

[Second Reprint]

ASSEMBLY, No. 359

STATE OF NEW JERSEY

214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

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District 36 (Bergen, Essex and Passaic)

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

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SYNOPSIS

The "Foreclosure Rescue Fraud Prevention Act."

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on March 3, 2011, with amendments.

(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] ~~four~~² 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 in which an owner transfers an interest in fee, or a
 40 beneficial interest created through a trust document, in the
 41 distressed property; the acquirer of the property allows the owner to
 42 occupy the property; and the acquirer of the property or a person
 43 acting in participation with the acquirer of the property conveys or

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.

1 promises to convey an interest in fee back to the owner or gives the
2 owner an option to purchase the property at a later date.

3 “Distressed property conveyance” means a transaction in which
4 an owner transfers an interest in fee in a distressed property.

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

- 7 (1) saving the owner’s property from foreclosure;
- 8 (2) postponing the foreclosure sale;
- 9 (3) obtaining a forbearance from the mortgagee;
- 10 (4) securing the right to exercise the right to reinstatement;
- 11 (5) obtaining an extension of the period within which the owner
- 12 may reinstate his or her mortgage obligation;
- 13 (6) obtaining a waiver of an acceleration clause;
- 14 (7) obtaining a modification of a mortgage;
- 15 (8) assisting the owner in obtaining a loan or advance of funds;

16 or

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

18 "Distressed property service" ²or “service”² means, without
19 limitation, ²in connection with a distressed property conditional
20 conveyance or a distressed property conveyance,² any of the
21 following:

- 22 (1) debt, budget, or financial counseling of any type;
- 23 (2) receiving money for the purpose of distributing it to
- 24 creditors in payment or partial payment of any obligation secured
- 25 by a mortgage or other lien on a distressed property;
- 26 (3) contacting creditors on behalf of an owner;
- 27 (4) arranging or attempting to arrange for an extension of the
- 28 period within which the owner may cure the owner's default and
- 29 reinstate a debt obligation;
- 30 (5) arranging or attempting to arrange for a delay or
- 31 postponement of the time of sale of the distressed property;
- 32 (6) advising with respect to the filing of any document or
- 33 assisting in any manner in the preparation of any document for
- 34 filing with any court; or
- 35 (7) giving advice, explanation, or instruction to an owner that in
- 36 any manner relates to the cure of a default or forfeiture or to the
- 37 postponement or avoidance of a sale of the distressed property.

38 "Foreclosure consultant": (1) means any person, located out-of-
39 State or within the State, who, directly or indirectly, for
40 compensation from an owner, makes any solicitation,
41 representation, or offer to perform, or who performs, any distressed
42 property service that the person represents will in any manner do
43 any of the following in relation to the owner’s distressed property:

- 44 (a) prevent or postpone the foreclosure sale ²[or the loss]² of
- 45 the property ²[due to nonpayment of taxes]²;
- 46 (b) obtain any forbearance from any ²[beneficiary or]²
- 47 mortgagee ²[or relief with respect to a tax sale of the property]²;

