

46:10B-53

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2011 **CHAPTER:** 146

NJSA: 46:10B-53 (The "Foreclosure Rescue Fraud Prevention Act")

BILL NO: A359 (Substituted for S1651)

SPONSOR(S) Schaer and others

DATE INTRODUCED: January 12, 2010

COMMITTEE: **ASSEMBLY:** Financial Institutions and Insurance

SENATE: Commerce

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 5, 2011

SENATE: December 15, 2011

DATE OF APPROVAL: December 20, 2011

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Third reprint enacted)

A359

SPONSOR'S STATEMENT:	(Begins on page 15 of introduced bill)	Yes
COMMITTEE STATEMENT:	ASSEMBLY:	Yes
	SENATE:	Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT:	Yes
LEGISLATIVE FISCAL ESTIMATE:	No

S1651

SPONSOR'S STATEMENT:	(Begins on page 15 of introduced bill)	Yes
COMMITTEE STATEMENT:	ASSEMBLY:	No
	SENATE:	Yes
FLOOR AMENDMENT STATEMENT:		No
LEGISLATIVE FISCAL ESTIMATE:		No

(continued)

VETO MESSAGE: Yes

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/RWH

P.L.2011, CHAPTER 146, *approved December 20, 2011*
Assembly, No. 359 (*Third Reprint*)

1 AN ACT concerning certain mortgage foreclosure consultant
2 practices ², amending P.L.2005, c.199² and supplementing Title
3 46 of the Revised Statutes.

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 shall be known and may be cited as
9 the "Foreclosure Rescue Fraud Prevention Act."

10
11 2. (New section) As used in this act:
12 "Business day" means any day other than a Saturday, Sunday, or
13 a federal holiday.

14 ²"Conventional mortgage rate" means the highest mortgage rate
15 published for the relevant loan product on the website of any
16 generally accepted industry provider of such information,
17 applicable to the week preceding the transaction.²

18 "Distressed property" means residential real property consisting
19 of from one to ²**[six]** four² dwelling units, at least one of which is
20 occupied by the owner as a primary residence, and which is the
21 subject of a ²mortgage² foreclosure ²**[or tax sale]²** proceeding ²**[**,
22 or which is at risk of loss due to nonpayment of taxes]² or whose
23 owner is more than 90 days delinquent on any loan that is secured
24 by the property.

25 "Distressed property purchaser" means a person who acquires an
26 interest in a distressed property through a distressed property
27 conditional conveyance or a distressed property conveyance, or a
28 person who participates in a joint venture or joint enterprise
29 involving a distressed property conditional conveyance or a
30 distressed property conveyance. The term "distressed property
31 purchaser" does not mean a federally insured financial institution or
32 a person who acquires distressed property through a deed in lieu of
33 foreclosure or a person acting in participation with any person who
34 acquires distressed property through a deed in lieu of foreclosure,
35 provided that person does not promise to convey an interest in fee

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted September 30, 2010.

²Senate SCM committee amendments adopted March 3, 2011.

³Assembly amendments adopted in accordance with Governor's recommendations December 1, 2011.

1 back to the owner or does not give the owner an option to purchase
2 the property at a later date.

3 "Distressed property conditional conveyance" means a
4 transaction ³involving any participation by, or any distressed
5 property service or other service or other assistance provided by, a
6 foreclosure consultant³ in which an owner transfers an interest in
7 fee, or a beneficial interest created through a trust document, in the
8 distressed property; the acquirer of the property allows the owner to
9 occupy the property; and the acquirer of the property or a person
10 acting in participation with the acquirer of the property conveys or
11 promises to convey an interest in fee back to the owner or gives the
12 owner an option to purchase the property at a later date.

13 "Distressed property conveyance" means a transaction
14 ³involving any participation by, or any distressed property service
15 or other service or other assistance provided by, a foreclosure
16 consultant³ in which an owner transfers an interest in fee in a
17 distressed property.

18 ²"Distressed property relief" or "relief" means, in connection
19 with a foreclosure consultant, any of the following:

- 20 (1) saving the owner's property from foreclosure;
21 (2) postponing the foreclosure sale;
22 (3) obtaining a forbearance from the mortgagee;
23 (4) securing the right to exercise the right to reinstatement;
24 (5) obtaining an extension of the period within which the owner
25 may reinstate his or her mortgage obligation;
26 (6) obtaining a waiver of an acceleration clause;
27 (7) obtaining a modification of a mortgage;
28 (8) assisting the owner in obtaining a loan or advance of funds;

29 or

- 30 (9) avoiding the impairment of the owner's credit.²

31 "Distressed property service" ²or "service"² means, without
32 limitation, ²in connection with a distressed property conditional
33 conveyance or a distressed property conveyance,² any of the
34 following:

- 35 (1) debt, budget, or financial counseling of any type;
36 (2) receiving money for the purpose of distributing it to
37 creditors in payment or partial payment of any obligation secured
38 by a mortgage or other lien on a distressed property;
39 (3) contacting creditors on behalf of an owner;
40 (4) arranging or attempting to arrange for an extension of the
41 period within which the owner may cure the owner's default and
42 reinstate a debt obligation;
43 (5) arranging or attempting to arrange for a delay or
44 postponement of the time of sale of the distressed property;
45 (6) advising with respect to the filing of any document or
46 assisting in any manner in the preparation of any document for
47 filing with any court; or

1 (7) giving advice, explanation, or instruction to an owner that in
2 any manner relates to the cure of a default or forfeiture or to the
3 postponement or avoidance of a sale of the distressed property.

4 "Foreclosure consultant": (1) means any person, located out-of-
5 State or within the State, who, directly or indirectly, for
6 compensation from an owner, makes any solicitation,
7 representation, or offer to perform, or who performs, any distressed
8 property service that the person represents will in any manner do
9 any of the following in relation to the owner's distressed property:

10 (a) prevent or postpone the foreclosure sale ²[or the loss]² of
11 the property ²[due to nonpayment of taxes]²;

12 (b) obtain any forbearance from any ²[beneficiary or]²
13 mortgagee ²[or relief with respect to a tax sale of the property]²;

14 (c) assist the owner in exercising any right of reinstatement or
15 right of redemption;

16 (d) obtain any extension of the period within which the owner
17 may reinstate the owner's rights with respect to the property;

18 (e) obtain any waiver of an acceleration clause contained in any
19 promissory note, contract, or mortgage evidencing or securing a
20 debt in relation to the property;

21 (f) assist the owner in obtaining a loan or advance of funds to
22 pay off the promissory note, contract, or mortgage evidencing or
23 securing a debt in relation to the property; or

24 (g) avoid or ameliorate the impairment of the owner's credit
25 resulting from default on the promissory note, contract, or
26 mortgage, or the conduct of a foreclosure sale ²[or tax sale]² or
27 offer to repair the owner's credit.

28 (2) shall not include any of the following:

29 (a) a housing counseling agency contracted by the United States
30 Department of Housing and Urban Development to provide
31 counseling;

32 (b) a person who holds or is owed an obligation secured by a
33 lien on any distressed property in situations in which the person
34 performs services in connection with the obligation or lien,
35 provided the obligation or lien did not arise as the result of, or as
36 part of, a proposed distressed property conditional conveyance or a
37 distressed property conveyance;

38 (c) a person licensed to practice law in this State while acting
39 under the authority of that license;

40 (d) a nonprofit, charitable entity qualified pursuant to section
41 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.
42 s.501(c)(3)), which is licensed pursuant to P.L.1979, c.16
43 (C.17:16G-1 et seq.) ²[, and which offers counseling or advice to an
44 owner of a distressed property, provided the entity does not contract
45 for services with for-profit lenders or distressed property purchasers
46 or any person who structures or plans a distressed property
47 conveyance]²;

1 (e) a municipality which has a tax lien on distressed property;

2 (f) an assignee or a purchaser of a municipal tax lien from a tax
3 sale; ²[or]²

4 (g) a sponsor which is certified by the Commissioner of
5 Community Affairs to participate in the “New Jersey Housing
6 Assistance and Recovery Program” established pursuant to sections
7 8 through 14 of P.L.2008, c.127 (C.55:14K-88 et seq.) ²;

8 (h) a bank, savings bank, savings and loan association, credit
9 union, or other federally insured financial institution, or insurance
10 company, or affiliate or subsidiary thereof, organized, chartered,
11 licensed, or holding a certificate of authority to do business under
12 the laws of this State or any other state or under the laws of the
13 United States;

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

17 (j) a person licensed as a title insurance producer pursuant to the
18 “New Jersey Insurance Producer Licensing Act of 2001,” P.L.2001,
19 c.210 (C.17:22A-26 et seq.) while acting under the authority of that
20 license or conducting the business of title insurance pursuant to
21 P.L.1975, c.106 (C.17:46B-1 et seq);

22 (k) a mediator licensed pursuant to the Judiciary’s Foreclosure
23 Mediation Program; or

24 (l) a person licensed pursuant to the “New Jersey Residential
25 Mortgage Lending Act,” P.L.2009, c.53 (17:11C-51 et seq.), while
26 acting under the authority of that license ².

27 “Owner” means an owner of record of title to a distressed
28 property.

29 ²“Owner’s current verified monthly income” means the monthly
30 average of the owner’s most recent six months of wage receipts or
31 pay stubs or if the owner has non-wage income by a verified
32 statement of profit and loss or income from a certified public
33 accountant who has reviewed the owner’s income.

34 “Reasonable ability to pay” means that the owner’s current
35 verified monthly income is adequate to service a 30 year fixed rate
36 loan at the conventional mortgage rate together with actual property
37 taxes, homeowner’s insurance, condominium or association fees, if
38 applicable, and reasonable and necessary living expenses.

39 “Reasonable and necessary living expenses” means not less than
40 the average utility costs over the last twelve months, or if that figure
41 is unavailable \$200, and transportation, food, clothing, and other
42 expenses equal to an amount not less than the Collection Financial
43 Standards set forth by the Internal Revenue Service for
44 transportation, food, clothing, and other items and out-of-pocket
45 health care costs.²

46 “Residual income” means an owner’s net income available to
47 meet living expenses after the payment of all ordinary and

1 necessary debt, including payments under an option to purchase
2 back the owner's property transferred in a distressed property
3 conditional conveyance.

4
5 3. (New section) 'a.' A foreclosure consultant shall not
6 conduct any business in this State until the foreclosure consultant:

7 'a.] (1) (a) ²[registers with the Director of the Division of
8 Consumer Affairs on] Obtains a license from the Commissioner of
9 Banking and Insurance by filing² an application form to be
10 prescribed by the ²[director] commissioner² by regulation. As to
11 ²[registration] licensure² by a business entity, the application shall
12 be accompanied by documentation establishing the business entity,
13 including incorporation documents, if the entity is incorporated.

14 (b) The application shall be accompanied by a reasonable fee,
15 ²[set by the director, in an amount sufficient to defray the
16 division's expenses incurred in administering and enforcing this
17 act.] as established by the commissioner by regulation.²

18 (c) A person required to be ²[registered] licensed² under this
19 act shall ²[register on an annual basis and]² file an ²[amended
20 registration] amendment to their application² within 20 days after
21 any change in the information required to be included in the
22 application ².

