



**REAL ESTATE**

**RADIOUSA**



# **SPECIAL REPORT**

**The New Foreclosure Rescue Fraud Prevention Act**

## **Is It The End Of Short Sales For Realtors?**

**Report Date: September 24, 2008**

**Effective Date Of New Law: October 1, 2008**

If you're a real estate investor, real estate agent or a homeowner in foreclosure, you need to be aware of a new law going into effect on October 1, 2006. Many of the clients that we have been asking us lately what this new law is all about. The new law is titled the **Foreclosure Rescue Fraud Prevention Act**, and becomes Florida Statute sec. 501.1377.

Effectively, without a serious change in the way their business is conducted, most real estate agents will **NOT** be able to be involved in short sales in the State of Florida any longer!

This law came about as a way to combat, prevent and prohibit certain fraudulent schemes that many homeowners facing foreclosure end up being the victims of.

Foreclosure rescue is not necessarily fraudulent or even harmful, in fact we often work with homeowners in distress and many of our clients do as well. However there are some not so savory individuals using "rescue" techniques to take advantage of and defraud homeowners. Talk to anyone in foreclosure and they will tell you that they are deluged by individuals or firms that claim they can help them avoid foreclosure.

So what does this have to do with Realtors working on Short Sales. Well, the new law approved by the State and signed into law by Governor Charlie Crist, defines a "foreclosure-rescue consultant" as a person who **directly or indirectly** makes a **solicitation, representation, or offer** to a homeowner to provide or perform, in return for payment of money or other valuable consideration, *foreclosure-related rescue services*.

"Foreclosure-related rescue services" means any good or service related to, or promising assistance in connection with stopping, avoiding, or delaying foreclosure proceedings concerning residential real property or curing or otherwise addressing a default or failure to timely pay with respect to a residential mortgage loan obligation.

The original bill which you can read in its entirety at the end of this report initially provided an exception for attorneys, Realtors and Mortgage brokers. Here is how the original wording read in regards to the exception:

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

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

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

However, on March 6, 2007, the Committee on Financial Institutions voted to recommend a strike-all amendment.

The amendment, "Narrows the exemptions for entities that are considered a 'foreclosure-rescue consultant' by removing lawyers, real estate brokers, and mortgage brokers." See [House of Representatives Staff Analysis dated March 14, 2008](#).

The final version, which also can be read in its entirety at the end of this report had a number of changes. A major change was to eliminate the exception for attorneys and Realtors. Here is how the final version is worded:

The term does not apply to:

1. A person excluded under s. 501.212.
2. A person acting under the express authority or written approval of the United States Department of Housing and Urban Development or other department or agency of the United States or this state to provide foreclosure-related rescue services.
3. A charitable, not-for-profit agency or organization, as determined by the United States Internal Revenue Service under s. 501(c)(3) of the Internal Revenue Code, which offers counseling or advice to an owner of residential real property in foreclosure or loan default if the agency or organization does not contract for foreclosure-related rescue services with a for-profit lender or person facilitating or engaging in foreclosure-rescue transactions.
4. A person who holds or is owed an obligation secured by a lien on any residential real property in foreclosure if the person performs foreclosure-related rescue services in connection with this obligation or lien and the obligation or lien was not the result of or part of a proposed foreclosure reconveyance or foreclosure-rescue transaction.
5. A financial institution as defined in s. 655.005 and any parent or subsidiary of the financial institution or of the parent or subsidiary.
6. A licensed mortgage broker, mortgage lender, or correspondent mortgage lender that provides mortgage counseling or advice regarding residential real property in foreclosure, which counseling or advice is within the scope of services set forth in chapter 494 and is provided without payment of money or other consideration other than a mortgage brokerage fee as defined in s. 494.001.

Notice the difference. While mortgage brokers are still an exception, neither attorneys or Realtors remained excepted from this new law. ***Therefore as a Realtor, you are most assuredly subject to and must act under this law.***

Many agents will read this and say, so what? What's the big deal? This is a good law and it protects the client. After all the basic provisions of this law are to:

- Provide the homeowner with the necessary information regarding the services offered and their rights;

- Prohibit misleading representations and unfair contract terms;
- Provide certain minimum requirements for any contracts including being in writing
- Provide that the rescue consultant can not charge any fees until all the services listed in the contract have been completed;
- Provide for a "cooling-off" period for the homeowner to cancel the contract or a transfer of their home; and to
- Provide that all transfers to a rescue consultant involving a lease-back or sell-back provision creates a rebuttable presumption that the transaction is a loan transaction and the conveyance is a mortgage to the equity purchaser from the homeowner.

