

SENATE, No. 1264

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED FEBRUARY 21, 2008

Sponsored by:
Senator SHIRLEY K. TURNER
District 15 (Mercer)

SYNOPSIS

The “Foreclosure Consulting and Anti-Fraud Act.”

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning certain mortgage foreclosure practices, and
2 amending and supplementing P.L.1979, c.16 (C.17:16G-1 et
3 seq.).

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) This act, amending P.L.1979, c.16 (C.17:16G-
9 1 et seq.), shall be known and may be cited as the "Foreclosure
10 Consulting and Anti-Fraud Act."

11
12 2. Section 1 of P.L.1979, c. 16 (C. 17:16G-1) is amended to
13 read as follows:

14 1. As used in this act,

15 a. "Nonprofit social service agency" or "nonprofit consumer
16 credit counseling agency" means any corporation duly organized
17 under Title 15 of the Revised Statutes or Title 15A of the New
18 Jersey Statutes, no part of the assets, income or profit of which is
19 distributable to, or enures to the benefit of its members, directors or
20 officers, except to the extent permitted under this act, and which is
21 engaged in debt adjustment.

22 b. "Credit counseling" means any guidance or educational
23 program or advice offered by a nonprofit social service agency or
24 nonprofit consumer credit counseling agency for the purpose of
25 fostering the responsible use of credit and debt management.

26 c. (1) "Debt adjuster" means a person who either (a) acts or
27 offers to act for a consideration as an intermediary between a debtor
28 and his creditors for the purpose of settling, compounding, or
29 otherwise altering the terms of payment of any debts of the debtor,
30 or (b) who, to that end, receives money or other property from the
31 debtor, or on behalf of the debtor, for payment to, or distribution
32 among, the creditors of the debtor.

33 (2) The following persons shall not be deemed debt adjusters:
34 (a) an attorney-at-law of this State who is not principally engaged
35 as a debt adjuster; (b) a person who is a regular, full-time employee
36 of a debtor, and who acts as an adjuster of his employer's debts; (c)
37 a person acting pursuant to any order or judgment of court, or
38 pursuant to authority conferred by any law of this State or the
39 United States; (d) a person who is a creditor of the debtor, or an
40 agent of one or more creditors of the debtor, and whose services in
41 adjusting the debtor's debts are rendered without cost to the debtor;
42 or (e) a person who, at the request of a debtor, arranges for or
43 makes a loan to the debtor, and who, at the authorization of the
44 debtor, acts as an adjuster of the debtor's debts in the disbursement

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 of the proceeds of the loan, without compensation for the services
2 rendered in adjusting those debts.

3 (3) Subject to paragraph (2) of this subsection c., a distressed
4 property purchaser as defined in subsection g. of this section and a
5 foreclosure consultant as defined in subsection i. of this section
6 shall be deemed to be a debt adjuster.

7 d. "Debtor" means an individual or two or more individuals
8 who are jointly and severally, or jointly or severally indebted.

9 e. "Debtor-owner" means a debtor who is the owner of record
10 of title to a distressed property.

11 f. "Distressed property" means residential real property
12 consisting of from one to six dwelling units, at least one of which is
13 occupied by a debtor-owner as a primary residence, and which is
14 the subject of a foreclosure or tax sale proceeding, or which is at
15 risk of loss due to nonpayment of taxes or whose debtor-owner is
16 more than 90 days delinquent on any loan that is secured by the
17 property.

18 g. "Distressed property purchaser" means a person who
19 acquires an interest in fee or a beneficial interest through a trust
20 document in a distressed property while allowing the debtor-owner
21 to possess, occupy, or retain a leasehold interest or any present or
22 future interest in fee in the property, or a person who participates in
23 a joint venture or joint enterprise involving a distressed property
24 conveyance. A distressed property purchaser does not mean a
25 federally insured financial institution or a person who acquires
26 distressed property through a deed in lieu of foreclosure or a person
27 acting in participation with any person who acquires distressed
28 property through a deed in lieu of foreclosure, provided that person
29 does not promise to convey an interest in fee back to the debtor-
30 owner or does not give the debtor-owner an option to purchase the
31 property at a later date. A distressed property purchaser also does
32 not mean a spouse, child, parent, or sibling of the debtor-owner.

33 h. "Distressed property conveyance" means a transaction in
34 which: a debtor-owner transfers an interest in fee, or a beneficial
35 interest created through a trust document, in a distressed property;
36 the acquirer of the property allows the debtor-owner to occupy the
37 property; and the acquirer of the property or a person acting in
38 participation with the acquirer of the property conveys or promises
39 to convey an interest in fee back to the debtor-owner or gives the
40 debtor-owner an option to purchase the property at a later date.