23 (d) Licenses issued pursuant to this section shall expire
24 biennially and may be renewed upon submission of a renewal
25 application to the department² ;

26 (2)¹ obtains a bond from a surety company authorized to do
27 business in the State in a form and an amount to be prescribed by
28 the ¹[Director of the Division of Consumer Affairs] ²[director¹
29 commissioner² by regulation ¹]; and

30 b.] ¹ files the bond with the ²[director] commissioner² ¹,¹ and
31 obtains written approval of the bond from the ²[director]
32 commissioner²;

33 ¹(3) submits to the ²[director] commissioner² the name, address,
34 fingerprints and written consent for a criminal history record
35 background check to be performed on any officer, director, partner
36 or owner of a controlling interest ², or any employee engaged in
37 mortgage foreclosure consulting activities,² of the foreclosure
38 consultant. The ²[director] commissioner² is authorized to
39 exchange fingerprint data with and receive criminal history record
40 information from the State Bureau of Identification in the Division
41 of State Police and the Federal Bureau of Investigation consistent
42 with applicable State and federal laws, rules and regulations. This
43 information shall be collected for the purposes of facilitating
44 determinations concerning ²[registration] licensure² eligibility for
45 the foreclosure consultant, based upon any findings related to an

1 ²employee engaged in mortgage foreclosure consultant activities,²
2 officer, director, partner or owner. The applicant shall bear the cost
3 for the criminal history record background check, including all
4 costs of administering and processing the check. The Division of
5 State Police shall promptly notify the ²[director] commissioner² in
6 the event an ² employee engaged in mortgage foreclosure consultant
7 activities,² officer, director, partner or owner of the foreclosure
8 consultant, who was the subject of a criminal history record
9 background check pursuant to this section, is arrested for a crime or
10 offense in this State after the date the background check was
11 performed, whether the foreclosure consultant is a prospective new
12 ²[registrant] applicant², or subsequently, a current ²[registrant]
13 licensee² ; and

14 (4) provides the name and street address of an agent in the State
15 of New Jersey for service of process.

16 b. The ²[director] commissioner² may refuse to issue or
17 renew, and may revoke, any ²[registration] license²:

18 (1) for failure to comply with, or violation of, the provisions of
19 this act or for any other good cause shown within the meaning and
20 purpose of this act. A refusal or revocation shall not be made except
21 upon reasonable notice to, and opportunity to be heard by, the
22 applicant or ²[registrant] licensee² ; or

23 (2) upon proof that the applicant or ²[registrant] licensee² has
24 been convicted of any crime of moral turpitude or any crime
25 relating adversely to the activity regulated by this act. For purposes
26 of this subsection, a plea of guilty, non vult, nolo contendere or any
27 other such disposition of alleged criminal activity shall be deemed a
28 conviction.

29 c.¹ ²[For the purposes of complying with the requirements of
30 this section, “foreclosure consultant” shall not include:

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

36 (2) a person licensed pursuant to the “New Jersey Residential
37 Mortgage Lending Act,” P.L.2009, c.53 (17:11C-51 et seq.), while
38 acting under the authority of that license; ¹[or]¹

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

42 (4) an attorney licensed to practice law in this State, while
43 acting under the authority of that license.

44 d.]² A person who ²[registers] is licensed² as a foreclosure
45 consultant pursuant to this act shall not be subject to the provisions

1 of P.L.1979, c.16 (C.17:16G-1 et seq.) while acting under the
2 authority of this act.

3 ²[e.] d.² A person shall not present himself to the public as a
4 ²[registered] licensed² foreclosure consultant or use the
5 designation “foreclosure consultant,” “foreclosure consultant
6 specialist,” or similar designation without ²[registering] obtaining a
7 license² pursuant to this act¹.

8
9 4. (New section) a. A foreclosure consultant contract shall be
10 written in plain language and shall fully disclose the exact nature of
11 the foreclosure consultant's services ²to be performed, the
12 foreclosure consultant’s representations, the distressed property
13 relief to be secured,² and the total amount and terms of
14 compensation.

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

20 "NOTICE REQUIRED BY NEW JERSEY LAW
21(Name) or anyone working for him or her
22 CANNOT:

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

26 (2) Ask you to sign or have you sign any lien, mortgage, or deed
27 unless all provisions of the “Foreclosure Rescue Fraud Prevention
28 Act,” P.L. , c (C.) (pending before the Legislature as this
29 bill), and any other applicable federal and State laws have been
30 complied with.

31 (3) Guarantee that they will be able to refinance a loan on your
32 home or arrange for you to keep your home.”

33 c. A foreclosure consultant contract shall be written in the
34 same language as principally used by the foreclosure consultant to
35 describe the consultant’s services ²[or to negotiate the contract] to
36 be performed and the distressed property relief to be secured for the
37 owner,² shall be dated and signed by the owner, and shall contain in
38 immediate proximity to the space reserved for the owner's signature
39 a conspicuous statement in 14-point boldface type, if the contract is
40 printed, or in capital letters, if the contract is typed, as follows:

41 "You, the owner, may cancel this transaction at any time until
42 after the foreclosure consultant has fully performed every service
43 the foreclosure consultant contracted to perform ²[or represented
44 would be performed] and has secured the distressed property relief
45 for the owner². See the attached notice of cancellation form for an
46 explanation of this right."

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

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

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

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

13 "NOTICE OF CANCELLATION

14

15 (Enter date of transaction)

16 You may cancel this transaction, without any penalty or
17 obligation, at any time until after the foreclosure consultant has
18 fully performed every service ²[the foreclosure consultant
19 contracted to perform or represented would be performed] and has
20 secured the relief for the owner ².

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

23(Name of foreclosure consultant) at

24(Address of foreclosure consultant's place
25 of business)

26 I hereby cancel this transaction on(Date)

27(Owner's signature)."

28 f. The foreclosure consultant shall provide the owner with a
29 copy of a foreclosure consultant contract and the attached notice of
30 cancellation in duplicate immediately upon execution of the
31 contract.

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

35

36 5. (New section) a. In addition to any other legal right to
37 rescind a foreclosure consultant contract, an owner has the right to
38 cancel a foreclosure consultant contract at any time until after the
39 foreclosure consultant has fully performed every service the
40 foreclosure consultant contracted to perform ²[or represented would
41 be performed] and has secured the relief for the owner ².

42 b. Cancellation occurs when the owner delivers by any means,
43 written notice of cancellation to the foreclosure consultant at the
44 address specified in the foreclosure consultant contract. A notice of
45 cancellation, if given by mail, is effective when deposited in the
46 mail properly addressed with postage prepaid. A notice of
47 cancellation sent by certified mail, return receipt requested, to the

1 address specified in the foreclosure consultant contract, shall be
2 conclusive proof of notice of cancellation.

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

7

8 6. (New section) It is a violation of this act for a foreclosure
9 consultant to:

10 a. claim, demand, charge, collect, or receive any compensation
11 until after the foreclosure consultant has fully performed every
12 distressed property service the foreclosure consultant contracted to
13 perform ²[or represented would be performed, unless compensation
14 for partial performance is expressly agreed to by both parties in the
15 foreclosure contract] and has secured the distressed property relief
16 for the owner²;

17 b. claim, demand, charge, collect, or receive any fee, interest,
18 or any other compensation for any reason, in excess of two monthly
19 mortgage payments of principal and interest, or the most recent
20 quarterly property tax installment on the distressed property,
21 whichever is less;

22 c. take a wage assignment, a lien of any type on real or
23 personal property, or other security to secure the payment of
24 compensation. Any agreement to take such security is void and
25 unenforceable;

26 d. receive any consideration from any third party in connection
27 with distressed property services rendered to an owner;

28 e. acquire any interest, directly or indirectly, or by means of a
29 subsidiary or affiliate in a distressed property from an owner with
30 whom the foreclosure consultant has contracted;

31 f. accept any power of attorney from an owner for any
32 purpose, except to inspect documents as provided by law; or

33 g. induce or attempt to induce an owner to enter a contract that
34 does not comply in all respects with sections 4 and 5 of this act.

35

36 7. (New section) a. Any waiver by an owner of the provisions
37 of section 4, 5, or 6 of this act is void and unenforceable as contrary
38 to public policy.

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

41

42 8. (New section) a. A distressed property purchaser who enters
43 into a distressed property conditional conveyance or a distressed
44 property conveyance shall do so in the form of a written contract. A
45 distressed property conditional conveyance contract and a distressed
46 property conveyance contract shall be written in at least 14-point
47 boldface type, in the same language principally used by the owner

1 to negotiate the sale of the distressed property, shall be fully
 2 completed, signed, and dated by the owner and the distressed
 3 property purchaser, and shall be witnessed and acknowledged by a
 4 notary public, before the owner executes a deed or any other
 5 instrument of conveyance of the distressed property.

6 b. A distressed property conditional conveyance contract and a
 7 distressed property conveyance contract shall contain the entire
 8 agreement of the parties, be fully assignable, and survive delivery
 9 of any deed or any other instrument of conveyance of the distressed
 10 property.

11 c. A distressed property conditional conveyance contract and a
 12 distressed property conveyance contract shall include the following
 13 terms, except that a distressed property conveyance contract shall
 14 not be required to contain the terms set forth in paragraph (5):

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

17 (2) the address of the distressed property;

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

20 (4) a complete description of the terms of payment or other
 21 consideration including, but not limited to, any distressed property
 22 services of any nature that the distressed property purchaser
 23 represents will be performed for the owner before or after the
 24 transaction;

25 (5) a complete description of the terms of any related agreement
 26 designed to allow the owner to remain in the dwelling including,
 27 but not limited to, a lease agreement, repurchase agreement,
 28 contract for deed, or a lease agreement with an option to purchase;

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

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

34 "NOTICE REQUIRED BY NEW JERSEY LAW

35 Until your right to cancel this contract has ended,
 36(Name) or anyone working for
 37(Name) CANNOT ask you to sign or have you sign
 38 any deed or any other document. You are urged to have this
 39 contract reviewed by an attorney of your choice within ²[five] 10²
 40 business days of signing it."; and

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

46 "NOTICE REQUIRED BY NEW JERSEY LAW

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

1 9. (New section) a. In addition to any other right of rescission
 2 provided by applicable State or federal laws, the owner has the right
 3 to cancel a distressed property conditional conveyance contract or a
 4 distressed property conveyance contract with a distressed property
 5 purchaser until midnight of the 10th business day following the day
 6 on which the owner signs the contract, or until the conclusion of a
 7 sheriff's sale pursuant to the provisions of the "Fair Foreclosure
 8 Act," P.L.1995, c.244 (C.2A:50-53 et seq.) ²[or the conclusion of a
 9 municipal tax sale foreclosure pursuant to the provisions of the "tax
 10 sale law," chapter 5 of Title 54 of the Revised Statutes]²,
 11 whichever occurs first ², during which the owner may have an
 12 attorney review the contract².

13 b. Cancellation of the contract occurs when the owner ², or an
 14 attorney representing the owner,² delivers, by any means, written
 15 notice of cancellation to the address specified in the contract.
 16 Notice of cancellation, if given by mail, is effective when deposited
 17 in the mail properly addressed with postage prepaid. Notice by
 18 certified mail, return receipt requested, to the address specified in
 19 the contract, shall be conclusive proof of notice of cancellation.

20 c. A notice of cancellation given by the owner ², or an attorney
 21 representing the owner,² need not take the particular form as
 22 provided with the contract, and however expressed, is effective if it
 23 indicates the intention of the owner not to be bound by the contract.

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

28 ¹e. The 10 business days during which the owner ², or an
 29 attorney representing the owner,² may cancel the contract shall not
 30 begin to run until all parties to the contract have executed the
 31 contract and the distressed property purchaser has complied with all
 32 the requirements of this section.¹

33
 34 10. (New section) a. A distressed property conditional
 35 conveyance contract and a distressed property conveyance contract
 36 with a distressed property purchaser shall contain in immediate
 37 proximity to the space reserved for the owner's signature a
 38 conspicuous statement in a size equal to at least 14-point boldface
 39 type, if the contract is printed, or in capital letters, if the contract is
 40 typed, as follows:

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

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

1 b. A contract with a distressed property purchaser shall be
2 accompanied by a completed form in duplicate, captioned
3 "NOTICE OF CANCELLATION" in a size equal to a 14-point
4 boldface type, if the contract is printed, or in capital letters, if the
5 contract is typed, followed by a space in which the distressed
6 property purchaser shall enter the date on which the owner executes
7 any contract. This form shall be attached to the contract, shall be
8 easily detachable, and shall contain in at least 14-point type, if the
9 contract is printed, or in capital letters, if the contract is typed, the
10 following statement written in the same language as used in the
11 contract:

12 "NOTICE OF CANCELLATION

13

14 (Enter date contract signed)

15 You may cancel this contract for the conveyance of your home,
16 without any penalty or obligation, at any time before
17 (enter date and time of day). To cancel this
18 transaction, mail or deliver a signed and dated copy of this
19 cancellation notice to (Name of purchaser) at
20 (Street address of purchaser's place of
21 business) NOT LATER THAN
22 (Enter date and time of day).

