

SENATE, No. 1265

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED FEBRUARY 21, 2008

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

SYNOPSIS

The "Foreclosure Rescue Fraud Prevention Act."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain mortgage foreclosure consultant
2 practices and supplementing Title 46 of the Revised Statutes.

3

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

6

7 1. This act shall be known and may be cited as the "Foreclosure
8 Rescue Fraud Prevention Act."

9

10 2. As used in this act:

11 "Business day" means any day other than a Saturday, Sunday, or
12 a federal holiday.

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

19 "Distressed property purchaser" means a person who acquires an
20 interest in a distressed property through a distressed property
21 conditional conveyance or a distressed property conveyance, or a
22 person who participates in a joint venture or joint enterprise
23 involving a distressed property conditional conveyance or a
24 distressed property conveyance. The term "distressed property
25 purchaser" does not mean a federally insured financial institution or
26 a person who acquires distressed property through a deed in lieu of
27 foreclosure or a person acting in participation with any person who
28 acquires distressed property through a deed in lieu of foreclosure,
29 provided that person does not promise to convey an interest in fee
30 back to the owner or does not give the owner an option to purchase
31 the property at a later date.

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

40 "Distressed property conveyance" means a transaction in which
41 an owner transfers an interest in fee in a distressed property.

42 "Distressed property service" means, without limitation, any of
43 the following:

44 (1) debt, budget, or financial counseling of any type;

45 (2) receiving money for the purpose of distributing it to
46 creditors in payment or partial payment of any obligation secured
47 by a mortgage or other lien on a distressed property;

48 (3) contacting creditors on behalf of an owner;

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- 1 (4) arranging or attempting to arrange for an extension of the
2 period within which the owner may cure the owner's default and
3 reinstate a debt obligation;
- 4 (5) arranging or attempting to arrange for a delay or
5 postponement of the time of sale of the distressed property;
- 6 (6) advising with respect to the filing of any document or
7 assisting in any manner in the preparation of any document for
8 filing with any court; or
- 9 (7) giving advice, explanation, or instruction to an owner that in
10 any manner relates to the cure of a default or forfeiture or to the
11 postponement or avoidance of a sale of the distressed property.
- 12 "Foreclosure consultant": (1) means any person, located out-of-
13 State or within the State, who, directly or indirectly, for
14 compensation from an owner, makes any solicitation,
15 representation, or offer to perform, or who performs, any distressed
16 property service that the person represents will in any manner do
17 any of the following in relation to the owner's distressed property:
- 18 (a) prevent or postpone the foreclosure sale or the loss of the
19 property due to nonpayment of taxes;
- 20 (b) obtain any forbearance from any beneficiary or mortgagee or
21 relief with respect to a tax sale of the property;
- 22 (c) assist the owner in exercising any right of reinstatement or
23 right of redemption;
- 24 (d) obtain any extension of the period within which the owner
25 may reinstate the owner's rights with respect to the property;
- 26 (e) obtain any waiver of an acceleration clause contained in any
27 promissory note, contract, or mortgage evidencing or securing a
28 debt in relation to the property;
- 29 (f) assist the owner in obtaining a loan or advance of funds to
30 pay off the promissory note, contract, or mortgage evidencing or
31 securing a debt in relation to the property; or
- 32 (g) avoid or ameliorate the impairment of the owner's credit
33 resulting from default on the promissory note, contract, or
34 mortgage, or the conduct of a foreclosure sale or tax sale or offer to
35 repair the owner's credit.
- 36 (2) shall not include any of the following:
- 37 (a) a housing counseling agency contracted by the United States
38 Department of Housing and Urban Development to provide
39 counseling;
- 40 (b) a person who holds or is owed an obligation secured by a
41 lien on any distressed property in situations in which the person
42 performs services in connection with the obligation or lien,
43 provided the obligation or lien did not arise as the result of, or as
44 part of, a proposed distressed property conditional conveyance or a
45 distressed property conveyance;
- 46 (c) a person licensed to practice law in this State while acting
47 under the authority of that license; or

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1 (d) a nonprofit, charitable entity qualified pursuant to section
2 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.
3 s.501(c)(3)), which is licensed pursuant to P.L.1979, c.16
4 (C.17:16G-1 et seq.), and which offers counseling or advice to an
5 owner of a distressed property, provided the entity does not contract
6 for services with for-profit lenders or distressed property purchasers
7 or any person who structures or plans a distressed property
8 conveyance;

9 "Owner" means an owner of record of title to a distressed
10 property.