41 i. (1) "Foreclosure consultant" means any debt adjuster who,
42 directly or indirectly, makes any solicitation, representation, or
43 offer to perform, or who performs, any debt adjustment or credit
44 counseling that the debt adjuster represents will in any manner do
45 any of the following in relation to the debtor-owner's distressed
46 property:

47 (a) prevent or postpone the foreclosure sale or the loss of the
48 property due to nonpayment of taxes;

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- 1 (b) obtain any forbearance from any beneficiary or mortgagee or
2 relief with respect to a tax sale of the property;
- 3 (c) assist the debtor-owner in exercising any right of
4 reinstatement or right of redemption;
- 5 (d) obtain any extension of the period within which the debtor-
6 owner may reinstate the debtor-owner's rights with respect to the
7 property;
- 8 (e) obtain any waiver of an acceleration clause contained in any
9 promissory note, contract, or mortgage evidencing or securing a
10 debt in relation to the property;
- 11 (f) assist the debtor-owner in obtaining a loan or advance of
12 funds to pay off the promissory note, contract, or mortgage
13 evidencing or securing a debt in relation to the property; or
- 14 (g) avoid or ameliorate the impairment of the debtor-owner's
15 credit resulting from default on the promissory note, contract, or
16 mortgage, or the conduct of a foreclosure sale or tax sale or offer to
17 repair the debtor-owner's credit.
- 18 (2) The following persons shall not be deemed foreclosure
19 consultants:
- 20 (a) a person or the person's authorized agent acting under the
21 express authority or written approval of the United States
22 Department of Housing and Urban Development;
- 23 (b) a person who holds or is owed an obligation secured by a
24 lien on any distressed property in situations in which the person
25 performs services in connection with the obligation or lien,
26 provided the obligation or lien did not arise as the result of, or as
27 part of, a proposed distressed property conveyance; and
- 28 (c) a mortgagee approved by the United States Department of
29 Housing and Urban Development and any subsidiary, affiliate,
30 agent or employee of the mortgagee, while engaged in the business
31 of the mortgagee.
- 32 (cf: P.L.1986, c.184, s.1)

33

34 3. Section 2 of P.L.1979, c.16 (C.17:16G-2) is amended to read
35 as follows:

36 2. a. No person other than a nonprofit social service agency or
37 a nonprofit consumer credit counseling agency shall act as a debt
38 adjuster.

39 b. It shall be unlawful for any nonprofit social service agency
40 or nonprofit consumer credit counseling agency to act as a debt
41 adjuster without first obtaining a license from the Commissioner of
42 the Department of Banking and Insurance pursuant to this act. The
43 commissioner may also require any agent, officer, or employee of a
44 nonprofit social service agency or a nonprofit consumer credit
45 counseling agency providing debt adjustment or credit counseling,
46 or category of agent, officer, or employee, to be licensed pursuant
47 to regulations promulgated by the commissioner.

1 c. A licensee is authorized to offer debt adjustment and credit
2 counseling as provided by the provisions of P.L.1979, c.16
3 (C.17:16G-1 et seq.).
4 (cf: 1986, c.184, s.2)

5
6 4. Section 3 of P.L.1979, c.16 (C.17:16G-3) is amended to read
7 as follows:

8 3. a. Application for **【said】** a debt adjuster license shall be
9 made on forms prescribed by the commissioner, who shall be
10 empowered to require information deemed necessary to demonstrate
11 that the applicant is qualified to be licensed and possesses the
12 necessary financial resources to sustain its operation.

13 b. As part of the application process, the commissioner may, as
14 established by regulation, require any applicant or category of
15 applicants to consent to a criminal history record background check.
16 The commissioner is authorized to exchange fingerprint data with,
17 and receive criminal history information from, the Federal Bureau
18 of Investigation, Identification Division, and the State Bureau of
19 Identification in the Division of State Police in performing
20 background checks. The commissioner is authorized to conduct
21 additional background checks the commissioner deems appropriate.
22 (cf: P.L.1986, c. 184, s.3)

23
24 5. Section 4 of P.L.1979, c.16 (C.17:16G-4) is amended to read
25 as follows:

26 4. The commissioner; shall promulgate procedures and
27 standards for the issuance or denial of licenses, which may include
28 disqualifications based upon standards of good moral character, or
29 disqualifications based upon a criminal history record background
30 check performed pursuant to section 3 of P.L.1979, c.16 (C.17:16G-
31 3), including, but not limited to, conviction of any crime involving
32 fraud or dishonesty; shall promulgate grounds for and procedures
33 under which licenses may be revoked, suspended, or reinstated **【,】** ;
34 and shall establish fees necessary to meet administrative costs under
35 this act.
36 (cf: P.L.1979, c.16, s.4)

37
38 6. Section 5 of P.L.1979, c.16 (C.17:16G-5) is amended to read
39 as follows:

40 5. a. Any nonprofit social service agency or nonprofit
41 consumer credit counseling agency licensed under this act shall be
42 bonded to the satisfaction of the commissioner for each location
43 pursuant to regulation. In setting the bonding requirements for each
44 location, the commissioner shall consider the number of debtors
45 provided credit counseling and debt adjustment services at that
46 location, and the balance of funds in the trust account required to be
47 maintained by the licensee pursuant to section 3 of P.L.2005, c.287
48 (C.17:16G-9).