23 I hereby cancel this transaction on (Date)
24 (Owner's
25 signature)."

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

29 d. The distressed property purchaser shall record the contract
30 and the attached notice of cancellation with the county clerk in the
31 county in which the distressed property is located within 10
32 business days of the signing of the contract by both parties.

33 ¹[e. The 10 business days during which the owner may cancel
34 the contract shall not begin to run until all parties to the contract
35 have executed the contract and the distressed property purchaser has
36 complied with all the requirements of this section.]¹

37
38 11. (New section) a. A distressed property purchaser, in the
39 course of a distressed property conditional conveyance, shall not:

40 (1) enter into, or attempt to enter into, a distressed property
41 conditional conveyance unless the distressed property purchaser
42 verifies and can demonstrate that the owner has a reasonable ability
43 to pay for the subsequent conveyance of a fee interest back to the
44 owner under the terms of any option to purchase and a reasonable
45 ability to make monthly or any other required payments due prior to
46 the subsequent conveyance;

1 (2) fail to make a payment to the owner at the time the title to
2 the distressed property is conveyed from the owner to the distressed
3 property purchaser, or, if the distressed property purchaser acquires
4 a beneficial interest through a trust, at the time of the creation of the
5 trust, so that the owner has received consideration in an amount of
6 at least 82% of the property's fair market value, or, in the
7 alternative, fail to make a payment to the owner, in situations in
8 which the owner is unable to purchase the distressed property from
9 the distressed property owner at the time of the expiration of the
10 owner's option to purchase, so that the owner has received
11 consideration in an amount of at least 82% of the property's fair
12 market value;

13 (3) enter into an option to purchase or lease as part of a
14 distressed property conditional conveyance containing terms that
15 are unfair or commercially unreasonable, or engage in any other
16 unfair conduct;

17 (4) represent, directly or indirectly, that the distressed property
18 purchaser is acting as an advisor or a consultant, or in any other
19 manner represent that the distressed property purchaser is acting on
20 behalf of the homeowner;

21 (5) misrepresent the distressed property purchaser's status as to
22 licensure or certification;

23 (6) do any of the following until after the time during which the
24 owner may cancel the transaction:

25 (a) accept from the owner an execution of a deed or any other
26 instrument of conveyance of any interest in the distressed property;

27 (b) induce the owner to execute a deed or any other instrument
28 of conveyance of any interest in the distressed property; or

29 (c) record with the county recorder of deeds any document
30 signed by the owner, including but not limited to a deed or any
31 other instrument of conveyance;

32 (7) fail to convey title to the distressed property to the owner
33 under an option to purchase provided for in the distressed property
34 conveyance contract, in situations in which the terms of the
35 conveyance contract have been fulfilled;

36 (8) enter into a distressed property conditional conveyance if
37 any party to the transaction is represented by way of a power of
38 attorney;

39 (9) fail to extinguish all liens encumbering the distressed
40 property, immediately following the conveyance of the distressed
41 property, or fail to assume all liability with respect to the lien in
42 foreclosure and prior liens that will not be extinguished by the
43 foreclosure, which assumption shall be accomplished without
44 violations of the terms and conditions of the lien being assumed;

45 (10) cause the property to be conveyed or encumbered without
46 the knowledge or permission of the owner, or in any way frustrate

1 the ability of the owner to complete the conveyance back to the
2 owner;

3 (11) fail to have all documents executed as part of a distressed
4 property conditional conveyance also signed by a notary public
5 licensed in the State who is unrelated in any way to the distressed
6 property purchaser or any participant in the distressed property
7 conveyance;

8 (12) fail to complete a distressed property conditional
9 conveyance in the office of a title insurance producer licensed
10 pursuant to the “New Jersey Insurance Producer Licensing Act of
11 2001,” P.L.2001, c.210 (C.17:22A-26 et seq.), or in the office of an
12 attorney licensed to practice law in this State;

13 (13) fail to provide to the owner, prior to the time of completion
14 of a distressed property conditional conveyance, a disclosure
15 statement in a form to be designed and prescribed by regulation by
16 ²[the Director of the Division of Consumer Affairs, within the
17 Department of Law and Public Safety, in consultation with]² the
18 Commissioner of Banking and Insurance, which statement shall
19 require disclosure to the owner of all costs that the owner will incur
20 in connection with the conveyance and any option for the owner to
21 purchase the property, including a schedule of monthly and annual
22 payments, closing costs, and any additional costs and fees related to
23 the conveyance;

24 (14) claim, demand, charge, collect, or receive any fee, interest,
25 or any other compensation for any reason from an owner, for
26 services or as consideration for ²offering or providing any option to
27 purchase to the owner or for otherwise² participating in the
28 conveyance transaction, in excess of ²[two monthly mortgage
29 payments of principal and interest, or the most recent quarterly
30 property tax installment on the distressed property, whichever is
31 less] 3.5% of the purchase price²;

32 (15) in situations in which the distressed property conditional
33 conveyance involves a transfer of an interest in fee from an owner
34 to a distressed property purchaser, fail to record the deed to the
35 purchaser in the county clerk’s office in which the property is
36 located, or fail to include a statement on the recorded deed that the
37 deed was obtained through a transaction governed by the
38 “Foreclosure Rescue Fraud Prevention Act”;

39 (16) fail to notify in writing all existing mortgage lien holders of
40 the distressed property purchaser’s intent to accept conveyance of
41 an interest in the property from the owner;

42 (17) fail to fully comply with all terms and conditions contained
43 in the mortgage lien documents, including but not limited to due-
44 on-sale provisions; ²[and]²

45 (18) fail to satisfy all qualification requirements for assuming the
46 repayment of mortgage²; and

1 (19) enter into an option to purchase or lease as part of a
2 distressed property conditional conveyance in which the agreement
3 fails to provide for a length of time of at least three years within
4 which the owner may exercise his right to purchase back the
5 property².

6 b. For purposes of paragraph (1) of subsection a. of this
7 section, an evaluation of "reasonable ability to pay" shall include
8 the owner's debt to income ratio, the owner's residual income, the
9 fair market value of the distressed property, and the owner's credit
10 history. There shall be a rebuttable presumption that the distressed
11 property purchaser has not verified reasonable payment ability if
12 the distressed property purchaser has not obtained documents of
13 assets, liabilities, and income, other than a statement by the owner.

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

27 d. If an owner fails to make a required payment or otherwise
28 defaults under a distressed property conditional conveyance
29 contract which contains an owner's option to purchase or a promise
30 to convey an interest in fee back to the owner, the distressed
31 property purchaser shall only enforce the forfeiture of the owner's
32 interest under the contract as follows:

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

38 (2) the distressed property purchaser may bring an action to
39 enforce the forfeiture of the owner's interest in the property and for
40 recovery of possession of the property by use of the procedures for
41 foreclosure and judicial sale of residential real property available to
42 lenders pursuant to the provisions of the "Fair Foreclosure Act."

43 ²e. With respect to the amount of any fee or other consideration
44 provided by an owner to a distressed property purchaser at the time
45 of the execution of an option to purchase, as part of any distressed
46 property conditional conveyance, and as consideration for that
47 agreement:

1 (1) the entire fee or other consideration shall be provided by the
2 owner at the time of the execution of the option to purchase or lease
3 agreement;

4 (2) the distressed property purchaser may declare some or all of
5 the fee or other consideration to be non-refundable, regardless of
6 whether the owner exercises his right to purchase back the property
7 from the distressed property purchaser pursuant to the option to
8 purchase or lease agreement, or declare that some or all of the fee or
9 other consideration shall be applied as credit toward the purchase of
10 the property, if the owner does exercise his right to purchase back
11 the property, so long as this declaration is agreed to by the owner
12 and expressly stated in the agreement; and

13 (3) the fee or other consideration provided to the distressed
14 property purchaser shall not constitute an equitable ownership
15 interest in the property.

16 f. With respect to any money provided by the owner to the
17 distressed property purchaser pursuant to any distressed property
18 conditional conveyance, remitted as a monthly credit towards the
19 purchase of the property in excess of any monthly rental obligation
20 established pursuant to any agreement designed to allow the owner
21 to remain in the property, including, but not limited to, a lease
22 agreement between the parties:

23 (1) the distressed property purchaser may declare some or all of
24 the money to be non-refundable, if the owner does not exercise his
25 right to purchase back the property from the distressed property
26 purchaser pursuant to the option to purchase or lease agreement, so
27 long as this declaration is agreed to by the owner and expressly
28 stated in the agreement;

29 (2) the money provided to the distressed property purchaser shall
30 not constitute an equitable ownership interest in the property; and

31 (3) the money shall continue to be the property of the owner and
32 shall be held in trust by the distressed property purchaser for use as
33 a credit towards the purchase of the property, subject to any
34 agreement pursuant to paragraph (1) of this subsection.

35 g. If the owner exercises his right to purchase back the property
36 from the distressed property purchaser pursuant to the option to
37 purchase agreement: (1) any amount still owed toward the purchase
38 price or other consideration on the property, as set forth in the
39 agreement, following the application of any fee, money, or other
40 consideration agreed to be applied towards the purchase by the
41 distressed property purchaser as credit towards the purchase, shall
42 be the sole responsibility of the owner; and (2) a new deed for the
43 property shall be executed by the distressed property purchaser and
44 filed with the office of the county clerk in the county in which the
45 property resides.²

1 12. (New section) A distressed property purchaser, in the course
2 of a distressed property conveyance, shall not fail to:

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

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

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

17 d. provide to the owner, prior to the time of completion of a
18 distressed property conveyance, a disclosure statement in a form to
19 be designed and prescribed by regulation by ²the Director of the
20 Division of Consumer Affairs, within the Department of Law and
21 Public Safety, in consultation with ²the Commissioner of Banking
22 and Insurance, which statement shall require disclosure to the
23 owner of all costs and fees that the owner will incur in connection
24 with the conveyance;

25 e. notify in writing all existing mortgage lien holders of the
26 distressed property purchaser's intent to accept conveyance of an
27 interest in the property from the owner;

28 f. fully comply with all terms and conditions contained in the
29 mortgage lien documents, including but not limited to due-on-sale
30 provisions; and

31 g. satisfy all qualification requirements for assuming the
32 repayment of the mortgage.

33
34 13. (New section) Any waiver of the provisions of sections 8, 9,
35 10, 11, or 12 of this act is void and unenforceable as contrary to
36 public policy.

37
38 ¹14. (New section) a. The ²the Director of the Division of
39 Consumer Affairs Commissioner of Banking and Insurance² may
40 investigate or examine any foreclosure consultant, or other person
41 as the ²director commissioner² deems necessary to determine
42 compliance with this act. For these purposes, the ²director
43 commissioner² may examine the books, accounts, records and other
44 documents or matters of any foreclosure consultant or other person.
45 Each foreclosure consultant shall be subject to an examination by
46 the ²director commissioner², not more than once in any 12 month
47 period, unless the ²director commissioner² has reason to believe

1 that the foreclosure consultant is not complying with the provisions
2 of this act, or is not transacting business in accordance with law, in
3 which case the ²[director] commissioner² may conduct an
4 examination at any time. The ²[director] commissioner² shall have
5 the power to compel by subpoena the production of all relevant
6 books, accounts, records and other documents and materials relative
7 to an examination or investigation.

8 b. The ²[director] commissioner² or the ²[director's]
9 commissioner's² designee shall have power to issue subpoenas to
10 compel the attendance of witnesses and the production of
11 documents, papers, books, accounts, records and other evidence
12 before him in any matter over which he has jurisdiction pursuant to
13 this act, and to administer oaths and affirmations to any person.

