

1 AN ACT concerning mortgages.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Mortgage Rescue Fraud Act.

6 Section 5. Definitions. As used in this Act:

7 "Distressed property" means residential real property
8 consisting of one to 6 family dwelling units that is in
9 foreclosure or at risk of loss due to nonpayment of taxes, or
10 whose owner is more than 90 days delinquent on any loan that is
11 secured by the property.

12 "Distressed property consultant" means any person who,
13 directly or indirectly, for compensation from the owner, makes
14 any solicitation, representation, or offer to perform or who,
15 for compensation from the owner, performs any service that the
16 person represents will in any manner do any of the following:

17 (1) stop or postpone the foreclosure sale or the loss
18 of the home due to nonpayment of taxes;

19 (2) obtain any forbearance from any beneficiary or
20 mortgagee, or relief with respect to a tax sale of the
21 property;

22 (3) assist the owner to exercise any right of
23 reinstatement or right of redemption;

24 (4) obtain any extension of the period within which the
25 owner may reinstate the owner's rights with respect to the
26 property;

27 (5) obtain any waiver of an acceleration clause
28 contained in any promissory note or contract secured by a
29 mortgage on a distressed property or contained in the
30 mortgage;

31 (6) assist the owner in foreclosure, loan default, or
32 post-tax sale redemption period to obtain a loan or advance

1 of funds;

2 (7) avoid or ameliorate the impairment of the owner's
3 credit resulting from the recording of a notice of default
4 or the conduct of a foreclosure sale or tax sale; or

5 (8) save the owner's residence from foreclosure or loss
6 of home due to nonpayment of taxes.

7 A "distressed property consultant" does not include any of
8 the following:

9 (1) a person or the person's authorized agent acting
10 under the express authority or written approval of the
11 Department of Housing and Urban Development;

12 (2) a person who holds or is owed an obligation secured
13 by a lien on any distressed property, or a person acting
14 under the express authorization or written approval of such
15 person, when the person performs services in connection
16 with the obligation or lien, if the obligation or lien did
17 not arise as the result of or as part of a proposed
18 distressed property conveyance;

19 (3) banks, savings banks, savings and loan
20 associations, credit unions, and insurance companies
21 organized, chartered, or holding a certificate of
22 authority to do business under the laws of this State or
23 any other state or under the laws of the United States;

24 (4) licensed attorneys engaged in the practice of law;

25 (5) a Department of Housing and Urban Development
26 approved mortgagee and any subsidiary or affiliate of these
27 persons or entities, and any agent or employee of these
28 persons or entities, while engaged in the business of these
29 persons or entities;

30 (6) a 501(c)(3) nonprofit agency or organization,
31 doing business for no less than 5 years, that offers
32 counseling or advice to an owner of a home in foreclosure
33 or loan default, if they do not contract for services with
34 for-profit lenders or distressed property purchasers, or
35 any person who structures or plans such a transaction;

36 (7) licensees of the Residential Mortgage License Act

1 of 1987;

2 (8) licensees of the Consumer Installment Loan Act who
3 are authorized to make loans secured by real property; or

4 (9) licensees of the Real Estate License Act of 2000
5 when providing licensed activities.

6 "Distressed property purchaser" means any person who
7 acquires any interest in a distressed property while allowing
8 the owner to possess, occupy, or retain any present or future
9 interest in the property, or any person who structures or plans
10 a distressed property conveyance.

11 "Distressed property conveyance" means a transaction in
12 which an owner of a distressed property transfers an interest
13 in the distressed property; the acquirer of the property allows
14 the owner of the distressed property to occupy the property;
15 and the acquirer of the property or a person acting in
16 participation with the acquirer of the property conveys or
17 promises to convey an interest back to the owner or gives the
18 owner an option to purchase the property at a later date.

19 "Person" means any individual, partnership, corporation,
20 limited liability company, association, or other group or
21 entity, however organized.

22 "Service" means, without limitation, any of the following:

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

24 (2) receiving money for the purpose of distributing it
25 to creditors in payment or partial payment of any
26 obligation secured by a lien on a distressed property;

27 (3) contacting creditors on behalf of an owner of a
28 residence that is distressed property;

29 (4) arranging or attempting to arrange for an extension
30 of the period within which the owner of a distressed
31 property may cure the owner's default and reinstate his or
32 her obligation;

33 (5) arranging or attempting to arrange for any delay or
34 postponement of the time of sale of the residence in
35 foreclosure;

36 (6) advising the filing of any document or assisting in

1 any manner in the preparation of any document for filing
2 with any court; or

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

8 Section 10. Distressed property consultant contract terms.

9 (a) A distressed property consultant contract must be in
10 writing and must fully disclose the exact nature of the
11 distressed property consultant's services and the total amount
12 and terms of compensation.