- 1 (c) assist the owner in exercising any right of reinstatement or
- 2 right of redemption;
- 3 (d) obtain any extension of the period within which the owner
- 4 may reinstate the owner's rights with respect to the property;
- 5 (e) obtain any waiver of an acceleration clause contained in any
- 6 promissory note, contract, or mortgage evidencing or securing a
- 7 debt in relation to the property;
- 8 (f) assist the owner in obtaining a loan or advance of funds to
- 9 pay off the promissory note, contract, or mortgage evidencing or
- 10 securing a debt in relation to the property; or
- 11 (g) avoid or ameliorate the impairment of the owner's credit
- 12 resulting from default on the promissory note, contract, or
- 13 mortgage, or the conduct of a foreclosure sale ²[or tax sale]² or
- 14 offer to repair the owner's credit.
- 15 (2) shall not include any of the following:
- 16 (a) a housing counseling agency contracted by the United States
- 17 Department of Housing and Urban Development to provide
- 18 counseling;
- 19 (b) a person who holds or is owed an obligation secured by a
- 20 lien on any distressed property in situations in which the person
- 21 performs services in connection with the obligation or lien,
- 22 provided the obligation or lien did not arise as the result of, or as
- 23 part of, a proposed distressed property conditional conveyance or a
- 24 distressed property conveyance;
- 25 (c) a person licensed to practice law in this State while acting
- 26 under the authority of that license;
- 27 (d) a nonprofit, charitable entity qualified pursuant to section
- 28 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.
- 29 s.501(c)(3)), which is licensed pursuant to P.L.1979, c.16
- 30 (C.17:16G-1 et seq.) ²], and which offers counseling or advice to an
- 31 owner of a distressed property, provided the entity does not contract
- 32 for services with for-profit lenders or distressed property purchasers
- 33 or any person who structures or plans a distressed property
- 34 conveyance²;
- 35 (e) a municipality which has a tax lien on distressed property;
- 36 (f) an assignee or a purchaser of a municipal tax lien from a tax
- 37 sale; ²[or]²
- 38 (g) a sponsor which is certified by the Commissioner of
- 39 Community Affairs to participate in the "New Jersey Housing
- 40 Assistance and Recovery Program" established pursuant to sections
- 41 8 through 14 of P.L.2008, c.127 (C.55:14K-88 et seq.) ²;
- 42 (h) a bank, savings bank, savings and loan association, credit
- 43 union, or other federally insured financial institution, or insurance
- 44 company, or affiliate or subsidiary thereof, organized, chartered,
- 45 licensed, or holding a certificate of authority to do business under
- 46 the laws of this State or any other state or under the laws of the
- 47 United States;

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

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

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

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

14 "Owner" means an owner of record of title to a distressed
 15 property.

16 ²"Owner's current verified monthly income" means the monthly
 17 average of the owner's most recent six months of wage receipts or
 18 pay stubs or if the owner has non-wage income by a verified
 19 statement of profit and loss or income from a certified public
 20 accountant who has reviewed the owner's income.

21 "Reasonable ability to pay" means that the owner's current
 22 verified monthly income is adequate to service a 30 year fixed rate
 23 loan at the conventional mortgage rate together with actual property
 24 taxes, homeowner's insurance, condominium or association fees, if
 25 applicable, and reasonable and necessary living expenses.

26 "Reasonable and necessary living expenses" means not less than
 27 the average utility costs over the last twelve months, or if that figure
 28 is unavailable \$200, and transportation, food, clothing, and other
 29 expenses equal to an amount not less than the Collection Financial
 30 Standards set forth by the Internal Revenue Service for
 31 transportation, food, clothing, and other items and out-of-pocket
 32 health care costs. ²

33 "Residual income" means an owner's net income available to
 34 meet living expenses after the payment of all ordinary and
 35 necessary debt, including payments under an option to purchase
 36 back the owner's property transferred in a distressed property
 37 conditional conveyance.

38
 39 3. (New section) ¹a. ¹A foreclosure consultant shall not
 40 conduct any business in this State until the foreclosure consultant:

41 ¹[a.] (1) (a) ²[registers with the Director of the Division of
 42 Consumer Affairs on] Obtains a license from the Commissioner of
 43 Banking and Insurance by filing² an application form to be
 44 prescribed by the ²[director] commissioner² by regulation. As to
 45 ²[registration] licensure² by a business entity, the application shall
 46 be accompanied by documentation establishing the business entity,
 47 including incorporation documents, if the entity is incorporated.

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

5 (c) A person required to be ²registered ²licensed ²under this
6 act shall ²register on an annual basis and ²file an ²amended
7 registration ²amendment to their application ²within 20 days after
8 any change in the information required to be included in the
9 application ².