14 c. If any person shall refuse to obey a subpoena, or to give
15 testimony or to produce evidence as required thereby, the
16 ²[director] commissioner² may apply ex parte to any court having
17 jurisdiction over that person for an order compelling the appearance
18 of the witness before the ²[director] commissioner² to give
19 testimony or to produce evidence as required thereby, or both.

20 d. A foreclosure consultant shall have its financial records
21 audited annually by a certified public accountant, which audit shall
22 be filed with the ²[director] commissioner². ²[After reviewing the
23 audit, or for reasons the director deems appropriate, the director
24 may cause an examination of the consultant to be made. The actual
25 expenses of the examination shall be paid by the foreclosure
26 consultant, and the director may maintain any action against a
27 foreclosure consultant to recover any unpaid expenses in connection
28 with the examination.] The commissioner shall conduct at least one
29 examination of the financial records of every foreclosure consultant
30 licensed in the State every two years.²

31
32 ¹[14.] 15.¹ (New section) a. Any person who violates any
33 provision of this act shall, in addition to any other penalty provided
34 by law, be liable to a penalty of not more than \$10,000 for the first
35 offense, and not more than \$20,000 for the second and each
36 subsequent offense, which penalty may be collected in a summary
37 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
38 P.L.1999, c.274 (C.2A:58-10 et seq.).

39 b. A person who violates any provision of this act is guilty of a
40 crime of the third degree. A person who violates any provision of
41 this act in connection with a pattern of foreclosure rescue fraud or a
42 conspiracy or endeavor to engage in a pattern of foreclosure rescue
43 fraud is guilty of a crime of the second degree.

44 c. ¹[(1) Except as provided in paragraph (2) of this subsection,
45 any] Any¹ distressed property conditional conveyance involving
46 the transfer of an interest in fee or a beneficial interest created

1 through a trust document, in a distressed property, and involving the
2 acquirer of the property allowing the owner to occupy the property,
3 which is made in violation of any provision of this act, is voidable
4 and the transfer may be rescinded by the owner within two years of
5 the date of the transfer ², provided that the right, title or interest in
6 the property of a bona fide purchaser or mortgagee for value shall
7 not be affected thereby. Nothing herein shall limit the right of an
8 owner to recover damages from a distressed property purchaser².

9 ¹[(2) A violation of paragraph (2) of subsection a. of section 11
10 of this act or of subsection a. of subsection 12 of this act, shall not
11 be a violation of this act that may cause a transfer described in
12 paragraph (1) of this subsection to be voidable or subject to
13 rescission.]¹

14 d. ¹[(1) Except as provided in paragraph (2) of this subsection,
15 an] An¹ owner ²[or a municipal lien tax holder of interest in a
16 distressed property on behalf of an owner]² may bring an action in
17 Superior Court against a foreclosure consultant or a distressed
18 property purchaser for any violation of this act, for treble damages,
19 attorney's fees, costs of suit and appropriate equitable relief. In an
20 action under this paragraph, the owner ²[or municipal lien tax
21 holder]² may:

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

25 ¹[(b)] (2)¹ introduce or provide as evidence in the action, any
26 contemporaneous oral agreements or representations made to the
27 owner by any party to a foreclosure consultant contract, distressed
28 property conditional conveyance contract, or distressed property
29 conveyance contract signed by the owner.

30 ¹[(2) For a violation of paragraph (2) of subsection a. of section
31 11 of this act or of subsection a. of subsection 12 of this act, an
32 owner may bring an action in Superior Court against a distressed
33 property purchaser for actual damages. In an action under this
34 paragraph, the court may award attorney's fees and costs of suit to
35 the prevailing party .]¹

36 e. The remedies and rights provided for in this act are not
37 exclusive, but cumulative, and all other remedies or rights provided
38 by State or federal law, including, but not limited to, those brought
39 under the doctrine of equitable mortgage ²or pursuant to the "Fair
40 Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.)² are
41 specifically preserved. ²Nothing in this act shall be construed to
42 limit the application of the consumer fraud act, P.L.1960, c.39
43 (C.56:8-1 et seq.).²

44 ¹f. If the ²[Director of the Division of Consumer Affairs]
45 Commissioner of Banking and Insurance² determines that there has
46 been any substantial violation of this act by a professional licensed

1 under a licensing board in this State, the ²[director] commissioner²
 2 shall provide a written notice describing the violation to the
 3 licensing board having jurisdiction over the profession, for such
 4 action as the board deems appropriate.¹

5
 6 ¹[15.] 16.¹ (New section) The ²[Director of the Division of
 7 Consumer Affairs, within the Department of Law and Public Safety,
 8 in consultation with the]² Commissioner of Banking and Insurance
 9 shall enforce the provisions of this act, and may promulgate
 10 regulations pursuant to the "Administrative Procedure Act,"
 11 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
 12 purposes of the act.

13
 14 ²17. Section 2 of P.L.2005, c.199 (C.17:1C-34) is amended to
 15 read as follows:

16 2. For the purposes of this act:

17 "Assessment" means the assessment imposed pursuant to section
 18 3 of this act for the special functions of the division as provided in
 19 that section.

20 "Commissioner" means the Commissioner of Banking and
 21 Insurance.

22 "Department" means the Department of Banking and Insurance.

23 "Depository institution" means any entity holding a state charter
 24 for a bank, savings bank, savings and loan association or credit
 25 union, irrespective of whether the entity accepts deposits.

26 "Division" means the Division of Banking in the Department of
 27 Banking and Insurance.

28 "Other financial entity" means a person who is licensed or
 29 registered pursuant to: the "New Jersey Consumer Finance
 30 Licensing Act," sections 1 through 49 of P.L.1996, c.157
 31 (C.17:11C-1 et seq.); the "New Jersey Residential Mortgage
 32 Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-
 33 51 et seq.), other than a financial entity with respect to the payment
 34 of required fees to the Nationwide Mortgage Licensing System and
 35 Registry as set forth by that nationwide system and registry; "The
 36 Check Cashers Regulatory Act of 1993," P.L.1993, c.383
 37 (C.17:15A-30 et seq.); the "New Jersey Money Transmitters Act,"
 38 P.L.1998, c.14 (C.17:15C-1 et seq.); the "Insurance Premium
 39 Finance Company Act," P.L.1968, c.221 (C.17:16D-1 et seq.); the
 40 "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1
 41 et seq.); the "Door-to-Door Retail Installment Sales Act of 1968,"
 42 P.L.1968, c.223 (C.17:16C-61.1 et seq.); the "Home Repair
 43 Financing Act," P.L.1960, c.41 (C.17:16C-62 et seq.); the "Door-to-
 44 Door Home Repair Sales Act of 1968," P.L.1968, c.224 (C.17:16C-
 45 95 et seq.); P.L.1979, c.16 (C.17:16G-1 et seq.); the "Foreclosure
 46 Rescue Fraud Prevention Act," P.L. , c. (C.)(pending before

1 the Legislature as this bill), or the "pawnbroking law," R.S.45:22-1
2 et seq.

3 "Nationwide Mortgage Licensing System and Registry" means
4 the mortgage licensing system developed and maintained by the
5 Conference of State Bank Supervisors and the American
6 Association of Residential Mortgage Regulators, or their
7 successors, and utilized in this State pursuant to the provisions of
8 the "New Jersey Residential Mortgage Lending Act," sections 1
9 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.).

10 "Regulated entity" means a depository institution, other financial
11 entity or person chartered, licensed or registered by the Division of
12 Banking or who should be chartered, licensed or registered.²
13 (cf: 2009, c.53, s.63)

14
15 ¹[16.] ²[17. ¹] 18.² This act shall take effect on the ²[90th]
16 180th² day following enactment ², but the Commissioner of
17 Banking and Insurance may take such anticipatory administrative
18 action in advance thereof as shall be necessary for the
19 implementation of this act².

20

21

22

23

24 The "Foreclosure Rescue Fraud Prevention Act."

ASSEMBLY, No. 359

STATE OF NEW JERSEY

214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen, Essex and Passaic)

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Co-Sponsored by:

Assemblymen Ramos, Chiappone, Diegnan, Assemblywoman Voss, Assemblyman Prieto, Assemblywomen Tucker, Vainieri Huttle, Angelini, Assemblyman Wisniewski, Assemblywomen Evans, Greenstein, Assemblymen Chivukula, Conaway, Assemblywoman Rodriguez, Assemblymen Albano, Milam, Conners, Assemblywoman Wagner, Assemblymen Moriarty, Scalera and Assemblywoman Riley

SYNOPSIS

The "Foreclosure Rescue Fraud Prevention Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



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;

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

- 1 (c) a person licensed to practice law in this State while acting
2 under the authority of that license;
- 3 (d) a nonprofit, charitable entity qualified pursuant to section
4 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.
5 s.501(c)(3)), which is licensed pursuant to P.L.1979, c.16
6 (C.17:16G-1 et seq.), and which offers counseling or advice to an
7 owner of a distressed property, provided the entity does not contract
8 for services with for-profit lenders or distressed property purchasers
9 or any person who structures or plans a distressed property
10 conveyance;
- 11 (e) a municipality which has a tax lien on distressed property;
- 12 (f) an assignee or a purchaser of a municipal tax lien from a tax
13 sale; or
- 14 (g) a sponsor which is certified by the Commissioner of
15 Community Affairs to participate in the “New Jersey Housing
16 Assistance and Recovery Program” established pursuant to sections
17 8 through 14 of P.L.2008, c.127 (C.55:14K-88 et seq.).
- 18 “Owner” means an owner of record of title to a distressed
19 property.
- 20 “Residual income” means an owner’s net income available to
21 meet living expenses after the payment of all ordinary and
22 necessary debt, including payments under an option to purchase
23 back the owner’s property transferred in a distressed property
24 conditional conveyance.
- 25
- 26 3. A foreclosure consultant shall not conduct any business in
27 this State until the foreclosure consultant:
- 28 a. obtains a bond from a surety company authorized to do
29 business in the State in a form and an amount to be prescribed by
30 the Director of the Division of Consumer Affairs by regulation; and
31 b. files the bond with the director and obtains written approval
32 of the bond from the director.
- 33 For the purposes of complying with the requirements of this
34 section, “foreclosure consultant” shall not include:
- 35 (1) a bank, savings bank, savings and loan association, credit
36 union, or other federally insured financial institution, or insurance
37 company organized, chartered, licensed, or holding a certificate of
38 authority to do business under the laws of this State or any other
39 state or under the laws of the United States;
- 40 (2) a person licensed pursuant to the “New Jersey Licensed
41 Lenders Act,” P.L.1996, c.157 (C.17:11C-1 et seq.), while acting
42 under the authority of that license; or
- 43 (3) a person licensed as a real estate broker, broker-salesperson,
44 or salesperson pursuant to R.S.45:15-1 et seq., while acting under
45 the authority of that license.

1 4. a. A foreclosure consultant contract shall be written in plain
2 language and shall fully disclose the exact nature of the foreclosure
3 consultant's services and the total amount and terms of
4 compensation.

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

10

11 "NOTICE REQUIRED BY NEW JERSEY LAW

12(Name) or anyone working for him or her
13 CANNOT:

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

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

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

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

31 "You, the owner, may cancel this transaction at any time until
32 after the foreclosure consultant has fully performed every service
33 the foreclosure consultant contracted to perform or represented
34 would be performed. See the attached notice of cancellation form
35 for an explanation of this right."