13 (b) The following notice, printed in at least 12-point
14 boldface type and completed with the name of the distressed
15 property consultant, must be printed immediately above the
16 statement required by subsection (c) of this Section:

17 "NOTICE REQUIRED BY ILLINOIS LAW

18(Name) or anyone working
19 for him or her CANNOT:

20 (1) Take any money from you or ask you for money until
21 (Name) has
22 completely finished doing everything he or she said he or
23 she would do; or

24 (2) Ask you to sign or have you sign any lien,
25 mortgage, or deed."

26 (c) A distressed property consultant contract must be
27 written in the same language as principally used by the
28 distressed property consultant to describe his or her services
29 or to negotiate the contract, must be dated and signed by the
30 owner, and must contain in immediate proximity to the space
31 reserved for the owner's signature a conspicuous statement in a
32 size equal to at least 12-point boldface type, as follows:

33 "You, the owner, may cancel this transaction at any
34 time until after the distressed property consultant has
35 fully performed each and every service the distressed

1 property consultant contracted to perform or represented
2 he or she would perform. See the attached notice of
3 cancellation form for an explanation of this right."

4 (d) A distressed property contract must contain on the
5 first page, in a type size no smaller than that generally used
6 in the body of the document, each of the following:

7 (1) the name and address of the distressed property
8 consultant to which the notice of cancellation is to be
9 mailed; and

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

11 (e) A distressed property consultant contract must be
12 accompanied by a completed form in duplicate, captioned "NOTICE
13 OF CANCELLATION," which must be attached to the contract, must
14 be easily detachable, and must contain, in at least 12-point
15 boldface type, the following statement written in the same
16 language as used in the contract:

"NOTICE OF CANCELLATION

.....

(Enter date of transaction)

20 You may cancel this transaction, without any penalty or
21 obligation, at any time until after the distressed property
22 consultant has fully performed each and every service the
23 distressed property consultant contracted to perform or
24 represented he or she would perform.

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

28(Name of distressed property consultant) at
29(Address of distressed property
30 consultant's place of business)

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

33 (f) The distressed property consultant shall provide the
34 owner with a copy of a distressed property consultant contract
35 and the attached notice of cancellation immediately upon
36 execution of the contract.

1 Section 15. Rescission of distressed property consultant
2 contract.

3 (a) In addition to any other legal right to rescind a
4 contract, an owner has the right to cancel a distressed
5 property consultant contract at any time until after the
6 distressed property consultant has fully performed each
7 service the distressed property consultant contracted to
8 perform or represented he or she would perform.

9 (b) Cancellation occurs when the owner gives written notice
10 of cancellation to the distressed property consultant at the
11 address specified in the distressed property consultant
12 contract.

13 (c) Notice of cancellation, if given by mail, is effective
14 when deposited in the mail properly addressed with postage
15 prepaid. Notice by certified mail, return receipt requested,
16 addressed to the address specified in the distressed property
17 consultant contract, shall be conclusive proof of notice of
18 service.

19 (d) Notice of cancellation given by the owner need not take
20 the particular form as provided with the distressed property
21 consultant contract and, however expressed, is effective if it
22 indicates the intention of the owner not to be bound by the
23 contract.

24 Section 20. Waiver of a distressed property consultant
25 contract.

26 (a) Any waiver by an owner of the provisions of Section 10
27 or 15 is void and unenforceable as contrary to public policy.

28 (b) Any attempt by a distressed property consultant to
29 induce an owner to waive the owner's rights is a violation of
30 the Act.

31 Section 25. Distressed property conveyance contract. A
32 distressed property purchaser shall enter into every
33 distressed property conveyance in the form of a written

1 contract. Every distressed property conveyance contract must
2 be written in letters of a size equal to at least 12-point
3 boldface type, in the same language principally used by the
4 owner of the distressed property to negotiate the sale of the
5 distressed property, must be fully completed, signed, and dated
6 by the owner of the distressed property and the distressed
7 property purchaser, and must be witnessed and acknowledged by a
8 notary public, before the execution of any instrument of
9 conveyance of the distressed property.