11 "Residual income" means an owner's net income available to
12 meet living expenses after the payment of all ordinary and
13 necessary debt, including payments under an option to purchase
14 back the owner's property transferred in a distressed property
15 conditional conveyance.

16
17 3. A foreclosure consultant shall not conduct any business in
18 this State until the foreclosure consultant:

19 a. obtains a bond from a surety company authorized to do
20 business in the State in a form and an amount to be prescribed by
21 the Director of the Division of Consumer Affairs by regulation; and

22 b. files the bond with the director and obtains written approval
23 of the bond from the director.

24 For the purposes of complying with the requirements of this
25 section, "foreclosure consultant" shall not include:

26 (1) a bank, savings bank, savings and loan association, credit
27 union, or other federally insured financial institution, or insurance
28 company organized, chartered, licensed, or holding a certificate of
29 authority to do business under the laws of this State or any other
30 state or under the laws of the United States;

31 (2) a person licensed pursuant to the "New Jersey Licensed
32 Lenders Act," P.L.1996, c.157 (C.17:11C-1 et seq.), while acting
33 under the authority of that license; or

34 (3) a person licensed as a real estate broker, broker-salesperson,
35 or salesperson pursuant to R.S.45:15-1 et seq., while acting under
36 the authority of that license.

37
38 4. a. A foreclosure consultant contract shall be written in plain
39 language and shall fully disclose the exact nature of the foreclosure
40 consultant's services and the total amount and terms of
41 compensation.

42 b. The following notice, printed in at least 14-point boldface
43 type, if the contract is printed, or in capital letters, if the contract is
44 typed, and completed with the name of the foreclosure consultant,
45 shall be printed immediately above the statement required by
46 subsection c. of this section:

1 "NOTICE REQUIRED BY NEW JERSEY LAW
2(Name) or anyone working for him or her
3 CANNOT:

4 (1) Take any money from you or ask you for money until
5(Name) has completely finished doing
6 everything he or she said would be done; or

7 (2) Ask you to sign or have you sign any lien, mortgage, or deed
8 unless all provisions of the "Foreclosure Rescue Fraud Prevention
9 Act," P.L. , c (C.) (pending before the Legislature as this
10 bill), and any other applicable federal and State laws have been
11 complied with.

12 (3) Guarantee that they will be able to refinance a loan on your
13 home or arrange for you to keep your home."

14 c. A foreclosure consultant contract shall be written in the
15 same language as principally used by the foreclosure consultant to
16 describe the consultant's services or to negotiate the contract, shall
17 be dated and signed by the owner, and shall contain in immediate
18 proximity to the space reserved for the owner's signature a
19 conspicuous statement in 14-point boldface type, if the contract is
20 printed, or in capital letters, if the contract is typed, as follows:

21 "You, the owner, may cancel this transaction at any time until
22 after the foreclosure consultant has fully performed every service
23 the foreclosure consultant contracted to perform or represented
24 would be performed. See the attached notice of cancellation form
25 for an explanation of this right."

26 d. A foreclosure consultant contract shall contain on the first
27 page, in a type size no smaller than that generally used in the body
28 of the document, each of the following:

29 (1) the name and address of the foreclosure consultant to which
30 the notice of cancellation is to be mailed; and

31 (2) the date the owner signed the contract.

32 e. A foreclosure consultant contract shall be accompanied by a
33 completed form, captioned "NOTICE OF CANCELLATION"
34 which shall be attached to the contract and easily detachable, and
35 shall contain, in at least 14-point boldface type, if the contract is
36 printed, or in capital letters, if the contract is typed, the following
37 statement written in the same language as used in the contract:

38
39 "NOTICE OF CANCELLATION
40

41 (Enter date of transaction)

42 You may cancel this transaction, without any penalty or
43 obligation, at any time until after the foreclosure consultant has
44 fully performed every service the foreclosure consultant contracted
45 to perform or represented would be performed.