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

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

17 b.] ¹ files the bond with the ²[director] commissioner² ¹ ¹ and
18 obtains written approval of the bond from the ²[director]
19 commissioner²;

20 ¹(3) submits to the ²[director] commissioner² the name, address,
21 fingerprints and written consent for a criminal history record
22 background check to be performed on any officer, director, partner
23 or owner of a controlling interest ², or any employee engaged in
24 mortgage foreclosure consulting activities,² of the foreclosure
25 consultant. The ²[director] commissioner² is authorized to
26 exchange fingerprint data with and receive criminal history record
27 information from the State Bureau of Identification in the Division
28 of State Police and the Federal Bureau of Investigation consistent
29 with applicable State and federal laws, rules and regulations. This
30 information shall be collected for the purposes of facilitating
31 determinations concerning ²[registration] licensure² eligibility for
32 the foreclosure consultant, based upon any findings related to an
33 employee engaged in mortgage foreclosure consultant activities,²
34 officer, director, partner or owner. The applicant shall bear the cost
35 for the criminal history record background check, including all
36 costs of administering and processing the check. The Division of
37 State Police shall promptly notify the ²[director] commissioner² in
38 the event an ² employee engaged in mortgage foreclosure consultant
39 activities,² officer, director, partner or owner of the foreclosure
40 consultant, who was the subject of a criminal history record
41 background check pursuant to this section, is arrested for a crime or
42 offense in this State after the date the background check was
43 performed, whether the foreclosure consultant is a prospective new
44 ²registrant applicant², or subsequently, a current ²registrant
45 licensee² ; and

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

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

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

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

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

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

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

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

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

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

35 ²[e.] d.² A person shall not present himself to the public as a
36 ²[registered] licensed² foreclosure consultant or use the
37 designation “foreclosure consultant,” “foreclosure consultant
38 specialist,” or similar designation without ²[registering] obtaining a
39 license² pursuant to this act¹.

40
41 4. (New section) a. A foreclosure consultant contract shall be
42 written in plain language and shall fully disclose the exact nature of
43 the foreclosure consultant's services ²to be performed, the
44 foreclosure consultant’s representations, the distressed property
45 relief to be secured,² and the total amount and terms of
46 compensation.

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

"NOTICE REQUIRED BY NEW JERSEY LAW

.....(Name) or anyone working for him or her
CANNOT:

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

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

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

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

"You, the owner, may cancel this transaction 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 distressed property relief
for the owner². See the attached notice of cancellation form for an
explanation of this right."

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

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

(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 ²the 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.

6. (New section) 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

- 1 perform ²or represented would be performed, unless compensation
2 for partial performance is expressly agreed to by both parties in the
3 foreclosure contract] and has secured the distressed property relief
4 for the owner²;
- 5 b. claim, demand, charge, collect, or receive any fee, interest,
6 or any other compensation for any reason, in excess of two monthly
7 mortgage payments of principal and interest, or the most recent
8 quarterly property tax installment on the distressed property,
9 whichever is less;
- 10 c. take a wage assignment, a lien of any type on real or
11 personal property, or other security to secure the payment of
12 compensation. Any agreement to take such security is void and
13 unenforceable;
- 14 d. receive any consideration from any third party in connection
15 with distressed property services rendered to an owner;
- 16 e. acquire any interest, directly or indirectly, or by means of a
17 subsidiary or affiliate in a distressed property from an owner with
18 whom the foreclosure consultant has contracted;
- 19 f. accept any power of attorney from an owner for any
20 purpose, except to inspect documents as provided by law; or
- 21 g. induce or attempt to induce an owner to enter a contract that
22 does not comply in all respects with sections 4 and 5 of this act.
23
- 24 7. (New section) a. Any waiver by an owner of the provisions
25 of section 4, 5, or 6 of this act is void and unenforceable as contrary
26 to public policy.
- 27 b. Any attempt by a foreclosure consultant to induce an owner
28 to waive the owner's rights is a violation of this act.
29
- 30 8. (New section) a. A distressed property purchaser who enters
31 into a distressed property conditional conveyance or a distressed
32 property conveyance shall do so in the form of a written contract. A
33 distressed property conditional conveyance contract and a distressed
34 property conveyance contract shall be written in at least 14-point
35 boldface type, in the same language principally used by the owner
36 to negotiate the sale of the distressed property, shall be fully
37 completed, signed, and dated by the owner and the distressed
38 property purchaser, and shall be witnessed and acknowledged by a
39 notary public, before the owner executes a deed or any other
40 instrument of conveyance of the distressed property.
- 41 b. A distressed property conditional conveyance contract and a
42 distressed property conveyance contract shall contain the entire
43 agreement of the parties, be fully assignable, and survive delivery
44 of any deed or any other instrument of conveyance of the distressed
45 property.
- 46 c. A distressed property conditional conveyance contract and a
47 distressed property conveyance contract shall include the following

