

[Third Reprint]

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 Huttie, Angelini, Assemblyman Wisniewski, Assemblywomen Evans, Greenstein, Assemblymen Chivukula, Conaway, Assemblywoman Rodriguez, Assemblymen Albano, Milam, Connors, Assemblywoman Wagner, Assemblymen Moriarty, Scalera, Assemblywomen Riley, Lampitt, Spencer, Jasey, Senators Turner, Stack, Cunningham, Gordon, Greenstein and Ruiz

SYNOPSIS

The "Foreclosure Rescue Fraud Prevention Act."

CURRENT VERSION OF TEXT

As amended on December 1, 2011 by the General Assembly pursuant to the Governor's recommendations.

(Sponsorship Updated As Of: 6/30/2011)

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

38 "Distressed property conditional conveyance" means a
 39 transaction ³involving any participation by, or any distressed
 40 property service or other service or other assistance provided by, a
 41 foreclosure consultant³ in which an owner transfers an interest in

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 fee, or a beneficial interest created through a trust document, in the
 2 distressed property; the acquirer of the property allows the owner to
 3 occupy the property; and the acquirer of the property or a person
 4 acting in participation with the acquirer of the property conveys or
 5 promises to convey an interest in fee back to the owner or gives the
 6 owner an option to purchase the property at a later date.

7 “Distressed property conveyance” means a transaction
 8 ³involving any participation by, or any distressed property service
 9 or other service or other assistance provided by, a foreclosure
 10 consultant³ in which an owner transfers an interest in fee in a
 11 distressed property.

12 ²“Distressed property relief” or “relief” means, in connection
 13 with a foreclosure consultant, any of the following:

14 (1) saving the owner’s property from foreclosure;

15 (2) postponing the foreclosure sale;

16 (3) obtaining a forbearance from the mortgagee;

17 (4) securing the right to exercise the right to reinstatement;

18 (5) obtaining an extension of the period within which the owner
 19 may reinstate his or her mortgage obligation;

20 (6) obtaining a waiver of an acceleration clause;

21 (7) obtaining a modification of a mortgage;

22 (8) assisting the owner in obtaining a loan or advance of funds;

23 or

24 (9) avoiding the impairment of the owner’s credit.²

25 “Distressed property service” ²or “service”² means, without
 26 limitation, ²in connection with a distressed property conditional
 27 conveyance or a distressed property conveyance,² any of the
 28 following:

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

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

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

34 (4) arranging or attempting to arrange for an extension of the
 35 period within which the owner may cure the owner's default and
 36 reinstate a debt obligation;

37 (5) arranging or attempting to arrange for a delay or
 38 postponement of the time of sale of the distressed property;

39 (6) advising with respect to the filing of any document or
 40 assisting in any manner in the preparation of any document for
 41 filing with any court; or

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

45 “Foreclosure consultant”: (1) means any person, located out-of-
 46 State or within the State, who, directly or indirectly, for
 47 compensation from an owner, makes any solicitation,

- 1 representation, or offer to perform, or who performs, any distressed
2 property service that the person represents will in any manner do
3 any of the following in relation to the owner's distressed property:
- 4 (a) prevent or postpone the foreclosure sale ²[or the loss]² of
5 the property ²[due to nonpayment of taxes]²;
- 6 (b) obtain any forbearance from any ²[beneficiary or]²
7 mortgagee ²[or relief with respect to a tax sale of the property]²;
- 8 (c) assist the owner in exercising any right of reinstatement or
9 right of redemption;
- 10 (d) obtain any extension of the period within which the owner
11 may reinstate the owner's rights with respect to the property;
- 12 (e) obtain any waiver of an acceleration clause contained in any
13 promissory note, contract, or mortgage evidencing or securing a
14 debt in relation to the property;
- 15 (f) assist the owner in obtaining a loan or advance of funds to
16 pay off the promissory note, contract, or mortgage evidencing or
17 securing a debt in relation to the property; or
- 18 (g) avoid or ameliorate the impairment of the owner's credit
19 resulting from default on the promissory note, contract, or
20 mortgage, or the conduct of a foreclosure sale ²[or tax sale]² or
21 offer to repair the owner's credit.
- 22 (2) shall not include any of the following:
- 23 (a) a housing counseling agency contracted by the United States
24 Department of Housing and Urban Development to provide
25 counseling;
- 26 (b) a person who holds or is owed an obligation secured by a
27 lien on any distressed property in situations in which the person
28 performs services in connection with the obligation or lien,
29 provided the obligation or lien did not arise as the result of, or as
30 part of, a proposed distressed property conditional conveyance or a
31 distressed property conveyance;
- 32 (c) a person licensed to practice law in this State while acting
33 under the authority of that license;
- 34 (d) a nonprofit, charitable entity qualified pursuant to section
35 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.
36 s.501(c)(3)), which is licensed pursuant to P.L.1979, c.16
37 (C.17:16G-1 et seq.) ²[, and which offers counseling or advice to an
38 owner of a distressed property, provided the entity does not contract
39 for services with for-profit lenders or distressed property purchasers
40 or any person who structures or plans a distressed property
41 conveyance]²;
- 42 (e) a municipality which has a tax lien on distressed property;
- 43 (f) an assignee or a purchaser of a municipal tax lien from a tax
44 sale; ²[or]²
- 45 (g) a sponsor which is certified by the Commissioner of
46 Community Affairs to participate in the "New Jersey Housing