46 To cancel this transaction, mail or deliver a signed and dated
47 copy of this cancellation notice, or any other written notice to:

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1(Name of foreclosure consultant) at
2(Address of foreclosure consultant's place
3 of business)

4 I hereby cancel this transaction on(Date)
5(Owner's signature).”

6 f. The foreclosure consultant shall provide the owner with a
7 copy of a foreclosure consultant contract and the attached notice of
8 cancellation in duplicate immediately upon execution of the
9 contract.

10 g. The foreclosure consultant shall record the contract with the
11 county clerk in the county in which the distressed property is
12 located, within 10 business days of its execution.

13

14 5. a. In addition to any other legal right to rescind a
15 foreclosure consultant contract, an owner has the right to cancel a
16 foreclosure consultant contract at any time until after the
17 foreclosure consultant has fully performed every service the
18 foreclosure consultant contracted to perform or represented would
19 be performed.

20 b. Cancellation occurs when the owner delivers by any means,
21 written notice of cancellation to the foreclosure consultant at the
22 address specified in the foreclosure consultant contract. A notice of
23 cancellation, if given by mail, is effective when deposited in the
24 mail properly addressed with postage prepaid. A notice of
25 cancellation sent by certified mail, return receipt requested, to the
26 address specified in the foreclosure consultant contract, shall be
27 conclusive proof of notice of cancellation.

28 c. A notice of cancellation given by the owner need not take
29 the particular form as provided with the foreclosure consultant
30 contract and, however expressed, is effective if it indicates the
31 intention of the owner not to be bound by the contract.

32

33 6. It is a violation of this act for a foreclosure consultant to:

34 a. claim, demand, charge, collect, or receive any compensation
35 until after the foreclosure consultant has fully performed every
36 distressed property service the foreclosure consultant contracted to
37 perform or represented would be performed, unless compensation
38 for partial performance is expressly agreed to by both parties in the
39 foreclosure contract;

40 b. claim, demand, charge, collect, or receive any fee, interest,
41 or any other compensation for any reason, in excess of two monthly
42 mortgage payments of principal and interest, or the most recent
43 quarterly property tax installment on the distressed property,
44 whichever is less;

45 c. take a wage assignment, a lien of any type on real or
46 personal property, or other security to secure the payment of
47 compensation. Any agreement to take such security is void and
48 unenforceable;

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- 1 d. receive any consideration from any third party in connection
2 with distressed property services rendered to an owner;
3 e. acquire any interest, directly or indirectly, or by means of a
4 subsidiary or affiliate in a distressed property from an owner with
5 whom the foreclosure consultant has contracted;
6 f. accept any power of attorney from an owner for any
7 purpose, except to inspect documents as provided by law; or
8 g. induce or attempt to induce an owner to enter a contract that
9 does not comply in all respects with sections 4 and 5 of this act.

10

11 7. a. Any waiver by an owner of the provisions of section 4, 5,
12 or 6 of this act is void and unenforceable as contrary to public
13 policy.

14 b. Any attempt by a foreclosure consultant to induce an owner
15 to waive the owner's rights is a violation of this act.

16

17 8. a. A distressed property purchaser who enters into a
18 distressed property conditional conveyance or a distressed property
19 conveyance shall do so in the form of a written contract. A
20 distressed property conditional conveyance contract and a distressed
21 property conveyance contract shall be written in at least 14-point
22 boldface type, in the same language principally used by the owner
23 to negotiate the sale of the distressed property, shall be fully
24 completed, signed, and dated by the owner and the distressed
25 property purchaser, and shall be witnessed and acknowledged by a
26 notary public, before the owner executes a deed or any other
27 instrument of conveyance of the distressed property.

28 b. A distressed property conditional conveyance contract and a
29 distressed property conveyance contract shall contain the entire
30 agreement of the parties, be fully assignable, and survive delivery
31 of any deed or any other instrument of conveyance of the distressed
32 property.