1 terms, except that a distressed property conveyance contract shall
2 not be required to contain the terms set forth in paragraph (5):

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

5 (2) the address of the distressed property;

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

8 (4) a complete description of the terms of payment or other
9 consideration including, but not limited to, any distressed property
10 services of any nature that the distressed property purchaser
11 represents will be performed for the owner before or after the
12 transaction;

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

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

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

22 "NOTICE REQUIRED BY NEW JERSEY LAW

23 Until your right to cancel this contract has ended,
24(Name) or anyone working for
25(Name) CANNOT ask you to sign or have you sign
26 any deed or any other document. You are urged to have this
27 contract reviewed by an attorney of your choice within ²~~five~~ 10²
28 business days of signing it."; and

29 (8) if title to the distressed property will be transferred in the
30 transaction, the following notice in at least 14-point boldface type,
31 if the contract is printed, or in capital letters, if the contract is typed,
32 and 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 As part of this transaction, you are giving up title to your home."
36

37 9. (New section) a. In addition to any other right of rescission
38 provided by applicable State or federal laws, the owner has the right
39 to cancel a distressed property conditional conveyance contract or a
40 distressed property conveyance contract with a distressed property
41 purchaser until midnight of the 10th business day following the day
42 on which the owner signs the contract, or until the conclusion of a
43 sheriff's sale pursuant to the provisions of the "Fair Foreclosure
44 Act," P.L.1995, c.244 (C.2A:50-53 et seq.) ²~~or the conclusion of a~~
45 municipal tax sale foreclosure pursuant to the provisions of the "tax
46 sale law," chapter 5 of Title 54 of the Revised Statutes]²,

1 whichever occurs first ², during which the owner may have an
 2 attorney review the contract².

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

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

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

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

23

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

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

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

37 b. A contract with a distressed property purchaser shall be
 38 accompanied by a completed form in duplicate, captioned
 39 "NOTICE OF CANCELLATION" in a size equal to a 14-point
 40 boldface type, if the contract is printed, or in capital letters, if the
 41 contract is typed, followed by a space in which the distressed
 42 property purchaser shall enter the date on which the owner executes
 43 any contract. This form shall be attached to the contract, shall be
 44 easily detachable, and shall contain in at least 14-point type, if the
 45 contract is printed, or in capital letters, if the contract is typed, the
 46 following statement written in the same language as used in the
 47 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 which the owner is unable to purchase the distressed property from the distressed property owner at the time of the expiration of the owner's option to purchase, so that the owner has received consideration in an amount of at least 82% of the property's fair market value;

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

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

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

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

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

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

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

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

40 b. For purposes of paragraph (1) of subsection a. of this
41 section, an evaluation of "reasonable ability to pay" shall include
42 the owner's debt to income ratio, the owner's residual income, the
43 fair market value of the distressed property, and the owner's credit
44 history. There shall be a rebuttable presumption that the distressed
45 property purchaser has not verified reasonable payment ability if
46 the distressed property purchaser has not obtained documents of
47 assets, liabilities, and income, other than a statement by the owner.

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

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

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

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

30 ²e. With respect to the amount of any fee or other consideration
31 provided by an owner to a distressed property purchaser at the time
32 of the execution of an option to purchase, as part of any distressed
33 property conditional conveyance, and as consideration for that
34 agreement:

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

38 (2) the distressed property purchaser may declare some or all of
39 the fee or other consideration to be non-refundable, regardless of
40 whether the owner exercises his right to purchase back the property
41 from the distressed property purchaser pursuant to the option to
42 purchase or lease agreement, or declare that some or all of the fee or
43 other consideration shall be applied as credit toward the purchase of
44 the property, if the owner does exercise his right to purchase back
45 the property, so long as this declaration is agreed to by the owner
46 and expressly stated in the agreement; and