As a professional, most real estate agents are already doing this and subscribe to this thinking. So what's the catch? Why should real estate agents who are working Short Sales be concerned.

Well, if you are truly endeavoring to complete your own transactions and are working as both an agent and a loss mitigation rep and have not farmed out any portion of the deal to a 3rd party firm and you are going to continue to work in that manner you should have no problem after October 1, 2008. That is, as long as you charge no retainer or any fee upfront and you have the homeowner execute the requisite disclosures that are required under the new law.

However, if you have been an agent who has been acquiring distressed property owners, and simply taking the listing and then turning over to some 3rd party loss mitigation or negotiation firm and charging a fee upfront to the homeowner. You and your 3rd party "negotiators" may effectively find yourselves out of the Short Sale business on October 1, 2008 as a result of this new law.

The law covers both foreclosure-related services agreements and foreclosure-rescue transactions and casts a wide net with its definition.

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

- 1. Stopping, avoiding, or delaying foreclosure proceedings concerning residential real property; or**
- 2. Curing or otherwise addressing a default or failure to timely pay with respect to a residential mortgage loan obligation.**

As you can see, there is no way around it. This law most assuredly handcuffs real estate agents who are taking the lazy way out and farming out their Short Sale work to upfront fee based 3rd party companies.

The law catches the lazy real estate agent coming and going. It does not provide an exception for Realtors, It words the description of the services performed in a Short Sale transaction as a protected activity under the law and defines who is subject to the law in an expressed definition:

**(b) "Foreclosure-rescue consultant" means a person who directly or indirectly makes a solicitation, representation, or offer to a homeowner to provide or perform, in return for payment of money or other valuable consideration, foreclosure-related rescue services.**

Your compliance with the new Florida legislation requires not just providing certain disclosures but it also requires that the disclosures be provided in a very specific delivery method.

How serious are the ramifications if this law is not adhered to? By **JUST HAVING THE SELLERS SIGN ANY DOCUMENTS...ANY documents!** when you first see them is a **\$15,000 violation!** By you not giving them a copy of what they signed within three hours is **ANOTHER \$15,000 violation**, and it could get much worse if the law is not followed correctly.

**Notice there is no exception for real estate agents so it has been said by many attorneys reviewing this new law that a listing agreement taken with the express professional knowledge that the property is only being listed for the purpose of effecting a Short Sale would indeed be subject to this new law.**

With many Realtors out there calling themselves "short sale experts", this could be a very damaging law. But wait...it gets worse! If this matter is not tried or tested in the Court system, then the disclosures would also extend to any documents signed by the homeowner. One of the provisions of this new law provides for cancellation of any contract signed if the homeowner decides for any reason to back out. The homeowner has 72 hours to back out.

Imagine you take a listing, you have the homeowner sign all the disclosures, you list the property, begin doing the loss mitigation work yourself, because you understand the ramifications of this new law and want to be an upstanding Realtor.

You place the property in the MLS and in a couple of days you get a call from the homeowner and he tells you he is ripping up your agreement and going with another Realtor to help him with his Short Sale, as is his right to do so under this new law.

How many of these deals are you going to chase before you, like many Realtors simply decide to forego working on Short Sales and declare them simply not worth the effort and potential trouble?.

There are many real estate agents out there absolutely winging it when it comes to short sales. They have no experience and no educational background on how to properly effect a successful short sale and these kinds of laws scare and intimidate them.

Many are flat out lazy and referring homeowners to "short sale loss mitigation" firms that charge homeowners a fee upfront.

Well as you have read, on October 1, 2008 this will no longer be legal.

We have talked to some of these firms and it is not uncommon for them to have literally thousands of short sale cases that they are working on. Why? Because most real estate agents don't know how to handle short sales and they simply drop the transaction into the laps of these "companies". Well that ride is about to come to an abrupt stop.

What's the answer? Learn how to properly execute Short Sale transactions on your own. They are really not that hard or time consuming if you know what you're doing.