33 c. A distressed property conditional conveyance contract and a
34 distressed property conveyance contract shall include the following
35 terms, except that a distressed property conveyance contract shall
36 not be required to contain the terms set forth in paragraph (5):

37 (1) the name, business address, and telephone number of the
38 distressed property purchaser;

39 (2) the address of the distressed property;

40 (3) the total consideration to be given by the distressed property
41 purchaser in connection with or incident to the transaction;

42 (4) a complete description of the terms of payment or other
43 consideration including, but not limited to, any distressed property
44 services of any nature that the distressed property purchaser
45 represents will be performed for the owner before or after the
46 transaction;

47 (5) a complete description of the terms of any related agreement
48 designed to allow the owner to remain in the dwelling including,

1 but not limited to, a lease agreement, repurchase agreement,
2 contract for deed, or a lease agreement with an option to purchase;

3 (6) a notice of cancellation as provided in this section;

4 (7) the following notice in at least 14-point boldface type, if the
5 contract is printed, or in capital letters, if the contract is typed, and
6 completed with the name of the distressed property purchaser
7 immediately above the statement required by this section:

8 "NOTICE REQUIRED BY NEW JERSEY LAW

9 Until your right to cancel this contract has ended,
10(Name) or anyone working for
11(Name) CANNOT ask you to sign or have you sign
12 any deed or any other document. You are urged to have this
13 contract reviewed by an attorney of your choice within five
14 business days of signing it."; and

15 (8) if title to the distressed property will be transferred in the
16 transaction, the following notice in at least 14-point boldface type,
17 if the contract is printed, or in capital letters, if the contract is typed,
18 and completed with the name of the distressed property purchaser
19 immediately above the statement required by this section:

20 "NOTICE REQUIRED BY NEW JERSEY LAW

21 As part of this transaction, you are giving up title to your home."
22

23 9. a. In addition to any other right of rescission provided by
24 applicable State or federal laws, the owner has the right to cancel a
25 distressed property conditional conveyance contract or a distressed
26 property conveyance contract with a distressed property purchaser
27 until midnight of the 10th business day following the day on which
28 the owner signs the contract, or until 8:00 a.m. on the last day of the
29 period during which the owner has a right of redemption pursuant to
30 the provisions of the "Fair Foreclosure Act," P.L.1995, c.244
31 (C.2A:50-53 et seq.) or the provisions of the "tax sale law," chapter
32 5 of Title 54 of the Revised Statutes, whichever occurs first.

33 b. Cancellation of the contract occurs when the owner delivers,
34 by any means, written notice of cancellation to the address specified
35 in the contract. Notice of cancellation, if given by mail, is effective
36 when deposited in the mail properly addressed with postage
37 prepaid. Notice by certified mail, return receipt requested, to the
38 address specified in the contract, shall be conclusive proof of notice
39 of cancellation.

40 c. A notice of cancellation given by the owner need not take
41 the particular form as provided with the contract, and however
42 expressed, is effective if it indicates the intention of the owner not
43 to be bound by the contract.

44 d. Within 10 business days following receipt of a notice of
45 cancellation delivered in accordance with this section, the distressed
46 property purchaser shall return to the owner, without condition, any
47 original contract and any other documents signed by the owner.

1 10. a. A distressed property conditional conveyance contract
2 and a distressed property conveyance contract with a distressed
3 property purchaser shall contain in immediate proximity to the
4 space reserved for the owner's signature a conspicuous statement in
5 a size equal to at least 14-point boldface type, if the contract is
6 printed, or in capital letters, if the contract is typed, as follows:

7 "You may cancel this contract for the conveyance of your house,
8 without any penalty or obligation, at any time before
9(Date and time of day). See the attached
10 notice of cancellation form for an explanation of this right."

11 The distressed property purchaser shall accurately enter the date
12 and time of day on which the cancellation right ends.