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

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

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

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

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"NOTICE OF CANCELLATION

.....
(Enter date of transaction)

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

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

.....(Name of foreclosure consultant) at
.....(Address of foreclosure consultant's place of business)

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

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

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

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

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

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

6. It is a violation of this act for a foreclosure consultant to:
a. claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed every distressed property service the foreclosure consultant contracted to perform or represented would be performed, unless compensation

- 1 for partial performance is expressly agreed to by both parties in the
2 foreclosure contract;
- 3 b. claim, demand, charge, collect, or receive any fee, interest,
4 or any other compensation for any reason, in excess of two monthly
5 mortgage payments of principal and interest, or the most recent
6 quarterly property tax installment on the distressed property,
7 whichever is less;
- 8 c. take a wage assignment, a lien of any type on real or
9 personal property, or other security to secure the payment of
10 compensation. Any agreement to take such security is void and
11 unenforceable;
- 12 d. receive any consideration from any third party in connection
13 with distressed property services rendered to an owner;
- 14 e. acquire any interest, directly or indirectly, or by means of a
15 subsidiary or affiliate in a distressed property from an owner with
16 whom the foreclosure consultant has contracted;
- 17 f. accept any power of attorney from an owner for any
18 purpose, except to inspect documents as provided by law; or
- 19 g. induce or attempt to induce an owner to enter a contract that
20 does not comply in all respects with sections 4 and 5 of this act.
21
- 22 7. a. Any waiver by an owner of the provisions of section 4, 5,
23 or 6 of this act is void and unenforceable as contrary to public
24 policy.
- 25 b. Any attempt by a foreclosure consultant to induce an owner
26 to waive the owner's rights is a violation of this act.
27
- 28 8. a. A distressed property purchaser who enters into a
29 distressed property conditional conveyance or a distressed property
30 conveyance shall do so in the form of a written contract. A
31 distressed property conditional conveyance contract and a distressed
32 property conveyance contract shall be written in at least 14-point
33 boldface type, in the same language principally used by the owner
34 to negotiate the sale of the distressed property, shall be fully
35 completed, signed, and dated by the owner and the distressed
36 property purchaser, and shall be witnessed and acknowledged by a
37 notary public, before the owner executes a deed or any other
38 instrument of conveyance of the distressed property.
- 39 b. A distressed property conditional conveyance contract and a
40 distressed property conveyance contract shall contain the entire
41 agreement of the parties, be fully assignable, and survive delivery
42 of any deed or any other instrument of conveyance of the distressed
43 property.
- 44 c. A distressed property conditional conveyance contract and a
45 distressed property conveyance contract shall include the following
46 terms, except that a distressed property conveyance contract shall
47 not be required to contain the terms set forth in paragraph (5):

- 1 (1) the name, business address, and telephone number of the
2 distressed property purchaser;
- 3 (2) the address of the distressed property;
- 4 (3) the total consideration to be given by the distressed property
5 purchaser in connection with or incident to the transaction;
- 6 (4) a complete description of the terms of payment or other
7 consideration including, but not limited to, any distressed property
8 services of any nature that the distressed property purchaser
9 represents will be performed for the owner before or after the
10 transaction;
- 11 (5) a complete description of the terms of any related agreement
12 designed to allow the owner to remain in the dwelling including,
13 but not limited to, a lease agreement, repurchase agreement,
14 contract for deed, or a lease agreement with an option to purchase;
- 15 (6) a notice of cancellation as provided in this section;
- 16 (7) the following notice in at least 14-point boldface type, if the
17 contract is printed, or in capital letters, if the contract is typed, and
18 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 Until your right to cancel this contract has ended,
22(Name) or anyone working for
23(Name) CANNOT ask you to sign or have you sign
24 any deed or any other document. You are urged to have this
25 contract reviewed by an attorney of your choice within five
26 business days of signing it."; and
- 27 (8) if title to the distressed property will be transferred in the
28 transaction, the following notice in at least 14-point boldface type,
29 if the contract is printed, or in capital letters, if the contract is typed,
30 and completed with the name of the distressed property purchaser
31 immediately above the statement required by this section:
32 "NOTICE REQUIRED BY NEW JERSEY LAW
33 As part of this transaction, you are giving up title to your home."
34
- 35 9. a. In addition to any other right of rescission provided by
36 applicable State or federal laws, the owner has the right to cancel a
37 distressed property conditional conveyance contract or a distressed
38 property conveyance contract with a distressed property purchaser
39 until midnight of the 10th business day following the day on which
40 the owner signs the contract, or until the conclusion of a sheriff's
41 sale pursuant to the provisions of the "Fair Foreclosure Act,"
42 P.L.1995, c.244 (C.2A:50-53 et seq.) or the conclusion of a
43 municipal tax sale foreclosure pursuant to the provisions of the "tax
44 sale law," chapter 5 of Title 54 of the Revised Statutes, whichever
45 occurs first.
- 46 b. Cancellation of the contract occurs when the owner delivers,
47 by any means, written notice of cancellation to the address specified

1 in the contract. Notice of cancellation, if given by mail, is effective
2 when deposited in the mail properly addressed with postage
3 prepaid. Notice by certified mail, return receipt requested, to the
4 address specified in the contract, shall be conclusive proof of notice
5 of cancellation.

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

10 d. Within 10 business days following receipt of a notice of
11 cancellation delivered in accordance with this section, the distressed
12 property purchaser shall return to the owner, without condition, any
13 original contract and any other documents signed by the owner.
14

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

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

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

27 b. A contract with a distressed property purchaser shall be
28 accompanied by a completed form in duplicate, captioned
29 "NOTICE OF CANCELLATION" in a size equal to a 14-point
30 boldface type, if the contract is printed, or in capital letters, if the
31 contract is typed, followed by a space in which the distressed
32 property purchaser shall enter the date on which the owner executes
33 any contract. This form shall be attached to the contract, shall be
34 easily detachable, and shall contain in at least 14-point type, if the
35 contract is printed, or in capital letters, if the contract is typed, the
36 following statement written in the same language as used in the
37 contract:

38 "NOTICE OF CANCELLATION

39

40 (Enter date contract signed)

41 You may cancel this contract for the conveyance of your home,
42 without any penalty or obligation, at any time before
43 (enter date and time of day). To cancel this
44 transaction, mail or deliver a signed and dated copy of this
45 cancellation notice to (Name of purchaser) at
46 (Street address of purchaser's place of

1 business) NOT LATER THAN
2 (Enter date and time of day).

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

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

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

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

17
18 11. a. A distressed property purchaser, in the course of a
19 distressed property conditional conveyance, shall not:

20 (1) enter into, or attempt to enter into, a distressed property
21 conditional conveyance unless the distressed property purchaser
22 verifies and can demonstrate that the owner has a reasonable ability
23 to pay for the subsequent conveyance of a fee interest back to the
24 owner under the terms of any option to purchase and a reasonable
25 ability to make monthly or any other required payments due prior to
26 the subsequent conveyance;

27 (2) fail to make a payment to the owner at the time the title to
28 the distressed property is conveyed from the owner to the distressed
29 property purchaser, or, if the distressed property purchaser acquires
30 a beneficial interest through a trust, at the time of the creation of the
31 trust, so that the owner has received consideration in an amount of
32 at least 82% of the property's fair market value, or, in the
33 alternative, fail to make a payment to the owner, in situations in
34 which the owner is unable to purchase the distressed property from
35 the distressed property owner at the time of the expiration of the
36 owner's option to purchase, so that the owner has received
37 consideration in an amount of at least 82% of the property's fair
38 market value;

39 (3) enter into an option to purchase or lease as part of a
40 distressed property conditional conveyance containing terms that
41 are unfair or commercially unreasonable, or engage in any other
42 unfair conduct;

43 (4) represent, directly or indirectly, that the distressed property
44 purchaser is acting as an advisor or a consultant, or in any other
45 manner represent that the distressed property purchaser is acting on
46 behalf of the homeowner;

- 1 (5) misrepresent the distressed property purchaser's status as to
2 licensure or certification;
- 3 (6) do any of the following until after the time during which the
4 owner may cancel the transaction:
 - 5 (a) accept from the owner an execution of a deed or any other
6 instrument of conveyance of any interest in the distressed property;
 - 7 (b) induce the owner to execute a deed or any other instrument
8 of conveyance of any interest in the distressed property; or
 - 9 (c) record with the county recorder of deeds any document
10 signed by the owner, including but not limited to a deed or any
11 other instrument of conveyance;
- 12 (7) fail to convey title to the distressed property to the owner
13 under an option to purchase provided for in the distressed property
14 conveyance contract, in situations in which the terms of the
15 conveyance contract have been fulfilled;
- 16 (8) enter into a distressed property conditional conveyance if
17 any party to the transaction is represented by way of a power of
18 attorney;
- 19 (9) fail to extinguish all liens encumbering the distressed
20 property, immediately following the conveyance of the distressed
21 property, or fail to assume all liability with respect to the lien in
22 foreclosure and prior liens that will not be extinguished by the
23 foreclosure, which assumption shall be accomplished without
24 violations of the terms and conditions of the lien being assumed;
- 25 (10) cause the property to be conveyed or encumbered without
26 the knowledge or permission of the owner, or in any way frustrate
27 the ability of the owner to complete the conveyance back to the
28 owner;
- 29 (11) fail to have all documents executed as part of a distressed
30 property conditional conveyance also signed by a notary public
31 licensed in the State who is unrelated in any way to the distressed
32 property purchaser or any participant in the distressed property
33 conveyance;
- 34 (12) fail to complete a distressed property conditional
35 conveyance in the office of a title insurance producer licensed
36 pursuant to the "New Jersey Insurance Producer Licensing Act of
37 2001," P.L.2001, c.210 (C.17:22A-26 et seq.), or in the office of an
38 attorney licensed to practice law in this State;
- 39 (13) fail to provide to the owner, prior to the time of completion
40 of a distressed property conditional conveyance, a disclosure
41 statement in a form to be designed and prescribed by regulation by
42 the Director of the Division of Consumer Affairs, within the
43 Department of Law and Public Safety, in consultation with the
44 Commissioner of Banking and Insurance, which statement shall
45 require disclosure to the owner of all costs that the owner will incur
46 in connection with the conveyance and any option for the owner to
47 purchase the property, including a schedule of monthly and annual

- 1 payments, closing costs, and any additional costs and fees related to
2 the conveyance;
- 3 (14) claim, demand, charge, collect, or receive any fee, interest,
4 or any other compensation for any reason from an owner, for
5 services or as consideration for participating in the conveyance
6 transaction, in excess of two monthly mortgage payments of
7 principal and interest, or the most recent quarterly property tax
8 installment on the distressed property, whichever is less;
- 9 (15) in situations in which the distressed property conditional
10 conveyance involves a transfer of an interest in fee from an owner
11 to a distressed property purchaser, fail to record the deed to the
12 purchaser in the county clerk's office in which the property is
13 located, or fail to include a statement on the recorded deed that the
14 deed was obtained through a transaction governed by the
15 "Foreclosure Rescue Fraud Prevention Act;
- 16 (16) fail to notify in writing all existing mortgage lien holders of
17 the distressed property purchaser's intent to accept conveyance of
18 an interest in the property from the owner;
- 19 (17) fail to fully comply with all terms and conditions contained
20 in the mortgage lien documents, including but not limited to due-
21 on-sale provisions; and
- 22 (18) fail to satisfy all qualification requirements for assuming
23 the repayment of mortgage.
- 24 b. For purposes of paragraph (1) of subsection a. of this
25 section, an evaluation of "reasonable ability to pay" shall include
26 the owner's debt to income ratio, the owner's residual income, the
27 fair market value of the distressed property, and the owner's credit
28 history. There shall be a rebuttable presumption that the distressed
29 property purchaser has not verified reasonable payment ability if
30 the distressed property purchaser has not obtained documents of
31 assets, liabilities, and income, other than a statement by the owner.
- 32 c. For purposes of paragraph (2) of subsection a. of this
33 section: (1) an appraisal at the time that the distressed property is
34 conveyed by a person licensed or certified by an agency of this
35 State or the federal government shall create a rebuttable
36 presumption that the appraisal is an accurate determination of the
37 fair market value of the property; and (2) "consideration" means any
38 payment or thing of value provided to the owner, including
39 reasonable costs paid to independent third parties necessary to
40 complete the distressed property conveyance or payment of money
41 to satisfy a debt or legal obligation of the owner. "Consideration"
42 shall not include amounts imputed as a down payment or fee to the
43 distressed property purchaser, or a person acting in participation
44 with the distressed property purchaser.
- 45 d. If an owner fails to make a required payment or otherwise
46 defaults under a distressed property conditional conveyance
47 contract which contains an owner's option to purchase or a promise

1 to convey an interest in fee back to the owner, the distressed
2 property purchaser shall only enforce the forfeiture of the owner's
3 interest under the contract as follows:

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

9 (2) the distressed property purchaser may bring an action to
10 enforce the forfeiture of the owner's interest in the property and for
11 recovery of possession of the property by use of the procedures for
12 foreclosure and judicial sale of residential real property available to
13 lenders pursuant to the provisions of the "Fair Foreclosure Act."
14

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

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

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

26 c. complete a distressed property conveyance in the office of a
27 title insurance producer licensed pursuant to the "New Jersey
28 Insurance Producer Licensing Act of 2001," P.L.2001, c.210
29 (C.17:22A-26 et seq.), or in the office of an attorney licensed to
30 practice law in the State;

31 d. provide to the owner, prior to the time of completion of a
32 distressed property conveyance, a disclosure statement in a form to
33 be designed and prescribed by regulation by the Director of the
34 Division of Consumer Affairs, within the Department of Law and
35 Public Safety, in consultation with the Commissioner of Banking
36 and Insurance, which statement shall require disclosure to the
37 owner of all costs and fees that the owner will incur in connection
38 with the conveyance;

39 e. notify in writing all existing mortgage lien holders of the
40 distressed property purchaser's intent to accept conveyance of an
41 interest in the property from the owner;

42 f. fully comply with all terms and conditions contained in the
43 mortgage lien documents, including but not limited to due-on-sale
44 provisions; and

45 g. satisfy all qualification requirements for assuming the
46 repayment of the mortgage.