The law was put into place to protect homeowners. We personally think it could have been even more stringent. We are all lucky that it didn't go further and it allows us to continue finding and capitalizing on these abundant opportunities.

As we have seen in the last week or so, our economy is **DEPENDENT** upon the massive amount of bad mortgages being settled in as expeditious a manner as possible. As real estate agents, you are on the front line. The financial triage that needs to take place is going to be accomplished by trained, expert, professional Realtors who know what they are doing and aren't afraid to do a little work.

Luckily we have not taken on **ALL** of the characteristics of a Socialist nation and we can all enjoy the fruits of our endeavors as successful Short Sale negotiators.

As an individual you now have a choice to make. Are you going to learn how to properly perform and negotiate a Short Sale on your own and reap the financial benefits therefrom?

Or are you going to allow this new law to claim you as a statistic and cause you to be eliminated from the Short Sale sector of the real estate industry?

Hurry, you only have a week to decide!



# **SPECIAL REPORT**

**THE TEXT OF THE ORIGINAL  
PROPOSED LEGISLATION**

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-rescue consultant  
7           from engaging in certain acts or failing to perform  
8           contracted services; requiring that all agreements for  
9           foreclosure-related rescue services and foreclosure-rescue  
10          transactions be in writing; specifying information that  
11          must be in the written agreement; requiring that certain  
12          statements in the written agreement be in bold type, in  
13          uppercase letters, and of a specified size; providing that  
14          the 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 equity purchasers to assume or discharge certain  
19          liens; requiring that an equity purchaser verify the  
20          homeowner's ability to make payments under a repurchase  
21          agreement; providing price limitations for repurchase  
22          transactions; providing that a foreclosure-rescue  
23          transaction involving a lease option or other repurchase  
24          agreement creates a rebuttable presumption that the  
25          transaction is a loan transaction and the conveyance from

26 | the homeowner to the equity purchaser is a mortgage;  
27 | providing that a person who violates certain provisions of  
28 | the act commits an unfair and deceptive trade practice as  
29 | defined in ch. 501, F.S.; providing penalties; providing  
30 | an effective date.

31 |  
32 | Be It Enacted by the Legislature of the State of Florida:  
33 |

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

51 preserving their rights to possession of their homes; to afford  
52 homeowners a reasonable and meaningful opportunity to rescind  
53 sales to equity purchasers; and to preserve and protect home  
54 equity for the homeowners of this state.

55 Section 2. Definitions.--As used in this act, the term:

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

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

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

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

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

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

68 (f) As a deed in lieu of foreclosure, a workout agreement,  
69 a bankruptcy plan, or any other agreement between a foreclosing  
70 lender and a homeowner.

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

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

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

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

89        (d) A person acting under the express authority or written  
90 approval of the United States Department of Housing and Urban  
91 Development or other department or agency of the United States  
92 or this state to provide foreclosure-related rescue services.

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

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

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

109        (3) "Foreclosure-related rescue services" means any good  
110 or service related to, or promising assistance in connection  
111 with:

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

114        (b) Curing or otherwise addressing a default or failure to  
115 timely pay with respect to a residential mortgage loan  
116 obligation.

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

118        (a) By which residential real property is conveyed to an  
119 equity purchaser and the homeowner maintains a legal or  
120 equitable interest in the residential real property conveyed,  
121 including, without limitation, a lease interest, an option to  
122 acquire the property, an interest as beneficiary or trustee to a  
123 land trust, or other interest in the property conveyed; and

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

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

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

134 (7) "Residential real property in foreclosure" means  
135 residential real property against which there is an outstanding  
136 notice of the pendency of foreclosure recorded pursuant to s.  
137 48.23, Florida Statutes, against which a summons and a complaint  
138 have been served under chapter 702, Florida Statutes, or that is  
139 owned by a person who is more than 90 days delinquent on any  
140 loan that is secured by the property.