13 b. A contract with a distressed property purchaser shall be
14 accompanied by a completed form in duplicate, captioned
15 "NOTICE OF CANCELLATION" in a size equal to a 14-point
16 boldface type, if the contract is printed, or in capital letters, if the
17 contract is typed, followed by a space in which the distressed
18 property purchaser shall enter the date on which the owner executes
19 any contract. This form shall be attached to the contract, shall be
20 easily detachable, and shall contain in at least 14-point type, if the
21 contract is printed, or in capital letters, if the contract is typed, the
22 following statement written in the same language as used in the
23 contract:

24 "NOTICE OF CANCELLATION

25

26 (Enter date contract signed)

27 You may cancel this contract for the conveyance of your home,
28 without any penalty or obligation, at any time before
29 (enter date and time of day). To cancel this
30 transaction, mail or deliver a signed and dated copy of this
31 cancellation notice to (Name of purchaser) at
32 (Street address of purchaser's place of
33 business) NOT LATER THAN
34 (Enter date and time of day).

35 I hereby cancel this transaction on (Date)
36 (Owner's
37 signature)."

38 c. The distressed property purchaser shall provide the owner
39 with a copy of the contract and the attached notice of cancellation in
40 duplicate at the time the contract is executed by all parties.

41 d. The distressed property purchaser shall record the contract
42 and the attached notice of cancellation with the county clerk in the
43 county in which the distressed property is located within 10
44 business days of the signing of the contract by both parties.

45 e. The 10 business days during which the owner may cancel
46 the contract shall not begin to run until all parties to the contract
47 have executed the contract and the distressed property purchaser has
48 complied with all the requirements of this section.

- 1 11. a. A distressed property purchaser, in the course of a
2 distressed property conditional conveyance, shall not:
- 3 (1) enter into, or attempt to enter into, a distressed property
4 conditional conveyance unless the distressed property purchaser
5 verifies and can demonstrate that the owner has a reasonable ability
6 to pay for the subsequent conveyance of a fee interest back to the
7 owner under the terms of any option to purchase and a reasonable
8 ability to make monthly or any other required payments due prior to
9 the subsequent conveyance;
- 10 (2) fail to make a payment to the owner at the time the title to
11 the distressed property is conveyed from the owner to the distressed
12 property purchaser, or, if the distressed property purchaser acquires
13 a beneficial interest through a trust, at the time of the creation of the
14 trust, so that the owner has received consideration in an amount of
15 at least 82% of the property's fair market value, or, in the
16 alternative, fail to make a payment to the owner, in situations in
17 which the owner is unable to purchase the distressed property from
18 the distressed property owner at the time of the expiration of the
19 owner's option to purchase, so that the owner has received
20 consideration in an amount of at least 82% of the property's fair
21 market value;
- 22 (3) enter into an option to purchase or lease as part of a
23 distressed property conditional conveyance containing terms that
24 are unfair or commercially unreasonable, or engage in any other
25 unfair conduct;
- 26 (4) represent, directly or indirectly, that the distressed property
27 purchaser is acting as an advisor or a consultant, or in any other
28 manner represent that the distressed property purchaser is acting on
29 behalf of the homeowner;
- 30 (5) misrepresent the distressed property purchaser's status as to
31 licensure or certification;
- 32 (6) do any of the following until after the time during which the
33 owner may cancel the transaction:
- 34 (a) accept from the owner an execution of a deed or any other
35 instrument of conveyance of any interest in the distressed property;
- 36 (b) induce the owner to execute a deed or any other instrument
37 of conveyance of any interest in the distressed property; or
- 38 (c) record with the county recorder of deeds any document
39 signed by the owner, including but not limited to a deed or any
40 other instrument of conveyance;
- 41 (7) fail to convey title to the distressed property to the owner
42 under an option to purchase provided for in the distressed property
43 conveyance contract, in situations in which the terms of the
44 conveyance contract have been fulfilled;
- 45 (8) enter into a distressed property conditional conveyance if
46 any party to the transaction is represented by way of a power of
47 attorney;

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1 (9) fail to extinguish all liens encumbering the distressed
2 property, immediately following the conveyance of the distressed
3 property, or fail to assume all liability with respect to the lien in
4 foreclosure and prior liens that will not be extinguished by the
5 foreclosure, which assumption shall be accomplished without
6 violations of the terms and conditions of the lien being assumed;