1 b. The commissioner may require a licensee to file an annual
2 report containing that information required by the commissioner by
3 regulation concerning activities conducted as a licensee in the
4 preceding calendar year. The report may encompass all debt
5 adjustment or credit counseling activities of a licensee in the
6 preceding calendar year, or may encompass one or more particular
7 activities, including, but not limited to, distressed property
8 conveyances, as specified by the commissioner. The report shall be
9 submitted under oath and in the form and within the time specified
10 by the commissioner by regulation.

11 c. The commissioner may require a high cost home loan
12 counselor to file an annual report containing that information
13 required by the commissioner by regulation concerning activities
14 conducted pursuant to subsection g. of section 5 of P.L.2003, c.64
15 (C.46:10B-26) as a registrant in the preceding calendar year. The
16 report shall be submitted under oath and in the form specified by
17 the commissioner by regulation.

18 d. Each licensee shall file with the commissioner on or before
19 April 1 of each year a copy of its annual report, containing the
20 information required by the commissioner by regulation pursuant to
21 P.L.1979, c.16 (C.17:16G-1 et seq.) and section 3 of P.L.2005,
22 c.287 (C.17:16G-9). A licensee or high cost home loan counselor
23 that fails to make and file its annual report in the form and within
24 the time provided in this section shall be subject to a penalty of not
25 more than \$100 for each day's failure, and the commissioner may
26 revoke or suspend its authority to do business in this State. The
27 penalty may be collected in a summary proceeding pursuant to the
28 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
29 et seq.). A warrant may issue in lieu of a summons.

30 e. Each licensee shall have its financial records relating to debt
31 adjustment audited annually by a certified public accountant or a
32 public accountant, which audit shall be filed with the commissioner.
33 Such an audit shall certify that the salaries and expenses paid by the
34 licensee are reasonable compared to those incurred by comparable
35 organizations providing similar services.

36 f. After reviewing the annual report and audit, the
37 Commissioner of Banking and Insurance may cause an examination
38 of the licensee to be made, the actual expenses of such an
39 examination shall be paid by the licensee, and the commissioner
40 may maintain any action against any licensee to recover the fees
41 and expenses herein provided for.

42 g. The licensee shall make a copy of the annual report and
43 audit available for public inspection at each of the licensee's
44 locations.

45 (cf: P.L.2007, c.81, s.25)

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47 7. Section 8 of P.L.1979, c.16 (C.17:16G-8) is amended to read
48 as follows:

1 interest through a trust document in a distressed property, while
2 allowing the debtor-owner to possess, occupy, or retain a leasehold
3 interest or any present or future interest in fee in the property, or
4 anyone involved in a joint venture or enterprise involving a
5 distressed property conveyance. Currently under the law, only
6 nonprofit social service agencies or nonprofit consumer credit
7 counseling agencies may be licensed as debt adjusters.

8 The bill also provides the Commissioner of Banking and
9 Insurance with additional regulatory authority to oversee
10 foreclosure consulting activities as well as other debt adjustment
11 and credit counseling activities in this State. Such regulatory
12 authority includes:

- 13 -permitting the commissioner to establish licensing requirements
14 for any agent, officer, or employee of a debt adjuster, or any
15 category of agent, officer, or employee, which may include
16 disqualifications based upon standards of good moral character; and
17 -permitting the commissioner, as part of any licensing
18 application, to require the applicant, or any category of applicants,
19 to consent to a criminal history record background check, and any
20 additional background check as deemed appropriate.

21 While the commissioner is already authorized to request an
22 annual report from any debt adjuster concerning that adjuster's
23 activities conducted in the preceding calendar year, the bill
24 emphasizes that the commissioner may also collect information
25 from a debt adjuster encompassing only one or more particular
26 activities, such as those activities primarily performed with respect
27 to foreclosure consulting.

28 Concerning penalties for violations of the applicable debt
29 adjustment and credit counseling law, the bill would now permit
30 any person to bring an action for punitive damages, as well as
31 receive attorney's fees and costs of suit. Additionally, the bill
32 clarifies the law's penalty provisions by emphasizing that the
33 commissioner's existing authority to enjoin, in addition to any
34 licensed debt adjuster, "any other person concerned or in any way
35 participating in" a violation of the law, includes, with respect to
36 foreclosure consulting activities, which activities may include a
37 conveyance of the property, any mortgage banker, mortgage broker,
38 or other licensee pursuant to the "New Jersey Licensed Lenders
39 Act," P.L.1996, c.157 (C.17:11C-1 et seq.), any real estate broker or
40 other licensee pursuant to R.S.45:15-1 et seq., or any real estate
41 appraiser licensed or certified pursuant to the "Real Estate
42 Appraisers Act," P.L.1991, c.68 (C.45:14F-1 et seq.).