141 Section 3. Prohibited acts.--In the course of offering or  
142 providing foreclosure-related rescue services, a foreclosure-  
143 rescue consultant, including the consultant's salespersons,  
144 agents, representatives, or independent contractors, may not:

145 (1) Engage in or initiate foreclosure-related rescue  
146 services without first executing a written agreement for  
147 foreclosure-related rescue services; or

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

153       Section 4. Foreclosure-related rescue services; written  
154 agreement.--

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

167       (2) The written agreement must clearly state that the  
168 homeowner may cancel the written agreement without any penalty  
169 or obligation if the homeowner cancels the agreement within 5  
170 business days after signing the written agreement. The right to  
171 cancel may not be waived by the homeowner or limited in any  
172 manner by the foreclosure-rescue consultant. If the homeowner

173 cancels the agreement, any payments that have been given to the  
 174 foreclosure-rescue consultant must be returned to the homeowner  
 175 within 10 days after receipt of the notice of cancellation.

176 (3) An agreement for foreclosure-related rescue services  
 177 must contain, immediately above the signature line for the  
 178 homeowner in bold, uppercase, 14-point or larger type, the  
 179 following disclosures:

181 HOMEOWNER'S RIGHT OF CANCELLATION

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

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

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



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222 The agreement must contain the entire understanding of the  
223 parties and must include:

224 1. The name, business address, and telephone number of the  
225 equity purchaser.

226 2. The street address and full legal description of the  
227 property.

228 3. Clear and conspicuous disclosure of any financial or  
229 legal obligations of the homeowner that will be assumed by the  
230 equity purchaser.

231 4. The total consideration to be paid by the equity  
232 purchaser in connection with or incident to the acquisition of  
233 the property by the equity purchaser.

234 5. The terms of payment or other consideration, including,  
235 but not limited to, any services that the equity purchaser  
236 represents will be performed for the homeowner before or after  
237 the sale.

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

240 (b) Every foreclosure-rescue transaction agreement must  
241 contain, above the signature line for the homeowner, a statement  
242 in 16-point bold type that complies substantially with the  
243 following:

244  
245 I understand that under this agreement I am selling my  
246 house to the other undersigned party.

247  
248       (c) Each foreclosure-rescue transaction agreement must  
249 state the specifications of any option or right to repurchase  
250 the residential real property in foreclosure, including the  
251 specific amounts of any escrow payments or deposit, down  
252 payment, purchase price, closing costs, commissions, or other  
253 fees or costs.

254       (2) An equity purchaser must give the homeowner, at the  
255 time the written agreement is signed, a notice stating that the  
256 homeowner may cancel the transaction without penalty if the  
257 homeowner cancels the transaction within 5 business days after  
258 signing the agreement. The equity purchaser must return to the  
259 homeowner any moneys paid by the homeowner within 30 days after  
260 the homeowner notifies the equity purchaser of such  
261 cancellation. The right to cancel does not limit or otherwise  
262 affect the homeowner's right to cancel the transaction under any  
263 other law. The right to cancel is not conditioned upon the  
264 homeowner's repayment of money paid to the homeowner under the  
265 foreclosure-rescue transaction. The right to cancel may not be  
266 waived by the homeowner or limited in any way by the equity  
267 purchaser. Notice of the right to cancel must serve as the cover  
268 sheet to the written agreement to enter into a foreclosure-  
269 rescue transaction. The notice must be on a separate sheet of  
270 paper with no other written or pictorial material, be in at

271 least 12-point bold, uppercase, double-spaced type, and read as  
 272 follows:

274 NOTICE TO THE HOMEOWNER/SELLER

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

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

283 THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY  
 284 YOU OR BY THE PURCHASERS.

286 ANY MONEY PAID TO YOU MUST BE RETURNED TO THE PURCHASER  
 287 WITHIN 30 DAYS AFTER CANCELLATION.

289 TO CANCEL, SIGN THIS FORM AND RETURN IT TO THE PURCHASER BY  
 290 5:00 P.M. ON \_\_\_\_\_ (DATE) AT \_\_\_\_\_  
 291 (ADDRESS) . IT IS BEST TO MAIL IT BY CERTIFIED MAIL OR OVERNIGHT  
 292 DELIVERY, RETURN RECEIPT REQUESTED, AND TO KEEP A PHOTOCOPY OF  
 293 THE SIGNED FORM AND YOUR POST OFFICE RECEIPT.