7 (10) cause the property to be conveyed or encumbered without
8 the knowledge or permission of the owner, or in any way frustrate
9 the ability of the owner to complete the conveyance back to the
10 owner;

11 (11) fail to have all documents executed as part of a distressed
12 property conditional conveyance also signed by a notary public
13 licensed in the State who is unrelated in any way to the distressed
14 property purchaser or any participant in the distressed property
15 conveyance;

16 (12) fail to complete a distressed property conditional
17 conveyance in the office of a title insurance producer licensed
18 pursuant to the "New Jersey Insurance Producer Licensing Act of
19 2001," P.L.2001, c.210 (C.17:22A-26 et seq.), or in the office of an
20 attorney licensed to practice law in this State;

21 (13) fail to provide to the owner, prior to the time of completion
22 of a distressed property conditional conveyance, a disclosure
23 statement in a form to be designed and prescribed by regulation by
24 the Director of the Division of Consumer Affairs, within the
25 Department of Law and Public Safety, in consultation with the
26 Commissioner of Banking and Insurance, which statement shall
27 require disclosure to the owner of all costs that the owner will incur
28 in connection with the conveyance and any option for the owner to
29 purchase the property, including a schedule of monthly and annual
30 payments, closing costs, and any additional costs and fees related to
31 the conveyance;

32 (14) claim, demand, charge, collect, or receive any fee, interest,
33 or any other compensation for any reason from an owner, for
34 services or as consideration for participating in the conveyance
35 transaction, in excess of two monthly mortgage payments of
36 principal and interest, or the most recent quarterly property tax
37 installment on the distressed property, whichever is less; and

38 (15) in situations in which the distressed property conditional
39 conveyance involves a transfer of an interest in fee from an owner
40 to a distressed property purchaser, fail to record the deed to the
41 purchaser in the county clerk's office in which the property is
42 located, or fail to include a statement on the recorded deed that the
43 deed was obtained through a transaction governed by the
44 "Foreclosure Rescue Fraud Prevention Act."

45 b. For purposes of paragraph (1) of subsection a. of this
46 section, an evaluation of "reasonable ability to pay" shall include
47 the owner's debt to income ratio, the owner's residual income, the
48 fair market value of the distressed property, and the owner's credit

1 history. There shall be a rebuttable presumption that the distressed
2 property purchaser has not verified reasonable payment ability if
3 the distressed property purchaser has not obtained documents of
4 assets, liabilities, and income, other than a statement by the owner.

5 c. For purposes of paragraph (2) of subsection a. of this
6 section: (1) an appraisal at the time that the distressed property is
7 conveyed by a person licensed or certified by an agency of this
8 State or the federal government shall create a rebuttable
9 presumption that the appraisal is an accurate determination of the
10 fair market value of the property; and (2) "consideration" means any
11 payment or thing of value provided to the owner, including
12 reasonable costs paid to independent third parties necessary to
13 complete the distressed property conveyance or payment of money
14 to satisfy a debt or legal obligation of the owner. "Consideration"
15 shall not include amounts imputed as a down payment or fee to the
16 distressed property purchaser, or a person acting in participation
17 with the distressed property purchaser.

18 d. If an owner fails to make a required payment or otherwise
19 defaults under a distressed property conditional conveyance
20 contract which contains an owner's option to purchase or a promise
21 to convey an interest in fee back to the owner, the distressed
22 property purchaser shall only enforce the forfeiture of the owner's
23 interest under the contract as follows:

24 (1) for purposes of the "Fair Foreclosure Act," P.L.1995, c.244
25 (C.2A:50-53 et seq.), the distressed property conditional
26 conveyance contract shall be deemed to be a residential mortgage,
27 the distressed property purchaser shall be deemed to be a lender,
28 and the owner shall be deemed to be a debtor; and

29 (2) the distressed property purchaser may bring an action to
30 enforce the forfeiture of the owner's interest in the property and for
31 recovery of possession of the property by use of the procedures for
32 foreclosure and judicial sale of residential real property available to
33 lenders pursuant to the provisions of the "Fair Foreclosure Act."
34

35 12. A distressed property purchaser, in the course of a distressed
36 property conveyance, shall not fail to:

37 a. make a payment to the owner at the time the title to the
38 distressed property is conveyed from the owner to the distressed
39 property purchaser, so that the owner has received consideration, as
40 defined by paragraph (2) of subsection c. of section 11 of this act, in
41 an amount of at least 82% of the property's fair market value;

42 b. have all documents executed as part of a distressed property
43 conveyance also signed by a notary public licensed in the State who
44 is unrelated in any way to the distressed property purchaser or any
45 participant in the distressed property conveyance;

46 c. complete a distressed property conveyance in the office of a
47 title insurance producer licensed pursuant to the "New Jersey
48 Insurance Producer Licensing Act of 2001," P.L.2001, c.210

1 (C.17:22A-26 et seq.), or in the office of an attorney licensed to
2 practice law in the State; and

3 d. provide to the owner, prior to the time of completion of a
4 distressed property conveyance, a disclosure statement in a form to
5 be designed and prescribed by regulation by the Director of the
6 Division of Consumer Affairs, within the Department of Law and
7 Public Safety, in consultation with the Commissioner of Banking
8 and Insurance, which statement shall require disclosure to the
9 owner of all costs and fees that the owner will incur in connection
10 with the conveyance.

11

12 13. Any waiver of the provisions of sections 8, 9, 10, 11, or 12
13 of this act is void and unenforceable as contrary to public policy.

14

15 14. a. Any person who violates any provision of this act shall,
16 in addition to any other penalty provided by law, be liable to a
17 penalty of not more than \$10,000 for the first offense, and not more
18 than \$20,000 for the second and each subsequent offense, which
19 penalty may be collected in a summary proceeding pursuant to the
20 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
21 et seq.).

22 b. A person who violates any provision of this act is guilty of a
23 crime of the third degree. A person who violates any provision of
24 this act in connection with a pattern of foreclosure rescue fraud or a
25 conspiracy or endeavor to engage in a pattern of foreclosure rescue
26 fraud is guilty of a crime of the second degree.

27 c. Any distressed property conditional conveyance or
28 distressed property conveyance involving the transfer of an interest
29 in fee or a beneficial interest through a trust document, which is
30 made in violation of any provision of this act, is voidable and the
31 transfer may be rescinded by the owner within two years of the date
32 of the transfer.

33 d. An owner may bring an action in Superior Court against a
34 foreclosure consultant or a distressed property purchaser for any
35 violation of this act, for treble damages, attorney's fees, costs of
36 suit and appropriate equitable relief. In an action under this
37 subsection, the owner may:

38 (1) cause a notice of lis pendens to be filed in the office of the
39 county clerk in the county in which the property is located, pursuant
40 to N.J.S.2A:15-6 et seq.; and

41 (2) introduce or provide as evidence in the action, any
42 contemporaneous oral agreements or representations made to the
43 owner by any party to a foreclosure consultant contract, distressed
44 property conditional conveyance contract, or distressed property
45 conveyance contract signed by the owner.

46 e. The remedies and rights provided for in this act are not
47 exclusive, but cumulative, and all other remedies or rights provided

1 by State or federal law, including, but not limited to, those brought
2 under the doctrine of equitable mortgage, are specifically preserved.

3

4 15. The Director of the Division of Consumer Affairs, within the
5 Department of Law and Public Safety, in consultation with the
6 Commissioner of Banking and Insurance, shall enforce the
7 provisions of this act, and may promulgate regulations pursuant to
8 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
9 et seq.) necessary to effectuate the purposes of the act.

10

11 16. This act shall take effect on the 90th day following
12 enactment.

13

14

STATEMENT

15

16 This bill, the "Foreclosure Rescue Fraud Prevention Act,"
17 requires foreclosure consultants and distressed property purchasers,
18 who contract with owners of residential properties in financial
19 distress, to adhere to certain practices in providing foreclosure
20 prevention services to owners.

