

By Senator Fasano

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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 consultant from  
7 engaging in certain acts or failing to perform contracted  
8 services; requiring that all agreements for foreclosure-  
9 related services and foreclosure-rescue services be in  
10 writing; specifying information that must be in the  
11 written agreement; requiring that certain statements in  
12 the written agreement be in bold type, in uppercase  
13 letters, and of a specified size; providing that the  
14 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 that an equity purchaser verify the homeowner's  
19 ability to make payments under a repurchase agreement;  
20 providing that a foreclosure-rescue transaction involving  
21 a lease option or other repurchase agreement creates a  
22 rebuttable presumption that the transaction is a loan  
23 transaction and the conveyance from the homeowner to the  
24 equity purchaser is a mortgage; providing that a person  
25 who violates certain provisions of the act commits an  
26 unfair and deceptive trade practice as defined in ch. 501,  
27 F.S.; providing an effective date.

28  
29 Be It Enacted by the Legislature of the State of Florida:

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31       Section 1. Legislative findings and intent.--The  
32 Legislature finds that homeowners who are in default on their  
33 mortgages, in foreclosure, or at risk of losing their home due to  
34 nonpayment of taxes may be vulnerable to fraud, deception, and  
35 unfair dealings with foreclosure consultants or foreclosure  
36 purchasers. The intent of sections 1-7 of this act is to provide  
37 a homeowner with information necessary to make an informed and  
38 intelligent decision regarding the sale or transfer of his or her  
39 home to an equity purchaser. It is the further intent of sections  
40 1-7 of this act to require that the sales agreement be expressed  
41 in writing in order to safeguard homeowners against deceit and  
42 financial hardship; to ensure, foster, and encourage fair dealing  
43 in the sale and purchase of homes in foreclosure or default; to  
44 prohibit representations that tend to mislead; to prohibit or  
45 restrict unfair contract terms; to provide a cooling-off period  
46 for homeowners who enter into contracts for services related to  
47 saving their homes from foreclosure or preserving their rights to  
48 possession of their home; to afford homeowners a reasonable and  
49 meaningful opportunity to rescind sales to equity purchasers; and  
50 to preserve and protect home equity for the homeowners of this  
51 state.

52       Section 2. Definitions.--As used in sections 1-7 of this  
53 act, the term:

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

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

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

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

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

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

65       (f) As a deed in lieu of foreclosure, a work-out agreement,  
66 a bankruptcy plan, or any other agreement between a foreclosing  
67 lender and a homeowner.

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

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

76       (b) A person licensed as a real estate broker under chapter  
77 475, Florida Statutes, if the person is acting within the course  
78 and scope of a broker as defined in s. 475.01, Florida Statutes.

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

85       (d) A person acting under the express authority or written  
86 approval of the United States Department of Housing and Urban

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87 Development or other department or agency of the United States or  
88 this state to provide foreclosure-related services.

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

97 (f) A person who holds or is owed an obligation secured by  
98 a lien on any residential real property in foreclosure if the  
99 person performs foreclosure-related services in connection with  
100 this obligation or lien and the obligation or lien did not arise  
101 as the result of or as part of a proposed foreclosure  
102 reconveyance or foreclosure-rescue transaction.

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

105 (3) "Foreclosure-related services" means any good or  
106 service related to, or promising assistance in connection with:

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

109 (b) Curing or otherwise addressing a default or failure to  
110 timely pay with respect to a residential mortgage loan  
111 obligation.

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

113 (a) By which residential real property is conveyed to an  
114 equity purchaser and the homeowner maintains a legal or equitable  
115 interest in the residential real property conveyed, including,

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116 without limitation, a lease interest, an option to acquire the  
117 property, an interest as beneficiary or trustee to a land trust,  
118 or other interest in the property conveyed; and

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

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

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

129 (7) "Residential real property in foreclosure" means  
130 residential real property against which there is an outstanding  
131 notice of the pendency of foreclosure recorded pursuant to s.  
132 48.23, Florida Statutes, against which a summons and complaint  
133 has been served under chapter 702, Florida Statutes, or which is  
134 owned by a person who is more than 90 days delinquent on any loan  
135 that is secured by the property.