295 I (we) hereby cancel this transaction.

296 \_\_\_\_\_ Seller's Signature  
 297 \_\_\_\_\_ Printed Name of Seller  
 298 \_\_\_\_\_ Seller's Signature  
 299 \_\_\_\_\_ Printed Name of Seller  
 300 \_\_\_\_\_ Date

302 (3) In any foreclosure-rescue transaction in which the  
 303 homeowner is provided the right to repurchase the residential  
 304 real property, the homeowner has a 30-day right to cure any  
 305 default of the terms of the contract, and this right to cure may  
 306 be exercised on at least three separate occasions during the  
 307 life of the foreclosure-rescue transaction or any agreement by  
 308 the parties. The homeowner's right to cure must be included in  
 309 any written agreement required by this section.

310 (4) In any foreclosure-rescue transaction, before or at  
 311 the time of conveyance, the equity purchaser must fully assume  
 312 or discharge any lien in foreclosure as well as any prior liens  
 313 that will not be extinguished by the foreclosure, which  
 314 assumption or discharge must be accomplished without violating  
 315 the terms and conditions of the liens being assumed or  
 316 discharged.

317 (5) If the homeowner has the right to repurchase the  
 318 residential real property, the equity purchaser must verify and  
 319 be able to demonstrate that the homeowner has or will have a  
 320 reasonable ability to make the required payments to exercise the

321 option to repurchase under the written agreement. For purposes  
322 of this section, there is a rebuttable presumption that the  
323 homeowner has a reasonable ability to make payments and to  
324 repurchase the property if the homeowner's payments for primary  
325 housing expenses and regular principal and interest payments on  
326 other personal debt do not exceed 60 percent of the homeowner's  
327 monthly gross income.

328 (6) If the homeowner has the right to repurchase the  
329 residential real property, the price the homeowner pays may not  
330 be unconscionable, unfair, or commercially unreasonable. A  
331 repurchase price offered within 2 years after the sale of the  
332 residential real property in foreclosure that exceeds 25 percent  
333 of the price at which the equity purchaser acquired the property  
334 creates a rebuttable presumption that the foreclosure-rescue  
335 transaction was unconscionable. The acquisition price paid by  
336 the equity purchaser may include any actual costs incurred by  
337 the purchaser in acquiring the property.

338 Section 6. Rebuttable presumption.--Any foreclosure-rescue  
339 transaction involving a lease option or other repurchase  
340 agreement creates a rebuttable presumption that the transaction  
341 is a loan transaction and the conveyance from the homeowner to  
342 the equity purchaser is a mortgage.

343 Section 7. Violations.--A person who violates any  
344 provision of this act commits an unfair and deceptive trade  
345 practice as defined in part II of chapter 501, Florida Statutes.

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346 | Violators are subject to the penalties and remedies provided in  
347 | part II of chapter 501, Florida Statutes, including a monetary  
348 | penalty not to exceed \$15,000 per violation.

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



# **SPECIAL REPORT**

**THE TEXT OF THE FINAL  
APPROVED LEGISLATION**

## Council Substitute for House Bill No. 643

An act relating to foreclosure fraud; creating s. 501.1377, F.S.; providing legislative findings and intent with respect to the need to protect homeowners who enter into agreements designed to save their homes from foreclosure; providing definitions; prohibiting a foreclosure-rescue consultant from engaging in certain acts or failing to perform contracted services; requiring that all agreements for foreclosure-related rescue services and foreclosure-rescue transactions be in writing; specifying information that must be in the written agreement; requiring that certain statements in the written agreement be in uppercase letters and of a specified size; providing that the homeowner has a right to cancel the agreement for a specified period and the right may not be waived; providing that the homeowner has a specified period during which to cure a default under certain circumstances; requiring equity purchasers to assume or discharge certain liens; requiring that an equity purchaser verify the homeowner's ability to make payments under a repurchase agreement; providing price limitations for repurchase transactions; providing for a rebuttable presumption of certain transactions being unconscionable under certain circumstances; providing for limited application of the presumption; providing an exclusion; providing that a foreclosure-rescue transaction involving a lease option or other repurchase agreement creates a rebuttable presumption that the transaction is a loan transaction and the conveyance from the homeowner to the equity purchaser is a mortgage; providing limited application of the presumption; providing an exclusion; providing that a person who violates certain provisions commits an unfair and deceptive trade practice as defined in part II of ch. 501, F.S.; providing penalties; repealing s. 501.2078, F.S., relating to violations involving individual homeowners during the course of residential foreclosure proceedings; providing an effective date.