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

3
4 14. a. Any person who violates any provision of this act shall,
5 in addition to any other penalty provided by law, be liable to a
6 penalty of not more than \$10,000 for the first offense, and not more
7 than \$20,000 for the second and each subsequent offense, which
8 penalty may be collected in a summary proceeding pursuant to the
9 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
10 et seq.).

11 b. A person who violates any provision of this act is guilty of a
12 crime of the third degree. A person who violates any provision of
13 this act in connection with a pattern of foreclosure rescue fraud or a
14 conspiracy or endeavor to engage in a pattern of foreclosure rescue
15 fraud is guilty of a crime of the second degree.

16 c. (1) Except as provided in paragraph (2) of this subsection,
17 any distressed property conditional conveyance involving the
18 transfer of an interest in fee or a beneficial interest created through
19 a trust document, in a distressed property, and involving the
20 acquirer of the property allowing the owner to occupy the property,
21 which is made in violation of any provision of this act, is voidable
22 and the transfer may be rescinded by the owner within two years of
23 the date of the transfer.

24 (2) A violation of paragraph (2) of subsection a. of section 11 of
25 this act or of subsection a. of subsection 12 of this act, shall not be a
26 violation of this act that may cause a transfer described in paragraph
27 (1) of this subsection to be voidable or subject to rescission.

28 d. (1) Except as provided in paragraph (2) of this subsection, an
29 owner or a municipal lien tax holder of interest in a distressed
30 property on behalf of an owner may bring an action in Superior
31 Court against a foreclosure consultant or a distressed property
32 purchaser for any violation of this act, for treble damages,
33 attorney's fees, costs of suit and appropriate equitable relief. In an
34 action under this paragraph, the owner or municipal lien tax holder
35 may:

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

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

44 (2) For a violation of paragraph (2) of subsection a. of section 11
45 of this act or of subsection a. of subsection 12 of this act, an owner
46 may bring an action in Superior Court against a distressed property
47 purchaser for actual damages. In an action under this paragraph, the

1 court may award attorney's fees and costs of suit to the prevailing
2 party .

3 e. The remedies and rights provided for in this act are not
4 exclusive, but cumulative, and all other remedies or rights provided
5 by State or federal law, including, but not limited to, those brought
6 under the doctrine of equitable mortgage, are specifically preserved.
7

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

15 16. This act shall take effect on the 90th day following
16 enactment.
17

18
19 STATEMENT
20

21 This bill, the "Foreclosure Rescue Fraud Prevention Act,"
22 requires foreclosure consultants and distressed property purchasers,
23 who contract with owners of residential properties in financial
24 distress, to adhere to certain practices in providing foreclosure
25 prevention services to owners.

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

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

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

38 The bill also prohibits certain practices by foreclosure
39 consultants, including:

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

43 (2) collecting fees in excess of certain limits as described in the
44 bill.

45 In situations in which there is a distressed property conditional
46 conveyance, whereby an owner transfers the distressed property to a
47 distressed property purchaser, occupies the property, and retains an

1 option to purchase the property back from the purchaser, or a
2 distressed property conveyance, whereby an owner simply transfers
3 the distressed property to a distressed property purchaser, the bill
4 provides certain contract rights to owners, including requirements
5 that:

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

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

10 As to distressed property conditional conveyances, the bill places
11 certain obligations on distressed property purchasers, including
12 requirements to:

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

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

19 (3) provide to the owner, prior to a distressed property
20 conditional conveyance, a disclosure statement that includes all
21 costs the owner will incur in connection with the conveyance and
22 any option for the owner to purchase the property back from the
23 purchaser.

24 As to distressed property conveyances, the bill places certain
25 obligations on distressed property purchasers, including a
26 requirement that the owner is paid at 82% of the property's fair
27 market value in consideration of the owner's transfer of title to the
28 distressed property purchaser.

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

35 The bill provides that any person who violates any provision of
36 the bill is guilty of a crime of the third degree. A person who
37 violates any provision of the bill in connection with a pattern of
38 foreclosure rescue fraud or a conspiracy or endeavor to engage in a
39 pattern of foreclosure rescue fraud is guilty of a crime of the second
40 degree.

41 The bill also provides that any distressed property conditional
42 conveyance or distressed property conveyance involving the
43 transfer of an interest in fee or a beneficial interest through a trust
44 document, which is made in violation of any provision of the bill, is
45 voidable and the transfer may be rescinded by the owner within two
46 years of the date of the transfer and outlines certain restrictions and
47 rights of owners of such properties.

1 In addition, the bill provides that an owner or a municipal tax
2 lien holder of interest in a distressed property on behalf of an
3 owner, may bring an action in Superior Court against a foreclosure
4 consultant or a distressed property purchaser for any violation of the
5 bill's provisions, for treble damages, attorney's fees, costs of suit
6 and appropriate equitable relief. If an owner or municipal tax lien
7 holder commences such an action, the party may:

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

11 (2) introduce or provide as evidence in the action, any
12 contemporaneous oral agreements or representations made to the
13 owner by any party to a foreclosure consultant contract or distressed
14 property conveyance contract signed by the owner.

15 Finally, the bill provides that the Director of the Division of
16 Consumer Affairs, within the Department of Law and Public Safety,
17 in consultation with the Commissioner of Banking and Insurance,
18 shall enforce the provisions of the bill, and may promulgate
19 regulations necessary to effectuate the purposes of the bill.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 359

STATE OF NEW JERSEY

DATED: MARCH 4, 2010

The Assembly Financial Institutions and Insurance Committee reports favorably Assembly Bill No. 359.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The bill also provides that any distressed property conditional conveyance involving the transfer of an interest in fee or a beneficial interest through a trust document and involving the acquirer of the property allowing the owner to occupy the property, which is made in violation of any provision of the bill, except a violation of the provisions relating to payment of at least 82% of the property's fair market value, is voidable and the transfer may be rescinded by the owner within two years of the date of the transfer.

In addition, the bill provides that an owner or a municipal tax lien holder of interest in a distressed property on behalf of an owner, may bring an action in Superior Court against a foreclosure consultant or a distressed property purchaser for any violation of the bill's provisions, for treble damages, attorney's fees, costs of suit and appropriate equitable relief. If an owner or municipal tax lien holder commences such an action, the party may:

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

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

Further, for a violation of the bill's provisions requiring payment of at least 82% of the property's fair market value by a distressed property purchaser, in the course of a distressed property conditional conveyance or a distressed property conveyance, an owner may bring an action in Superior Court against a distressed property purchaser for actual damages, and a court may award attorney's fees and costs of suit to the prevailing party in the action.

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

This bill was pre-filed for introduction in the 2010-2011 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO

ASSEMBLY, No. 359

with Assembly Floor Amendments
(Proposed by Assemblyman SCHAER)

ADOPTED: SEPTEMBER 30, 2010

These amendments to the “Foreclosure Rescue Fraud Prevention Act,” as the underlying bill is entitled, require foreclosure consultants to register annually with the Director of the Division of Consumer Affairs. The registration process requires foreclosure consultants to provide certain information and a registration fee, to be determined by the director. The foreclosure consultants are also subject to criminal background checks.

The amendments also:

- provide that the director may refuse to issue or renew, and may revoke, any registration for certain reasons, including failure to comply with the provisions of the bill, and upon proof that the applicant or registrant has been convicted of any crime of moral turpitude or any crime relating adversely to the activity regulated by the bill.
- add attorneys licensed to practice in this State to the categories of licensed professionals who are exempt from the bill’s requirements while acting under the authority of their license.
- provide that a person who registers as a foreclosure consultant shall not be subject to the provisions of P.L.1979, c.36 (C.17:16G-1 et seq.), commonly known as the “debt adjuster act,” while acting under the authority provided to foreclosure consultants properly registered under the bill’s provisions.
- prohibit any person from presenting himself to the public as a registered foreclosure consultant or using the designation “foreclosure consultant,” “foreclosure consultant specialist,” or similar designation, without registering as a foreclosure consultant pursuant to the bill’s provisions.
- provide that the director may examine the books, accounts and records of foreclosure consultants and other persons as necessary to enforce the bill’s provisions, and require that foreclosure consultants have their financial records audited annually.
- provide that, in addition to the civil and criminal penalties provided for in the bill, if the director determines that there has been any substantial violation of the bill’s provisions by a professional licensed under a licensing board in this State, the director shall provide a written notice describing the violation to the licensing board having jurisdiction over the profession, for such action as the board deems appropriate.

- revise the penalty provisions with respect to requirements that at the time of a distressed property conditional conveyance to a distressed property purchaser, an owner be paid at least 82% of the property's value; so that for a failure to pay at this level, in addition to the other penalties provided for, the owner has the right to rescind the transfer of the property within two years.

The amendments also make certain technical corrections.

SENATE COMMERCE COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 359

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 3, 2011

The Senate Commerce Committee reports favorably and with committee amendments Assembly Bill No. 359(1R).

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

The bill, as amended, requires a foreclosure consultant to post a bond with the Department of Banking and Insurance prior to conducting any business in the State. In addition, the bill provides certain contract rights for owners of a financially distressed residential property, as defined in the bill, who contract with foreclosure consultants, including requirements that:

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

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

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

(1) collecting any fee prior to the completion of all agreed upon services and until the distressed property relief is secured; and

(2) collecting fees in excess of certain limits as prescribed in the bill.

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

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

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

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

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

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

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

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

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

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

The bill also provides that any distressed property conditional conveyance involving the transfer of an interest in fee or a beneficial interest through a trust document, which is made in violation of any provision of the bill, is voidable and the transfer may be rescinded by the owner within two years of the date of the transfer and outlines certain restrictions and rights of owners of such properties. However, the bill provides that the two year right of rescission shall not affect a bonafide purchaser or mortgagee for value.

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

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

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

Finally, the bill, as amended, provides that the Commissioner of Banking and Insurance shall enforce the provisions of the bill and may promulgate regulations necessary to effectuate the purposes of the bill.

The amendments to the bill:

- provide that the Commissioner of Banking and Insurance shall enforce the provisions of the bill and may promulgate regulations necessary to effectuate the purposes of the bill.

- require foreclosure consultants to obtain a license from the Commissioner of Banking and Insurance. The license process requires foreclosure consultants to provide certain information and a registration fee, to be determined by the commissioner. The foreclosure consultants are also subject to criminal background checks.