1 Assistance and Recovery Program” established pursuant to sections
2 8 through 14 of P.L.2008, c.127 (C.55:14K-88 et seq.) ²;

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

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

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

17 (k) a mediator licensed pursuant to the Judiciary's Foreclosure
18 Mediation Program; or

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

22 “Owner” means an owner of record of title to a distressed
23 property.

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

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

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

41 “Residual income” means an owner’s net income available to
42 meet living expenses after the payment of all ordinary and
43 necessary debt, including payments under an option to purchase
44 back the owner’s property transferred in a distressed property
45 conditional conveyance.

1 3. (New section) ¹a.¹ A foreclosure consultant shall not
2 conduct any business in this State until the foreclosure consultant:

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

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

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

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

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

26 b.] ¹ files the bond with the ²[director] commissioner² ¹, ¹ and
27 obtains written approval of the bond from the ²[director]
28 commissioner²;

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

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

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

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

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

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

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

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

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

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

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

40 d.]² A person who ²[registers] is licensed² as a foreclosure
41 consultant pursuant to this act shall not be subject to the provisions
42 of P.L.1979, c.16 (C.17:16G-1 et seq.) while acting under the
43 authority of this act.

44 ²[e.] d.² A person shall not present himself to the public as a
45 ²[registered] licensed² foreclosure consultant or use the
46 designation “foreclosure consultant,” “foreclosure consultant

1 specialist,” or similar designation without ²[registering] obtaining a
 2 license² pursuant to this act¹.

3

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

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

15 "NOTICE REQUIRED BY NEW JERSEY LAW

16(Name) or anyone working for him or her
 17 CANNOT:

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

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

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

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

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

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

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

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

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

"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 ²[the foreclosure consultant contracted to perform or represented would be performed] and has secured the relief for the owner ².

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. (New section) 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 ²[or represented would be performed] and has secured the relief for the owner ².

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.

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

1 agreement of the parties, be fully assignable, and survive delivery
 2 of any deed or any other instrument of conveyance of the distressed
 3 property.

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

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

10 (2) the address of the distressed property;

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

13 (4) a complete description of the terms of payment or other
 14 consideration including, but not limited to, any distressed property
 15 services of any nature that the distressed property purchaser
 16 represents will be performed for the owner before or after the
 17 transaction;

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

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

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

27 "NOTICE REQUIRED BY NEW JERSEY LAW

28 Until your right to cancel this contract has ended,
 29(Name) or anyone working for
 30(Name) CANNOT ask you to sign or have you sign
 31 any deed or any other document. You are urged to have this
 32 contract reviewed by an attorney of your choice within ²**[five]** 10²
 33 business days of signing it."; and

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

39 "NOTICE REQUIRED BY NEW JERSEY LAW

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

41

42 9. (New section) a. In addition to any other right of rescission
 43 provided by applicable State or federal laws, the owner has the right
 44 to cancel a distressed property conditional conveyance contract or a
 45 distressed property conveyance contract with a distressed property
 46 purchaser until midnight of the 10th business day following the day
 47 on which the owner signs the contract, or until the conclusion of a

1 sheriff's sale pursuant to the provisions of the "Fair Foreclosure
2 Act," P.L.1995, c.244 (C.2A:50-53 et seq.) ²[or the conclusion of a
3 municipal tax sale foreclosure pursuant to the provisions of the "tax
4 sale law," chapter 5 of Title 54 of the Revised Statutes]²,
5 whichever occurs first ², during which the owner may have an
6 attorney review the contract².

7 b. Cancellation of the contract occurs when the owner ², or an
8 attorney representing the owner,² delivers, by any means, written
9 notice of cancellation to the address specified in the contract.
10 Notice of cancellation, if given by mail, is effective when deposited
11 in the mail properly addressed with postage prepaid. Notice by
12 certified mail, return receipt requested, to the address specified in
13 the contract, shall be conclusive proof of notice of cancellation.

