiring that certain statements in  
347 the written agreement be in uppercase letters and of a  
348 specified size; providing that the homeowner has a right  
349 to cancel the agreement for a specified period and the  
350 right may not be waived; providing that the homeowner has  
351 a specified period during which to cure a default under  
352 certain circumstances; requiring equity purchasers to  
353 assume or discharge certain liens; requiring that an  
354 equity purchaser verify the homeowner's ability to make  
355 payments under a repurchase agreement; providing price  
356 limitations for repurchase transactions; providing for a  
357 rebuttable presumption of certain transactions being  
358 unconscionable under certain circumstances; providing for  
359 limited application of the presumption; providing an  
360 exclusion; providing that a foreclosure-rescue transaction  
361 involving a lease option or other repurchase agreement  
362 creates a rebuttable presumption that the transaction is a  
363 loan transaction and the conveyance from the homeowner to  
364 the equity purchaser is a mortgage; providing limited  
365 application of the presumption; providing an exclusion;  
366 providing that a person who violates certain provisions  
367 commits an unfair and deceptive trade practice as defined  
368 in part II of ch. 501, F.S.; providing penalties;  
369 repealing s. 501.2078, F.S., relating to violations  
370 involving individual homeowners during the course of  
371 residential foreclosure proceedings; providing an  
372 effective date.