- exclude from the bill's purview transactions regarding properties that are at risk of tax lien foreclosure, thus applying the bill's provisions only to residential properties subject to mortgage foreclosure proceedings.

- add title insurance producers and real estate brokers to the categories of licensed professionals who are exempt from the bill's requirements while acting under the authority of their license.

- clarify that an affiliate or subsidiary of a bank, savings bank, savings and loan association, credit union, or other federally insured financial institution, or insurance company is exempt from the requirements placed on foreclosure consultants under the bill.

- provide for a 10 day attorney review period for any distressed property conveyance or distressed property conditional conveyance.

- provide that a distressed property purchaser shall not enter into an option to purchase or lease as part of a distressed property conditional conveyance in which the agreement fails to provide for a length of time of at least three years within which the owner may exercise his right to purchase back the property.

- establish certain requirements for any fee or other consideration provided by an owner to a distressed property purchaser at the time of the execution of an option to purchase as consideration for that agreement.

- establish certain additional requirements with regard to money provided by an owner to the distressed property purchaser pursuant to any distressed property conditional conveyance, remitted as a monthly credit towards the purchase of the property in excess of the any monthly rental obligation.

As reported, this bill is identical to Senate Committee Substitute for Senate Bill No. 1651, also reported by the committee today.

SENATE, No. 1651

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED MARCH 11, 2010

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;

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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 (e) a municipality which has a tax lien on distressed property;

10 (f) an assignee or a purchaser of a municipal tax lien from a tax
11 sale; or

12 (g) a sponsor which is certified by the Commissioner of
13 Community Affairs to participate in the "New Jersey Housing
14 Assistance and Recovery Program" established pursuant to sections
15 8 through 14 of P.L.2008, c.127 (C.55:14K-88 et seq.).

16 "Owner" means an owner of record of title to a distressed
17 property.

18 "Residual income" means an owner's net income available to
19 meet living expenses after the payment of all ordinary and
20 necessary debt, including payments under an option to purchase
21 back the owner's property transferred in a distressed property
22 conditional conveyance.

23

24 3. A foreclosure consultant shall not conduct any business in
25 this State until the foreclosure consultant:

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

29 b. files the bond with the director and obtains written approval
30 of the bond from the director.

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

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

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

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

44

45 4. a. A foreclosure consultant contract shall be written in plain
46 language and shall fully disclose the exact nature of the foreclosure
47 consultant's services and the total amount and terms of
48 compensation.

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

6
7 "NOTICE REQUIRED BY NEW JERSEY LAW
8(Name) or anyone working for him or her
9 CANNOT:

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

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

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

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

27 "You, the owner, may cancel this transaction at any time until
28 after the foreclosure consultant has fully performed every service
29 the foreclosure consultant contracted to perform or represented
30 would be performed. See the attached notice of cancellation form
31 for an explanation of this right."

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

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

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

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

44 "NOTICE OF CANCELLATION
45
46 (Enter date of transaction)

47 You may cancel this transaction, without any penalty or
48 obligation, at any time until after the foreclosure consultant has

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1 fully performed every service the foreclosure consultant contracted
2 to perform or represented would be performed.

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

5(Name of foreclosure consultant) at
6(Address of foreclosure consultant's place
7 of business)

8 I hereby cancel this transaction on(Date)
9(Owner's signature).”

10 f. The foreclosure consultant shall provide the owner with a
11 copy of a foreclosure consultant contract and the attached notice of
12 cancellation in duplicate immediately upon execution of the
13 contract.

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

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

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

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

36
37 6. It is a violation of this act for a foreclosure consultant to:

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

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

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1 c. take a wage assignment, a lien of any type on real or
2 personal property, or other security to secure the payment of
3 compensation. Any agreement to take such security is void and
4 unenforceable;

5 d. receive any consideration from any third party in connection
6 with distressed property services rendered to an owner;

7 e. acquire any interest, directly or indirectly, or by means of a
8 subsidiary or affiliate in a distressed property from an owner with
9 whom the foreclosure consultant has contracted;

10 f. accept any power of attorney from an owner for any
11 purpose, except to inspect documents as provided by law; or

12 g. induce or attempt to induce an owner to enter a contract that
13 does not comply in all respects with sections 4 and 5 of this act.
14

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

18 b. Any attempt by a foreclosure consultant to induce an owner
19 to waive the owner's rights is a violation of this act.
20

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

32 b. A distressed property conditional conveyance contract and a
33 distressed property conveyance contract shall contain the entire
34 agreement of the parties, be fully assignable, and survive delivery
35 of any deed or any other instrument of conveyance of the distressed
36 property.

37 c. A distressed property conditional conveyance contract and a
38 distressed property conveyance contract shall include the following
39 terms, except that a distressed property conveyance contract shall
40 not be required to contain the terms set forth in paragraph (5):

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

43 (2) the address of the distressed property;

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

46 (4) a complete description of the terms of payment or other
47 consideration including, but not limited to, any distressed property
48 services of any nature that the distressed property purchaser

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1 represents will be performed for the owner before or after the
2 transaction;

3 (5) a complete description of the terms of any related agreement
4 designed to allow the owner to remain in the dwelling including,
5 but not limited to, a lease agreement, repurchase agreement,
6 contract for deed, or a lease agreement with an option to purchase;

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

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

12 "NOTICE REQUIRED BY NEW JERSEY LAW

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

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

24 "NOTICE REQUIRED BY NEW JERSEY LAW

25 As part of this transaction, you are giving up title to your home."
26

27 9. a. In addition to any other right of rescission provided by
28 applicable State or federal laws, the owner has the right to cancel a
29 distressed property conditional conveyance contract or a distressed
30 property conveyance contract with a distressed property purchaser
31 until midnight of the 10th business day following the day on which
32 the owner signs the contract, or until the conclusion of a sheriff's
33 sale pursuant to the provisions of the "Fair Foreclosure Act,"
34 P.L.1995, c.244 (C.2A:50-53 et seq.) or the conclusion of a
35 municipal tax sale foreclosure pursuant to the provisions of the "tax
36 sale law," chapter 5 of Title 54 of the Revised Statutes, whichever
37 occurs first.

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

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

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

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

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

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

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

29 "NOTICE OF CANCELLATION

30

31 (Enter date contract signed)

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

40 I hereby cancel this transaction on (Date)
41 (Owner's
42 signature)."

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

46 d. The distressed property purchaser shall record the contract
47 and the attached notice of cancellation with the county clerk in the

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1 county in which the distressed property is located within 10
2 business days of the signing of the contract by both parties.

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

7

8 11. a. A distressed property purchaser, in the course of a
9 distressed property conditional conveyance, shall not:

10 (1) enter into, or attempt to enter into, a distressed property
11 conditional conveyance unless the distressed property purchaser
12 verifies and can demonstrate that the owner has a reasonable ability
13 to pay for the subsequent conveyance of a fee interest back to the
14 owner under the terms of any option to purchase and a reasonable
15 ability to make monthly or any other required payments due prior to
16 the subsequent conveyance;

17 (2) fail to make a payment to the owner at the time the title to
18 the distressed property is conveyed from the owner to the distressed
19 property purchaser, or, if the distressed property purchaser acquires
20 a beneficial interest through a trust, at the time of the creation of the
21 trust, so that the owner has received consideration in an amount of
22 at least 82% of the property's fair market value, or, in the
23 alternative, fail to make a payment to the owner, in situations in
24 which the owner is unable to purchase the distressed property from
25 the distressed property owner at the time of the expiration of the
26 owner's option to purchase, so that the owner has received
27 consideration in an amount of at least 82% of the property's fair
28 market value;

29 (3) enter into an option to purchase or lease as part of a
30 distressed property conditional conveyance containing terms that
31 are unfair or commercially unreasonable, or engage in any other
32 unfair conduct;

33 (4) represent, directly or indirectly, that the distressed property
34 purchaser is acting as an advisor or a consultant, or in any other
35 manner represent that the distressed property purchaser is acting on
36 behalf of the homeowner;

37 (5) misrepresent the distressed property purchaser's status as to
38 licensure or certification;

39 (6) do any of the following until after the time during which the
40 owner may cancel the transaction:

41 (a) accept from the owner an execution of a deed or any other
42 instrument of conveyance of any interest in the distressed property;

43 (b) induce the owner to execute a deed or any other instrument
44 of conveyance of any interest in the distressed property; or

45 (c) record with the county recorder of deeds any document
46 signed by the owner, including but not limited to a deed or any
47 other instrument of conveyance;

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1 (7) fail to convey title to the distressed property to the owner
2 under an option to purchase provided for in the distressed property
3 conveyance contract, in situations in which the terms of the
4 conveyance contract have been fulfilled;

5 (8) enter into a distressed property conditional conveyance if
6 any party to the transaction is represented by way of a power of
7 attorney;

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

14 (10) cause the property to be conveyed or encumbered without
15 the knowledge or permission of the owner, or in any way frustrate
16 the ability of the owner to complete the conveyance back to the
17 owner;

18 (11) fail to have all documents executed as part of a distressed
19 property conditional conveyance also signed by a notary public
20 licensed in the State who is unrelated in any way to the distressed
21 property purchaser or any participant in the distressed property
22 conveyance;

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

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

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

45 (15) in situations in which the distressed property conditional
46 conveyance involves a transfer of an interest in fee from an owner
47 to a distressed property purchaser, fail to record the deed to the
48 purchaser in the county clerk's office in which the property is

1 located, or fail to include a statement on the recorded deed that the
2 deed was obtained through a transaction governed by the
3 “Foreclosure Rescue Fraud Prevention Act”;

4 (16) fail to notify in writing all existing mortgage lien holders of
5 the distressed property purchaser’s intent to accept conveyance of
6 an interest in the property from the owner;

7 (17) fail to fully comply with all terms and conditions contained
8 in the mortgage lien documents, including but not limited to due-
9 on-sale provisions; and

10 (18) fail to satisfy all qualification requirements for assuming the
11 repayment of mortgage.

12 b. For purposes of paragraph (1) of subsection a. of this
13 section, an evaluation of "reasonable ability to pay" shall include
14 the owner’s debt to income ratio, the owner’s residual income, the
15 fair market value of the distressed property, and the owner's credit
16 history. There shall be a rebuttable presumption that the distressed
17 property purchaser has not verified reasonable payment ability if
18 the distressed property purchaser has not obtained documents of
19 assets, liabilities, and income, other than a statement by the owner.

20 c. For purposes of paragraph (2) of subsection a. of this
21 section: (1) an appraisal at the time that the distressed property is
22 conveyed by a person licensed or certified by an agency of this
23 State or the federal government shall create a rebuttable
24 presumption that the appraisal is an accurate determination of the
25 fair market value of the property; and (2) "consideration" means any
26 payment or thing of value provided to the owner, including
27 reasonable costs paid to independent third parties necessary to
28 complete the distressed property conveyance or payment of money
29 to satisfy a debt or legal obligation of the owner. "Consideration"
30 shall not include amounts imputed as a down payment or fee to the
31 distressed property purchaser, or a person acting in participation
32 with the distressed property purchaser.

33 d. If an owner fails to make a required payment or otherwise
34 defaults under a distressed property conditional conveyance
35 contract which contains an owner’s option to purchase or a promise
36 to convey an interest in fee back to the owner, the distressed
37 property purchaser shall only enforce the forfeiture of the owner’s
38 interest under the contract as follows:

39 (1) for purposes of the “Fair Foreclosure Act,” P.L.1995, c.244
40 (C.2A:50-53 et seq.), the distressed property conditional
41 conveyance contract shall be deemed to be a residential mortgage,
42 the distressed property purchaser shall be deemed to be a lender,
43 and the owner shall be deemed to be a debtor; and

44 (2) the distressed property purchaser may bring an action to
45 enforce the forfeiture of the owner’s interest in the property and for
46 recovery of possession of the property by use of the procedures for
47 foreclosure and judicial sale of residential real property available to
48 lenders pursuant to the provisions of the “Fair Foreclosure Act.”