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

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

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

27
28 10. (New section) a. A distressed property conditional
29 conveyance contract and a distressed property conveyance contract
30 with a distressed property purchaser shall contain in immediate
31 proximity to the space reserved for the owner's signature a
32 conspicuous statement in a size equal to at least 14-point boldface
33 type, if the contract is printed, or in capital letters, if the contract is
34 typed, as follows:

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

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

41 b. A contract with a distressed property purchaser shall be
42 accompanied by a completed form in duplicate, captioned
43 "NOTICE OF CANCELLATION" in a size equal to a 14-point
44 boldface type, if the contract is printed, or in capital letters, if the
45 contract is typed, followed by a space in which the distressed
46 property purchaser shall enter the date on which the owner executes

any contract. This form shall be attached to the contract, shall be easily detachable, and shall contain in at least 14-point type, if the contract is printed, or in capital letters, if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....

(Enter date contract signed)

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

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

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

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

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

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

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

(2) fail to make a payment to the owner at the time the title to the distressed property is conveyed from the owner to the distressed property purchaser, or, if the distressed property purchaser acquires a beneficial interest through a trust, at the time of the creation of the trust, so that the owner has received consideration in an amount of at least 82% of the property's fair market value, or, in the alternative, fail to make a payment to the owner, in situations in

- 1 which the owner is unable to purchase the distressed property from
2 the distressed property owner at the time of the expiration of the
3 owner's option to purchase, so that the owner has received
4 consideration in an amount of at least 82% of the property's fair
5 market value;
- 6 (3) enter into an option to purchase or lease as part of a
7 distressed property conditional conveyance containing terms that
8 are unfair or commercially unreasonable, or engage in any other
9 unfair conduct;
- 10 (4) represent, directly or indirectly, that the distressed property
11 purchaser is acting as an advisor or a consultant, or in any other
12 manner represent that the distressed property purchaser is acting on
13 behalf of the homeowner;
- 14 (5) misrepresent the distressed property purchaser's status as to
15 licensure or certification;
- 16 (6) do any of the following until after the time during which the
17 owner may cancel the transaction:
- 18 (a) accept from the owner an execution of a deed or any other
19 instrument of conveyance of any interest in the distressed property;
- 20 (b) induce the owner to execute a deed or any other instrument
21 of conveyance of any interest in the distressed property; or
- 22 (c) record with the county recorder of deeds any document
23 signed by the owner, including but not limited to a deed or any
24 other instrument of conveyance;
- 25 (7) fail to convey title to the distressed property to the owner
26 under an option to purchase provided for in the distressed property
27 conveyance contract, in situations in which the terms of the
28 conveyance contract have been fulfilled;
- 29 (8) enter into a distressed property conditional conveyance if
30 any party to the transaction is represented by way of a power of
31 attorney;
- 32 (9) fail to extinguish all liens encumbering the distressed
33 property, immediately following the conveyance of the distressed
34 property, or fail to assume all liability with respect to the lien in
35 foreclosure and prior liens that will not be extinguished by the
36 foreclosure, which assumption shall be accomplished without
37 violations of the terms and conditions of the lien being assumed;
- 38 (10) cause the property to be conveyed or encumbered without
39 the knowledge or permission of the owner, or in any way frustrate
40 the ability of the owner to complete the conveyance back to the
41 owner;
- 42 (11) fail to have all documents executed as part of a distressed
43 property conditional conveyance also signed by a notary public
44 licensed in the State who is unrelated in any way to the distressed
45 property purchaser or any participant in the distressed property
46 conveyance;

1 (12) fail to complete a distressed property conditional
2 conveyance in the office of a title insurance producer licensed
3 pursuant to the "New Jersey Insurance Producer Licensing Act of
4 2001," P.L.2001, c.210 (C.17:22A-26 et seq.), or in the office of an
5 attorney licensed to practice law in this State;

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

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

25 (15) in situations in which the distressed property conditional
26 conveyance involves a transfer of an interest in fee from an owner
27 to a distressed property purchaser, fail to record the deed to the
28 purchaser in the county clerk's office in which the property is
29 located, or fail to include a statement on the recorded deed that the
30 deed was obtained through a transaction governed by the
31 "Foreclosure Rescue Fraud Prevention Act";

32 (16) fail to notify in writing all existing mortgage lien holders of
33 the distressed property purchaser's intent to accept conveyance of
34 an interest in the property from the owner;

