

By the Committee on Banking and Insurance; and Senators Fasano and Gaetz

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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
29 loan transaction and the conveyance from the homeowner to

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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 finds
47 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 regarding
53 the sale or transfer of his or her home to an equity purchaser.
54 It is the further intent of this section to require that
55 foreclosure-related rescue services agreements be expressed in
56 writing in order to safeguard homeowners against deceit and
57 financial hardship; to ensure, foster, and encourage fair dealing
58 in the sale and purchase of homes in foreclosure or default; to

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59 prohibit representations that tend to mislead; to prohibit or
60 restrict unfair contract terms; to provide a cooling-off period
61 for homeowners who enter into contracts for services related to
62 saving their homes from foreclosure or preserving their rights to
63 possession of their homes; to afford homeowners a reasonable and
64 meaningful opportunity to rescind sales to equity purchasers; and
65 to preserve and protect home equity for the homeowners of this
66 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 the
72 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, a
80 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 payment
85 of money or other valuable consideration, foreclosure-related
86 rescue services. The term does not apply to:

87 1. A person excluded under s. 501.212.

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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 or
91 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 s.
94 501(c)(3) of the Internal Revenue Code, which offers counseling
95 or advice to an owner of residential real property in foreclosure
96 or loan default if the agency or organization does not contract
97 for foreclosure-related rescue services with a for-profit lender
98 or person facilitating or engaging in foreclosure-rescue
99 transactions.

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

106 5. A financial institution as defined in s. 655.005 and any
107 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
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.

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116 (c) "Foreclosure-related rescue services" means any good or
117 service related to, or promising assistance in connection 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 interest,
128 an option to acquire the property, an interest as beneficiary or
129 trustee to a land trust, or other interest in the property
130 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 residential
135 real property that is the subject of foreclosure proceedings.

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

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

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

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

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

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

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

169 (b) The homeowner has the right to cancel the written
170 agreement without any penalty or obligation if the homeowner
171 cancels the agreement within 3 business days after signing the
172 written agreement. The right to cancel may not be waived by the

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173 homeowner or limited in any manner by the foreclosure-rescue
 174 consultant. If the homeowner cancels the agreement, any payments
 175 that have been given to the foreclosure-rescue consultant must be
 176 returned to the homeowner within 10 business days after receipt
 177 of the notice of cancellation.

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

182
 183 HOMEOWNER'S RIGHT OF CANCELLATION

184
 185 YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED RESCUE
 186 SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS DAYS
 187 FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY YOU.

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

195
 196 TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A
 197 STATEMENT THAT YOU ARE CANCELLING THE AGREEMENT SHOULD BE MAILED
 198 (POSTMARKED) OR DELIVERED TO _____ (NAME) AT
 199 _____ (ADDRESS) NO LATER THAN MIDNIGHT OF
 200 _____ (DATE).
 201

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

206
207 (d) The inclusion of the statement does not prohibit the
208 foreclosure-rescue consultant from giving the homeowner more time
209 in which to cancel the agreement than is set forth in the
210 statement, provided all other requirements of this subsection are
211 met.

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

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

216 (a)1. A foreclosure-rescue transaction must include a
217 written agreement prepared in at least 12-point uppercase type
218 that is completed, signed, and dated by the homeowner and the
219 equity purchaser before executing any instrument from the
220 homeowner to the equity purchaser quitclaiming, assigning,
221 transferring, conveying, or encumbering an interest in the
222 residential real property in foreclosure. The equity purchaser
223 must give the homeowner a copy of the completed agreement within
224 1 business day after the homeowner signs the agreement. The
225 agreement must contain the entire understanding of the parties
226 and must include:

227 a. The name, business address, and telephone number of the
228 equity purchaser.

229 b. The street address and full legal description of the
230 property.

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

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

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

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

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

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

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

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

258 (b) The homeowner may cancel the foreclosure-rescue
259 transaction agreement without penalty if the homeowner notifies

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260 the equity purchaser of such cancellation no later than 5 p.m. on
261 the 3rd business day after signing the written agreement. Any
262 moneys paid by the equity purchaser to the homeowner or by the
263 homeowner to the equity purchaser must be returned at
264 cancellation. The right to cancel does not limit or otherwise
265 affect the homeowner's right to cancel the transaction under any
266 other law. The right to cancel may not be waived by the homeowner
267 or limited in any way by the equity purchaser. The equity
268 purchaser must give the homeowner, at the time the written
269 agreement is signed, a notice of the homeowner's right to cancel
270 the foreclosure-rescue transaction as set forth in this
271 subsection. The notice, which must be set forth on a separate
272 cover sheet to the written agreement that contains no other
273 written or pictorial material, must be in at least 12-point
274 uppercase type, double-spaced, and read as follows:

275
276 NOTICE TO THE HOMEOWNER/SELLER

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

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

284
285 THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY
286 YOU OR BY THE PURCHASER.

287
288 ANY MONEY PAID DIRECTLY TO YOU BY THE PURCHASER MUST BE

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

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

297
 298 I (we) hereby cancel this transaction.

299 _____ Seller's Signature
 300 _____ Printed Name of Seller
 301 _____ Seller's Signature
 302 _____ Printed Name of Seller
 303 _____ Date

304
 305 (c) In any foreclosure-rescue transaction in which the
 306 homeowner is provided the right to repurchase the residential
 307 real property, the homeowner has a 30-day right to cure any
 308 default of the terms of the contract with the equity purchaser,
 309 and this right to cure may be exercised on up to three separate
 310 occasions. The homeowner's right to cure must be included in any
 311 written agreement required by this subsection.

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

316 (e) If the homeowner has the right to repurchase the
 317 residential real property, the equity purchaser must verify and

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318 be able to demonstrate that the homeowner has or will have a
319 reasonable ability to make the required payments to exercise the
320 option to repurchase under the written agreement. For purposes of
321 this subsection, there is a rebuttable presumption that the
322 homeowner has a reasonable ability to make the payments required
323 to repurchase the property if the homeowner's monthly payments
324 for primary housing expenses and regular monthly principal and
325 interest payments on other personal debt do not exceed 60 percent
326 of the homeowner's monthly gross income.

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

340 (6) REBUTTABLE PRESUMPTION.--Any foreclosure-rescue
341 transaction involving a lease option or other repurchase
342 agreement creates a rebuttable presumption, solely between the
343 equity purchaser and the homeowner, that the transaction is a
344 loan transaction and the conveyance from the homeowner to the
345 equity purchaser is a mortgage under s. 697.01. Unless the lease
346 option or other repurchase agreement, or a memorandum of the

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347 lease option or other repurchase agreement, is recorded in
348 accordance with s. 695.01, the presumption created under this
349 subsection shall not apply against creditors or subsequent
350 purchasers for a valuable consideration and without notice.

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

356 Section 2. Section 501.2078, Florida Statutes, is repealed.

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