- 1 12. A distressed property purchaser, in the course of a distressed
2 property conveyance, shall not fail to:
- 3 a. make a payment to the owner at the time the title to the
4 distressed property is conveyed from the owner to the distressed
5 property purchaser, so that the owner has received consideration, as
6 defined by paragraph (2) of subsection c. of section 11 of this act, in
7 an amount of at least 82% of the property's fair market value;
- 8 b. have all documents executed as part of a distressed property
9 conveyance also signed by a notary public licensed in the State who
10 is unrelated in any way to the distressed property purchaser or any
11 participant in the distressed property conveyance;
- 12 c. complete a distressed property conveyance in the office of a
13 title insurance producer licensed pursuant to the "New Jersey
14 Insurance Producer Licensing Act of 2001," P.L.2001, c.210
15 (C.17:22A-26 et seq.), or in the office of an attorney licensed to
16 practice law in the State;
- 17 d. provide to the owner, prior to the time of completion of a
18 distressed property conveyance, a disclosure statement in a form to
19 be designed and prescribed by regulation by the Director of the
20 Division of Consumer Affairs, within the Department of Law and
21 Public Safety, in consultation with the Commissioner of Banking
22 and Insurance, which statement shall require disclosure to the
23 owner of all costs and fees that the owner will incur in connection
24 with the conveyance;
- 25 e. notify in writing all existing mortgage lien holders of the
26 distressed property purchaser's intent to accept conveyance of an
27 interest in the property from the owner;
- 28 f. fully comply with all terms and conditions contained in the
29 mortgage lien documents, including but not limited to due-on-sale
30 provisions; and
- 31 g. satisfy all qualification requirements for assuming the
32 repayment of the mortgage.

33
34 13. Any waiver of the provisions of sections 8, 9, 10, 11, or 12
35 of this act is void and unenforceable as contrary to public policy.
36

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

44 b. A person who violates any provision of this act is guilty of a
45 crime of the third degree. A person who violates any provision of
46 this act in connection with a pattern of foreclosure rescue fraud or a
47 conspiracy or endeavor to engage in a pattern of foreclosure rescue
48 fraud is guilty of a crime of the second degree.

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1 c. (1) Except as provided in paragraph (2) of this subsection,
2 any distressed property conditional conveyance involving the
3 transfer of an interest in fee or a beneficial interest created through
4 a trust document, in a distressed property, and involving the
5 acquirer of the property allowing the owner to occupy the property,
6 which is made in violation of any provision of this act, is voidable
7 and the transfer may be rescinded by the owner within two years of
8 the date of the transfer.

9 (2) A violation of paragraph (2) of subsection a. of section 11 of
10 this act or of subsection a. of subsection 12 of this act, shall not be a
11 violation of this act that may cause a transfer described in paragraph
12 (1) of this subsection to be voidable or subject to rescission.

13 d. (1) Except as provided in paragraph (2) of this subsection, an
14 owner or a municipal lien tax holder of interest in a distressed
15 property on behalf of an owner may bring an action in Superior
16 Court against a foreclosure consultant or a distressed property
17 purchaser for any violation of this act, for treble damages,
18 attorney's fees, costs of suit and appropriate equitable relief. In an
19 action under this paragraph, the owner or municipal lien tax holder
20 may:

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

24 (b) introduce or provide as evidence in the action, any
25 contemporaneous oral agreements or representations made to the
26 owner by any party to a foreclosure consultant contract, distressed
27 property conditional conveyance contract, or distressed property
28 conveyance contract signed by the owner.

29 (2) For a violation of paragraph (2) of subsection a. of section
30 11 of this act or of subsection a. of subsection 12 of this act, an
31 owner may bring an action in Superior Court against a distressed
32 property purchaser for actual damages. In an action under this
33 paragraph, the court may award attorney's fees and costs of suit to
34 the prevailing party.

35 e. The remedies and rights provided for in this act are not
36 exclusive, but cumulative, and all other remedies or rights provided
37 by State or federal law, including, but not limited to, those brought
38 under the doctrine of equitable mortgage, are specifically preserved.

39

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

46

47 16. This act shall take effect on the 90th day following
48 enactment.

STATEMENT

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

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

- (1) the contract for foreclosure consulting services must be in writing and must contain certain disclosures and notice requirements in 14-point boldface type; and
- (2) the owner has a right to cancel the foreclosure consulting contract at any time until after the foreclosure consultant has fully performed every service the consultant contracted to perform.

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

- (1) collecting any fee prior to the completion of all agreed upon services, unless compensation for partial performance is expressly agreed upon in the contract; and
- (2) collecting fees in excess of certain limits as described in the bill.

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

- (1) the contract be in writing and include certain notices and disclosures in 14-point boldface type; and
- (2) the owner has a right to cancel the contract during certain periods as described in the bill.

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

- (1) verify that the owner has a reasonable ability to pay for a subsequent conveyance of title back to the owner;
- (2) ensure that the owner is paid at least 82% of the property's fair market value in consideration for the owner's conveyance of title, or transfer of a beneficial interest through a trust, to the distressed property purchaser; and

1 (3) provide to the owner, prior to a distressed property
2 conditional conveyance, a disclosure statement that includes all
3 costs the owner will incur in connection with the conveyance and
4 any option for the owner to purchase the property back from the
5 purchaser.

6 As to distressed property conveyances, the bill places certain
7 obligations on distressed property purchasers, including a
8 requirement that the owner is paid at least 82% of the property's
9 fair market value in consideration for the owner's transfer of title to
10 the distressed property purchaser.

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

17 The bill provides that any person who violates any provision of
18 the bill is guilty of a crime of the third degree. A person who
19 violates any provision of the bill in connection with a pattern of
20 foreclosure rescue fraud or a conspiracy or endeavor to engage in a
21 pattern of foreclosure rescue fraud is guilty of a crime of the second
22 degree.

23 The bill also provides that any distressed property conditional
24 conveyance involving the transfer of an interest in fee or a
25 beneficial interest through a trust document and involving the
26 acquirer of the property allowing the owner to occupy the property,
27 which is made in violation of any provision of the bill, except a
28 violation of the provision relating to payment of at least 82% of the
29 property's fair market value, is voidable and the transfer may be
30 rescinded by the owner within two years of the date of the transfer.

31 In addition, the bill provides that an owner or a municipal tax
32 lien holder of interest in a distressed property on behalf of an
33 owner, may bring an action in Superior Court against a foreclosure
34 consultant or a distressed property purchaser for any violation of the
35 bill's provisions, for treble damages, attorney's fees, costs of suit
36 and appropriate equitable relief. If an owner or municipal tax lien
37 holder commences such an action, the party 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 or distressed
44 property conveyance contract signed by the owner.

45 Further, for a violation of the bill's provisions requiring payment
46 of at least 82% of the property's fair market value by a distressed
47 property purchaser, in the course of a distressed property
48 conditional conveyance or a distressed property conveyance, an

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1 owner may bring an action in Superior Court against a distressed
2 property purchaser for actual damages, and a court may award
3 attorney's fees and costs of suit to the prevailing party in the action.

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

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1651**

STATE OF NEW JERSEY

DATED: MARCH 3, 2011

The Senate Commerce Committee reports favorably Senate Committee Substitute for Senate Bill No. 1651.

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

The substitute bill requires a foreclosure consultant to post a bond with the Department of Banking and Insurance prior to conducting any business in the State. In addition, the bill provides certain contract rights for owners of a financially distressed residential property, as defined in the bill, who contract with foreclosure consultants, including requirements that:

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

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

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

(1) collecting any fee prior to the completion of all agreed upon services and securing any relief promised; and

(2) collecting fees in excess of certain limits as prescribed in the bill.

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

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

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

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

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

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

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

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

The bill also provides for a 10 day attorney review period for any distressed property conveyance or distressed property conditional conveyance.

Additionally, the bill provides that a distressed property purchaser shall not enter into an option to purchase or lease as part of a distressed property conditional conveyance in which the agreement fails to provide for a length of time of at least three years within which the owner may exercise his right to purchase back the property. The bill also establishes certain requirements for any fee or other consideration provided by an owner to a distressed property purchaser at the time of the execution of an option to purchase as consideration for that agreement.

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

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

The bill also provides that any distressed property conditional conveyance involving the transfer of an interest in fee or a beneficial interest through a trust document, which is made in violation of any provision of the bill, is voidable and the transfer may be rescinded by

the owner within two years of the date of the transfer and outlines certain restrictions and rights of owners of such properties. However, the bill provides that the two year right of rescission shall not affect a bonafide purchaser or mortgagee for value.

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

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

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

Finally, the bill provides that the Commissioner of Banking and Insurance shall enforce the provisions of the bill and may promulgate regulations necessary to effectuate the purposes of the bill.

As reported, this substitute bill is identical to Assembly Bill No. 359 (2R), also reported by the committee today.

ASSEMBLY BILL No. 359
(Second Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 359 (Second Reprint) with my recommendations for reconsideration. This bill attempts to protect distressed homeowners from foreclosure rescue scams by regulating "foreclosure consultants," providing certain contractual rights to homeowners, and regulating the prices of distressed home sales. The protections provided by this bill are an important step towards safeguarding residents faced with the painful choices and consequences that come from home foreclosures. Real estate experts estimate that mortgage lenders in New Jersey are waiting to file an estimated 28,500 foreclosures, and that another 55,000 mortgage loans are currently more than 90 days delinquent. New Jersey homeowners deserve protections from the unlicensed and unsupervised individuals who might prey upon the vulnerable. With the improvements recommended below, I look forward to swiftly signing this bill into law.

As written, this bill subjects all foreclosure consultants to licensure by the Department of Banking and Insurance and requires consultants to adhere to a set of reasonable business standards. Licensing these consultants will appropriately supplement the protections already in place to help curb foreclosure rescue scams.

In addition, the bill attempts to ensure that homeowners receive appropriate compensation for their homes in certain distressed property transactions. The bill provides certain contractual rights to distressed property owners, and includes a requirement that the owner is paid at least 82% of the property's fair market value in consideration for the homeowner's transfer of title. Although establishing a safety net for homeowners is important, this bill as presently drafted is too broad and may

have the dangerous, unintended consequence of freezing the marketplace for legitimate distressed residential properties and short-sale transactions ultimately hurting the very people the bill purports to help.

Wisely, the original intent of the bill was to specifically target the unregulated foreclosure consultants who at times employ fraudulent methods to obtain distressed properties at reduced costs. Limiting the sales of these properties brokered through a foreclosure consultant to 82% of fair market value is consistent with the goal of protecting homeowners from sham transactions. However, this bill sweeps in all transactions involving distressed properties, with the exception of those involving federally insured institutions and acquirers through a deed in lieu of foreclosure, without distinguishing between fraud and financing. Attempting to regulate nearly all distressed properties could have the dire effect of curtailing legitimate transactions across the State, preventing homeowners from engaging in pre-foreclosure transactions to stem further losses, and forcing banks to foreclose on many of the thousands of financially distressed homes in New Jersey that are already "under water." Simply stated, without the option of legitimate, pre-foreclosure sales, many homeowners will end up in bankruptcy, while banks will end up with more foreclosed-upon property, more debt, and fresh requests for taxpayer-funded support. Recognizing these potential harms, comparable legislation enacted in other states, such as Illinois, is more narrowly crafted to curb foreclosure rescue scams without adversely impacting the residential real estate market.

In order to limit those potentially dangerous unintended consequences, I recommend that the bill be amended to clarify that only distressed property conveyances and distressed property "conditional conveyances" involving participation by a foreclosure

consultant be subject to the "82% of fair market value" requirement. Therefore, I herewith return Assembly Bill No. 359 (Second Reprint) and recommend that it be amended as follows:

Page 2, Section 2, Line 39: After "transaction" insert "involving any participation by, or any distressed property service or other service or other assistance provided by, a foreclosure consultant"

Page 3, Section 2, Line 3: After, "transaction" insert "involving any participation by, or any distressed property service or other service or other assistance provided by, a foreclosure consultant"

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Jeffrey S. Chiesa

Chief Counsel to the Governor