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

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

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

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

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

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

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

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

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

35 ²e. With respect to the amount of any fee or other consideration
36 provided by an owner to a distressed property purchaser at the time
37 of the execution of an option to purchase, as part of any distressed
38 property conditional conveyance, and as consideration for that
39 agreement:

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

43 (2) the distressed property purchaser may declare some or all of
44 the fee or other consideration to be non-refundable, regardless of
45 whether the owner exercises his right to purchase back the property
46 from the distressed property purchaser pursuant to the option to
47 purchase or lease agreement, or declare that some or all of the fee or

1 other consideration shall be applied as credit toward the purchase of
2 the property, if the owner does exercise his right to purchase back
3 the property, so long as this declaration is agreed to by the owner
4 and expressly stated in the agreement; and

5 (3) the fee or other consideration provided to the distressed
6 property purchaser shall not constitute an equitable ownership
7 interest in the property.

8 f. With respect to any money provided by the owner to the
9 distressed property purchaser pursuant to any distressed property
10 conditional conveyance, remitted as a monthly credit towards the
11 purchase of the property in excess of any monthly rental obligation
12 established pursuant to any agreement designed to allow the owner
13 to remain in the property, including, but not limited to, a lease
14 agreement between the parties:

15 (1) the distressed property purchaser may declare some or all of
16 the money to be non-refundable, if the owner does not exercise his
17 right to purchase back the property from the distressed property
18 purchaser pursuant to the option to purchase or lease agreement, so
19 long as this declaration is agreed to by the owner and expressly
20 stated in the agreement;

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

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

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

38
39 12. (New section) A distressed property purchaser, in the course
40 of a distressed property conveyance, shall not fail to:

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

46 b. have all documents executed as part of a distressed property
47 conveyance also signed by a notary public licensed in the State who

1 is unrelated in any way to the distressed property purchaser or any
2 participant in the distressed property conveyance;

3 c. complete a distressed property conveyance in the office of a
4 title insurance producer licensed pursuant to the “New Jersey
5 Insurance Producer Licensing Act of 2001,” P.L.2001, c.210
6 (C.17:22A-26 et seq.), or in the office of an attorney licensed to
7 practice law in the State;

8 d. provide to the owner, prior to the time of completion of a
9 distressed property conveyance, a disclosure statement in a form to
10 be designed and prescribed by regulation by ²the Director of the
11 Division of Consumer Affairs, within the Department of Law and
12 Public Safety, in consultation with ²the Commissioner of Banking
13 and Insurance, which statement shall require disclosure to the
14 owner of all costs and fees that the owner will incur in connection
15 with the conveyance;

16 e. notify in writing all existing mortgage lien holders of the
17 distressed property purchaser’s intent to accept conveyance of an
18 interest in the property from the owner;

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

22 g. satisfy all qualification requirements for assuming the
23 repayment of the mortgage.

24
25 13. (New section) Any waiver of the provisions of sections 8, 9,
26 10, 11, or 12 of this act is void and unenforceable as contrary to
27 public policy.

28
29 ¹14. (New section) a. The ²the Director of the Division of
30 Consumer Affairs Commissioner of Banking and Insurance² may
31 investigate or examine any foreclosure consultant, or other person
32 as the ²the director commissioner² deems necessary to determine
33 compliance with this act. For these purposes, the ²the director
34 commissioner² may examine the books, accounts, records and other
35 documents or matters of any foreclosure consultant or other person.
36 Each foreclosure consultant shall be subject to an examination by
37 the ²the director commissioner², not more than once in any 12 month
38 period, unless the ²the director commissioner² has reason to believe
39 that the foreclosure consultant is not complying with the provisions
40 of this act, or is not transacting business in accordance with law, in
41 which case the ²the director commissioner² may conduct an
42 examination at any time. The ²the director commissioner² shall have
43 the power to compel by subpoena the production of all relevant
44 books, accounts, records and other documents and materials relative
45 to an examination or investigation.

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

7 c. If any person shall refuse to obey a subpoena, or to give
8 testimony or to produce evidence as required thereby, the
9 ²[director] commissioner² may apply ex parte to any court having
10 jurisdiction over that person for an order compelling the appearance
11 of the witness before the ²[director] commissioner² to give
12 testimony or to produce evidence as required thereby, or both.

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

24
25 ¹[14.] 15.¹ (New section) a. Any person who violates any
26 provision of this act shall, in addition to any other penalty provided
27 by law, be liable to a penalty of not more than \$10,000 for the first
28 offense, and not more than \$20,000 for the second and each
29 subsequent offense, which penalty may be collected in a summary
30 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
31 P.L.1999, c.274 (C.2A:58-10 et seq.).