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

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

501.1377 Violations involving homeowners during the course of residential foreclosure proceedings.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that homeowners who are in default on their mortgages, in foreclosure, or at risk of losing their homes due to nonpayment of taxes may be vulnerable to fraud, deception, and unfair dealings with foreclosure-rescue consultants or equity purchasers. The intent of this section is to provide a homeowner with information necessary to make an informed decision regarding the sale or transfer of his or her home to an equity purchaser. It is the further intent of this section to require that foreclosure-related rescue services agreements be expressed in writing in order to safeguard homeowners against deceit and financial hardship; to ensure, foster, and encourage fair dealing in the sale

and purchase of homes in foreclosure or default; to prohibit representations that tend to mislead; to prohibit or restrict unfair contract terms; to provide a cooling-off period for homeowners who enter into contracts for services related to saving their homes from foreclosure or preserving their rights to possession of their homes; to afford homeowners a reasonable and meaningful opportunity to rescind sales to equity purchasers; and to preserve and protect home equity for the homeowners of this state.

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

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

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

2. At a sale of property authorized by statute;

3. By order or judgment of any court;

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

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

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

1. A person excluded under s. 501.212.

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

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

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

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

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

(c) “Foreclosure-related rescue services” means any good or service related to, or promising assistance in connection with:

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

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

(d) “Foreclosure-rescue transaction” means a transaction:

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

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

(e) “Homeowner” means any record title owner of residential real property that is the subject of foreclosure proceedings.

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

(g) “Residential real property in foreclosure” means residential real property against which there is an outstanding notice of the pendency of foreclosure proceedings recorded pursuant to s. 48.23.

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

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

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

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

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

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

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

HOMEOWNER'S RIGHT OF CANCELLATION

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

THE FORECLOSURE-RESCUE 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 BUSINESS 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 SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR LENDER OR MORTGAGE SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR A RESTRUCTURING WITH YOU FREE OF CHARGE.

(d) The inclusion of the statement 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 statement, provided all other requirements of this subsection are met.

(e) The foreclosure-rescue consultant must give the homeowner a copy of the signed agreement within 3 hours after the homeowner signs the agreement.

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

(a)1. A foreclosure-rescue transaction must include a written agreement prepared in at least 12-point uppercase type that is completed, signed, and dated by the homeowner and the equity purchaser before executing any instrument from the homeowner to the equity purchaser quitclaiming, signing, transferring, conveying, or encumbering an interest in the residential real property in foreclosure. The equity purchaser must give the homeowner a copy of the completed agreement within 3 hours after the homeowner signs the agreement. The agreement must contain the entire understanding of the parties and must include:

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

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

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

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

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

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

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

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

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

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

(b) The homeowner may cancel the foreclosure-rescue transaction agreement without penalty if the homeowner notifies the equity purchaser of such cancellation no later than 5 p.m. on the 3rd business day after signing the written agreement. Any moneys paid by the equity purchaser to the homeowner or by the homeowner to the equity purchaser must be returned at cancellation. The right to cancel does not limit or otherwise affect the homeowner's right to cancel the transaction under any other law. The right to cancel may not be waived by the homeowner or limited in any way by the equity purchaser. The equity purchaser must give the homeowner, at the time the written agreement is signed, a notice of the homeowner's right to cancel the foreclosure-rescue transaction as set forth in this subsection. The notice, which must be set forth on a separate cover sheet to the written agreement that contains no other written or pictorial material, must be in at least 12-point uppercase type, double-spaced, and read as follows:

NOTICE TO THE HOMEOWNER/SELLER

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

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

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

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

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

I (we) hereby cancel this transaction.

Seller's Signature  
Printed Name of Seller  
Seller's Signature  
Printed Name of Seller  
Date

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

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

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

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

(6) REBUTTABLE PRESUMPTION.—Any foreclosure-rescue transaction involving a lease option or other repurchase agreement creates a rebuttable presumption, solely between the equity purchaser and the homeowner, that the transaction is a loan transaction and the conveyance from the homeowner to the equity purchaser is a mortgage under s. 697.01. Unless the lease option or other repurchase agreement, or a memorandum of the lease option or other repurchase agreement, is recorded in accordance with s. 695.01, the presumption created under this subsection shall not apply against creditors or subsequent purchasers for a valuable consideration and without notice.

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

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

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

Approved by the Governor May 28, 2008.

Filed in Office Secretary of State May 28, 2008.