136 Section 3. Prohibited acts.--In the course of offering or  
137 providing foreclosure-related services, a foreclosure consultant,  
138 including the consultant's sales persons, agents,  
139 representatives, or independent contractors, may not:

140 (1) Engage in or initiate foreclosure-related services  
141 without first executing a written agreement for foreclosure-  
142 related services; or

143 (2) Solicit, charge, receive, or attempt to collect or  
144 secure payment, directly or indirectly, for foreclosure-related

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145 services before successfully completing or performing all  
146 services contained in the agreement for foreclosure-related  
147 services.

148 Section 4. Foreclosure-related services; written  
149 agreement.--

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

161 (2) The written agreement must clearly state that the  
162 homeowner may cancel the written agreement without any penalty or  
163 obligation if the homeowner cancels the agreement within 5  
164 business days after signing the written agreement. The right to  
165 cancel may not be waived by the homeowner or limited in any  
166 manner by the foreclosure-rescue consultant. If the homeowner  
167 cancels the contract, any payments that have been given to the  
168 consultant must be returned to the homeowner within 10 days after  
169 receiving the notice of cancellation.

170 (3) An agreement for foreclosure-related services must  
171 contain, immediately above the signature line for the homeowner  
172 in bold type and uppercase letters in a minimum size of 14  
173 points, the following disclosures:

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HOMEOWNER'S RIGHT OF CANCELLATION

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

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

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

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

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

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202       (5) The foreclosure-rescue consultant must give the  
203 homeowner a copy of the signed agreement immediately after the  
204 homeowner signs the agreement.

205       Section 5. Foreclosure-rescue transactions; written  
206 agreement.--

207       (1) (a) In any foreclosure-rescue transaction there must be  
208 a written agreement prepared in at least 12-point bold type which  
209 is fully completed, signed, and dated by the homeowner and the  
210 equity purchaser before executing any instrument quitclaiming,  
211 assigning, transferring, conveying, or encumbering an interest in  
212 the residential real property subject to foreclosure. The equity  
213 purchaser must give the homeowner a copy of the completed  
214 agreement immediately after the homeowner signs the agreement.  
215 The agreement must contain the entire understanding of the  
216 parties and must include:

217       1. The name, business address, and telephone number of the  
218 equity purchaser;

219       2. The street address and full legal description of the  
220 property;

221       3. Clear and conspicuous disclosure of any financial or  
222 legal obligations of the homeowner which will be assumed by the  
223 equity purchaser;

224       4. The total consideration to be paid by the equity  
225 purchaser in connection with or incident to the acquisition by  
226 the equity purchaser of the property;

227       5. The terms of payment or other consideration, including,  
228 but not limited to, any services that the equity purchaser  
229 represents will be performed for the homeowner before or after  
230 the sale; and



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

233       (b) Every foreclosure-rescue transaction agreement must  
234 contain, above the signature line for the homeowner, a statement  
235 in 16-point bold type which complies substantially with the  
236 following:

237  
238       I understand that under this agreement I am selling my house  
239 to the other undersigned party.

240  
241       (c) Each foreclosure-rescue transaction agreement must  
242 state the specifications of any option or right to repurchase the  
243 residential real property in foreclosure, including the specific  
244 amounts of any escrow payments or deposit, down payment, purchase  
245 price, closing costs, commissions, or other fees or costs.

246       (2) An equity purchaser must give the homeowner, at the  
247 time the written agreement is signed, a notice stating that the  
248 homeowner may cancel the purchase without penalty if the  
249 homeowner notifies the equity purchaser within 5 business days  
250 after signing the agreement. The equity purchaser must return to  
251 the homeowner any moneys paid by the homeowner within 30 days  
252 after the homeowner notifies the equity purchaser. The right to  
253 cancel in this section does not limit or otherwise affect the  
254 homeowner's right to cancel the agreement under any other law.  
255 The right to cancel is not conditioned upon the homeowner's  
256 repayment of money paid to the homeowner under the foreclosure-  
257 rescue transaction. The right to cancel may not be waived by the  
258 homeowner or limited in any way by the equity purchaser. Notice  
259 or the right to cancel must serve as the cover sheet to the

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260 written agreement to enter into a foreclosure-rescue transaction.  
 261 The notice must be on a separate sheet of paper with no other  
 262 written or pictorial material, in at least 12-point bold type,  
 263 double-spaced, and read as follows:

264  
 265 NOTICE TO THE HOMEOWNER/SELLER

266  
 267 PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. IT CONTAINS  
 268 VALUABLE CANCELLATION RIGHTS.