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

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

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

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

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

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

34
35 12. (New section) A distressed property purchaser, in the course
36 of a distressed property conveyance, shall not fail to:

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

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

46 c. complete a distressed property conveyance in the office of a
47 title insurance producer licensed pursuant to the "New Jersey

1 Insurance Producer Licensing Act of 2001,” P.L.2001, c.210
2 (C.17:22A-26 et seq.), or in the office of an attorney licensed to
3 practice law in the State;

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

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

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

18 g. satisfy all qualification requirements for assuming the
19 repayment of the mortgage.
20

21 13. (New section) Any waiver of the provisions of sections 8, 9,
22 10, 11, or 12 of this act is void and unenforceable as contrary to
23 public policy.
24

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

42 b. The ²the director commissioner² or the ²the director’s
43 commissioner’s² designee shall have power to issue subpoenas to
44 compel the attendance of witnesses and the production of
45 documents, papers, books, accounts, records and other evidence

1 before him in any matter over which he has jurisdiction pursuant to
2 this act, and to administer oaths and affirmations to any person.

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

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

20
21 ¹[14.] 15.¹ (New section) a. Any person who violates any
22 provision of this act shall, in addition to any other penalty provided
23 by law, be liable to a penalty of not more than \$10,000 for the first
24 offense, and not more than \$20,000 for the second and each
25 subsequent offense, which penalty may be collected in a summary
26 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
27 P.L.1999, c.274 (C.2A:58-10 et seq.).

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

33 c. ¹[(1) Except as provided in paragraph (2) of this subsection,
34 any] Any¹ distressed property conditional conveyance involving
35 the transfer of an interest in fee or a beneficial interest created
36 through a trust document, in a distressed property, and involving the
37 acquirer of the property allowing the owner to occupy the property,
38 which is made in violation of any provision of this act, is voidable
39 and the transfer may be rescinded by the owner within two years of
40 the date of the transfer ², provided that the right, title or interest in
41 the property of a bona fide purchaser or mortgagee for value shall
42 not be affected thereby. Nothing herein shall limit the right of an
43 owner to recover damages from a distressed property purchaser².

44 ¹[(2) 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, shall not
46 be a violation of this act that may cause a transfer described in

1 paragraph (1) of this subsection to be voidable or subject to
2 rescission.】¹

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

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

14 ¹[(b)] (2)¹ introduce or provide as evidence in the action, any
15 contemporaneous oral agreements or representations made to the
16 owner by any party to a foreclosure consultant contract, distressed
17 property conditional conveyance contract, or distressed property
18 conveyance contract signed by the owner.

19 ¹[(2) For a violation of paragraph (2) of subsection a. of section
20 11 of this act or of subsection a. of subsection 12 of this act, an
21 owner may bring an action in Superior Court against a distressed
22 property purchaser for actual damages. In an action under this
23 paragraph, the court may award attorney’s fees and costs of suit to
24 the prevailing party .】¹

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

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

40
41 ¹[15.] 16.¹ (New section) The ²[Director of the Division of
42 Consumer Affairs, within the Department of Law and Public Safety,
43 in consultation with the]² Commissioner of Banking and Insurance
44 shall enforce the provisions of this act, and may promulgate
45 regulations pursuant to the “Administrative Procedure Act,”

1 P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the
2 purposes of the act.

3

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

6 2. For the purposes of this act:

7 "Assessment" means the assessment imposed pursuant to section
8 3 of this act for the special functions of the division as provided in
9 that section.

10 "Commissioner" means the Commissioner of Banking and
11 Insurance.

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

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

16 "Division" means the Division of Banking in the Department of
17 Banking and Insurance.

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

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

1 "Regulated entity" means a depository institution, other financial
2 entity or person chartered, licensed or registered by the Division of
3 Banking or who should be chartered, licensed or registered.²
4 (cf: 2009, c.53, s.63)
5
6 '16.]²17.1] 18.² This act shall take effect on the ²90th]
7 180th² day following enactment ², but the Commissioner of
8 Banking and Insurance may take such anticipatory administrative
9 action in advance thereof as shall be necessary for the
10 implementation of this act².