21 The bill requires a foreclosure consultant to post a bond with the
22 Division of Consumer Affairs prior to conducting any business in
23 the State. In addition, the bill provides certain contract rights for
24 owners of a financially distressed residential property, as defined in
25 the bill, who contract with foreclosure consultants, including
26 requirements that:

27 (1) the contract for foreclosure consulting services must be in
28 writing and must contain certain disclosures and notice
29 requirements in 14-point boldface type; and

30 (2) the owner has a right to cancel the foreclosure consulting
31 contract at any time until after the foreclosure consultant has fully
32 performed every service the consultant contracted to perform.

33 The bill also prohibits certain practices by foreclosure
34 consultants, including:

35 (1) collecting any fee prior to the completion of all agreed upon
36 services, unless compensation for partial performance is expressly
37 agreed upon in the contract; and

38 (2) collecting fees in excess of certain limits as described in the
39 bill.

40 In situations in which there is a distressed property conditional
41 conveyance, whereby an owner transfers the distressed property to a
42 distressed property purchaser, occupies the property, and retains an
43 option to purchase the property back from the purchaser, or a
44 distressed property conveyance, whereby an owner simply transfers
45 the distressed property to a distressed property purchaser, the bill
46 provides certain contract rights to owners, including requirements
47 that:

1 (1) the contract be in writing and include certain notices and
2 disclosures in 14-point boldface type; and

3 (2) the owner has a right to cancel the contract during certain
4 periods as described in the bill.

5 As to distressed property conditional conveyances, the bill places
6 certain obligations on distressed property purchasers, including
7 requirements to:

8 (1) verify that the owner has a reasonable ability to pay for a
9 subsequent conveyance of title back to the owner;

10 (2) ensure that the owner is paid at least 82% of the property's
11 fair market value in consideration for the owner's conveyance of
12 title, or transfer of a beneficial interest through a trust, to the
13 distressed property purchaser; and

14 (3) provide to the owner, prior to a distressed property
15 conditional conveyance, a disclosure statement that includes all
16 costs the owner will incur in connection with the conveyance and
17 any option for the owner to purchase the property back from the
18 purchaser.

19 As to distressed property conveyances, the bill places certain
20 obligations on distressed property purchasers, including a
21 requirement that the owner is paid at 82% of the property's fair
22 market value in consideration of the owner's transfer of title to the
23 distressed property purchaser.

24 For a violation of the bill's provisions, the bill provides for a
25 civil penalty of not more than \$10,000 for the first offense, and not
26 more than \$20,000 for the second and each subsequent offense,
27 which penalty may be collected in a summary proceeding pursuant
28 to the "Penalty Enforcement Law of 1999," P.L.1999, c.274
29 (C.2A:58-10 et seq.).

30 The bill provides that any person who violates any provision of
31 the bill is guilty of a crime of the third degree. A person who
32 violates any provision of the bill in connection with a pattern of
33 foreclosure rescue fraud or a conspiracy or endeavor to engage in a
34 pattern of foreclosure rescue fraud is guilty of a crime of the second
35 degree.

36 The bill also provides that any distressed property conditional
37 conveyance or distressed property conveyance involving the
38 transfer of an interest in fee or a beneficial interest through a trust
39 document, which is made in violation of any provision of the bill, is
40 voidable and the transfer may be rescinded by the owner within two
41 years of the date of the transfer.

42 In addition, the bill provides that an owner may bring an action
43 in Superior Court against a foreclosure consultant or a distressed
44 property purchaser for any violation of the bill's provisions, for
45 treble damages, attorney's fees, costs of suit and appropriate
46 equitable relief. If an owner commences such an action, the owner
47 may:

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1 (1) cause a notice of lis pendens to be filed in the office of the
2 county clerk in the county in which the property is located, pursuant
3 to N.J.S.2A:15-6 et seq.; and

4 (2) introduce or provide as evidence in the action, any
5 contemporaneous oral agreements or representations made to the
6 owner by any party to a foreclosure consultant contract or distressed
7 property conveyance contract signed by the owner.

8 Finally, the bill provides that the Director of the Division of
9 Consumer Affairs, within the Department of Law and Public Safety,
10 in consultation with the Commissioner of Banking and Insurance,
11 shall enforce the provisions of the bill, and may promulgate
12 regulations necessary to effectuate the purposes of the bill.