269  
 270 BY THIS CONTRACT YOU ARE AGREEING TO SELL YOUR HOME. YOU MAY  
 271 CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. OF THE FIFTH  
 272 BUSINESS DAY FOLLOWING RECEIPT OF THIS NOTICE.

273  
 274 THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY  
 275 YOU OR BY THE PURCHASERS.

276  
 277 ANY MONEY PAID TO YOU MUST BE RETURNED TO THE PURCHASER  
 278 WITHIN 30 DAYS AFTER CANCELLATION.

279  
 280 TO CANCEL, SIGN THIS FORM, AND RETURN IT TO THE PURCHASER BY  
 281 5:00 P.M. ON \_\_\_\_\_ (DATE) AT \_\_\_\_\_  
 282 (ADDRESS) . IT IS BEST TO MAIL IT BY CERTIFIED MAIL OR OVERNIGHT  
 283 DELIVERY, RETURN RECEIPT REQUESTED, AND TO KEEP A PHOTOCOPY OF  
 284 THE SIGNED FORM AND YOUR POST OFFICE RECEIPT.

285  
 286 I (we) hereby cancel this transaction.

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

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

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289 \_\_\_\_\_ Seller's Signature  
 290 \_\_\_\_\_ Printed Name of Seller  
 291 \_\_\_\_\_ Date

292  
 293 (3) In any foreclosure-rescue transaction in which the  
 294 homeowner is provided the right to repurchase the residential  
 295 real property, the homeowner has a 30-day right to cure any  
 296 default of the terms of the contract and this right to cure may  
 297 be exercised on at least three separate occasions during the life  
 298 of the foreclosure-rescue transaction or any agreement by the  
 299 parties. The homeowner's right to cure must be included in any  
 300 written agreement required by this section.

301 (4) In any foreclosure-rescue transaction, before or at the  
 302 time of conveyance, the equity purchaser must fully assume or  
 303 discharge any lien in foreclosure as well as any prior liens that  
 304 will not be extinguished by the foreclosure, which assumption or  
 305 discharge must be accomplished without violating the terms and  
 306 conditions of the liens being assumed or discharged.

307 (5) If the homeowner has the right to repurchase the  
 308 residential real property, the equity purchaser must verify and  
 309 be able to demonstrate that the homeowner has or will have a  
 310 reasonable ability to make the required payments to exercise the  
 311 option to repurchase under the written agreement. For purposes of  
 312 this section, there is a rebuttable presumption that the  
 313 homeowner has a reasonable ability to make payments and to  
 314 repurchase the property if the homeowner's payments for primary  
 315 housing expenses and regular principal and interest payments on  
 316 other personal debt do not exceed 60 percent of the homeowner's  
 317 monthly gross income.

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318       (6) If the homeowner has the right to repurchase the  
319 residential real property, the price the homeowner pays may not  
320 be unconscionable, unfair, or commercially unreasonable. A  
321 repurchase price offered within 2 years after the sale of the  
322 residential real property in foreclosure which exceeds 25 percent  
323 of the price at which the equity purchaser acquired the property  
324 creates a rebuttable presumption that the foreclosure-rescue  
325 transaction was unconscionable. The acquisition price paid by the  
326 equity purchaser may include any actual costs incurred by the  
327 purchaser in acquiring the property.

328       Section 6. Rebuttable presumption.--Any foreclosure-rescue  
329 transaction involving a lease option or other repurchase  
330 agreement creates a rebuttable presumption that the transaction  
331 is a loan transaction and the conveyance from the homeowner to  
332 the equity purchaser is a mortgage.

333       Section 7. Violations.--A person who violates any provision  
334 of sections 1-6 of this act commits an unfair and deceptive trade  
335 practice as defined in part II of chapter 501, Florida Statutes.  
336 Violators are subject to the penalties and remedies provided in  
337 part II of chapter 501, Florida Statutes, including a monetary  
338 penalty not to exceed \$15,000 per violation.

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