32 b. A person who violates any provision of this act is guilty of a
33 crime of the third degree. A person who violates any provision of
34 this act in connection with a pattern of foreclosure rescue fraud or a
35 conspiracy or endeavor to engage in a pattern of foreclosure rescue
36 fraud is guilty of a crime of the second degree.

37 c. ¹[(1) Except as provided in paragraph (2) of this subsection,
38 any] Any¹ distressed property conditional conveyance involving
39 the transfer of an interest in fee or a beneficial interest created
40 through a trust document, in a distressed property, and involving the
41 acquirer of the property allowing the owner to occupy the property,
42 which is made in violation of any provision of this act, is voidable
43 and the transfer may be rescinded by the owner within two years of
44 the date of the transfer ², provided that the right, title or interest in
45 the property of a bona fide purchaser or mortgagee for value shall

1 not be affected thereby. Nothing herein shall limit the right of an
2 owner to recover damages from a distressed property purchaser².

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

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

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

19 ¹[(b)] (2)¹ introduce or provide as evidence in the action, any
20 contemporaneous oral agreements or representations made to the
21 owner by any party to a foreclosure consultant contract, distressed
22 property conditional conveyance contract, or distressed property
23 conveyance contract signed by the owner.

24 ¹[(2) For a violation of paragraph (2) of subsection a. of section
25 11 of this act or of subsection a. of subsection 12 of this act, an
26 owner may bring an action in Superior Court against a distressed
27 property purchaser for actual damages. In an action under this
28 paragraph, the court may award attorney's fees and costs of suit to
29 the prevailing party .]¹

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

38 ¹f. If the ²[Director of the Division of Consumer Affairs]
39 Commissioner of Banking and Insurance² determines that there has
40 been any substantial violation of this act by a professional licensed
41 under a licensing board in this State, the ²[director] commissioner²
42 shall provide a written notice describing the violation to the
43 licensing board having jurisdiction over the profession, for such
44 action as the board deems appropriate.¹

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

8
9 ²17. Section 2 of P.L.2005, c.199 (C.17:1C-34) is amended to
10 read as follows:

11 2. For the purposes of this act:

12 "Assessment" means the assessment imposed pursuant to section
13 3 of this act for the special functions of the division as provided in
14 that section.

15 "Commissioner" means the Commissioner of Banking and
16 Insurance.

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

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

21 "Division" means the Division of Banking in the Department of
22 Banking and Insurance.

23 "Other financial entity" means a person who is licensed or
24 registered pursuant to: the "New Jersey Consumer Finance
25 Licensing Act," sections 1 through 49 of P.L.1996, c.157
26 (C.17:11C-1 et seq.); the "New Jersey Residential Mortgage
27 Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-
28 51 et seq.), other than a financial entity with respect to the payment
29 of required fees to the Nationwide Mortgage Licensing System and
30 Registry as set forth by that nationwide system and registry; "The
31 Check Cashers Regulatory Act of 1993," P.L.1993, c.383
32 (C.17:15A-30 et seq.); the "New Jersey Money Transmitters Act,"
33 P.L.1998, c.14 (C.17:15C-1 et seq.); the "Insurance Premium
34 Finance Company Act," P.L.1968, c.221 (C.17:16D-1 et seq.); the
35 "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1
36 et seq.); the "Door-to-Door Retail Installment Sales Act of 1968,"
37 P.L.1968, c.223 (C.17:16C-61.1 et seq.); the "Home Repair
38 Financing Act," P.L.1960, c.41 (C.17:16C-62 et seq.); the "Door-to-
39 Door Home Repair Sales Act of 1968," P.L.1968, c.224 (C.17:16C-
40 95 et seq.); P.L.1979, c.16 (C.17:16G-1 et seq.); the "Foreclosure
41 Rescue Fraud Prevention Act," P.L. , c. (C.)(pending before
42 the Legislature as this bill), or the "pawnbroking law," R.S.45:22-1
43 et seq.

44 "Nationwide Mortgage Licensing System and Registry" means
45 the mortgage licensing system developed and maintained by the
46 Conference of State Bank Supervisors and the American
47 Association of Residential Mortgage Regulators, or their

1 successors, and utilized in this State pursuant to the provisions of
2 the "New Jersey Residential Mortgage Lending Act," sections 1
3 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.).

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

8
9 ' [16.] ²[17.¹] 18.² This act shall take effect on the ²[90th]
10 180th² day following enactment ², but the Commissioner of
11 Banking and Insurance may take such anticipatory administrative
12 action in advance thereof as shall be necessary for the
13 implementation of this act².