10 Section 30. Distressed property conveyance contract terms.
11 Every contract required by Section 25 must contain the entire
12 agreement of the parties, be fully assignable, and survive
13 delivery of any instrument of conveyance of the distressed
14 property. Every lease entered into pursuant to a contract
15 required by Section 25 is terminable at will by the distressed
16 property owner, without liability. Every contract required by
17 Section 25 must include the following terms:

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

20 (2) the address of the distressed property;

21 (3) the total consideration to be given by the
22 foreclosure purchaser in connection with or incident to the
23 sale;

24 (4) a complete description of the terms of payment or
25 other consideration including, but not limited to, any
26 services of any nature that the distressed property
27 purchaser represents he or she will perform for the owner
28 of the distressed property before or after the sale;

29 (5) a complete description of the terms of any related
30 agreement designed to allow the owner of the distressed
31 property to remain in the home such as a rental agreement,
32 repurchase agreement, contract for deed, or lease with
33 option to buy;

34 (6) a notice of cancellation as provided in this
35 Section;

1 (7) the following notice in at least 12-point boldface
 2 type, if the contract is printed, or in capital letters, if
 3 the contract is typed, and completed with the name of the
 4 distressed property purchaser, immediately above the
 5 statement required by this Section:

6 "NOTICE REQUIRED BY ILLINOIS LAW

7 Until your right to cancel this contract has ended,
 8 (Name) or anyone working for
 9 (Name) CANNOT ask you to sign or have
 10 you sign any deed or any other document. You are urged to
 11 have this contract reviewed by an attorney of your choice
 12 within 5 business days of signing it."; and

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

20 "NOTICE REQUIRED BY ILLINOIS LAW

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

23 Section 35. Cancellation of a distressed property
 24 conveyance contract.

25 (a) In addition to any other right of rescission, the owner
 26 of the distressed property has the right to cancel any contract
 27 with a distressed property purchaser until midnight of the
 28 fifth business day following the day on which the owner of the
 29 distressed property signs a contract that complies with
 30 Sections 25 and 30 or until 8:00 a.m. on the last day of the
 31 period during which the owner of the distressed property has a
 32 right of redemption under the Illinois Mortgage Foreclosure Law
 33 or the Property Tax Code, whichever occurs first.

34 (b) Cancellation occurs when the owner of the distressed
 35 property delivers, by any means, written notice of cancellation

1 to the address specified in the distressed property conveyance
2 contract.

3 (c) A notice of cancellation given by the owner of the
4 distressed property need not take the particular form as
5 provided with the distressed property conveyance contract.

6 (d) Within 10 days following receipt of a notice of
7 cancellation given in accordance with this Section, the
8 distressed property purchaser shall return, without condition,
9 any original contract and any other documents signed by the
10 owner of the distressed property.

11 Section 40. Notice of cancellation of a distressed property
12 conveyance contract.

13 (a) The contract must contain in immediate proximity to the
14 space reserved for the owner of the distressed property's
15 signature a conspicuous statement in a size equal to at least
16 12-point boldface type, if the contract is printed, or in
17 capital letters, if the contract is typed, as follows:

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

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

26 (b) The contract must be accompanied by a completed form in
27 duplicate, captioned "NOTICE OF CANCELLATION" in a size equal
28 to a 12-point boldface type, if the contract is printed, or in
29 capital letters, if the contract is typed, followed by a space
30 in which the distressed property purchaser shall enter the date
31 on which the owner of the distressed property executes any
32 contract. This form must be attached to the contract, must be
33 easily detachable, and must contain in at least 12-point type,
34 if the contract is printed, or in capital letters, if the
35 contract is typed, the following statement written in the same

1 language as used in the contract:

2 "NOTICE OF CANCELLATION

3

4 (Enter date contract signed)

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

15 I hereby cancel this transaction on (Date)
16 (Seller's
17 signature)".

18 (c) The distressed property purchaser shall provide the
19 owner of the distressed property with a copy of the contract
20 and the attached notice of cancellation immediately at the time
21 the contract is executed by all parties.

22 (d) The distressed property purchaser shall record the
23 contract with the recorder of deeds in the county where the
24 distressed property is located within 10 days of its execution,
25 provided the contract has not been canceled. If the contract is
26 not recorded, the contract and any conveyance made or given
27 pursuant to the terms of the contract are void ab initio.

28 (e) The 5 business days during which the owner of the
29 distressed property may cancel the contract shall not begin to
30 run until all parties to the contract have executed the
31 contract and the distressed property purchaser has complied
32 with all the requirements of this Section.

33 Section 45. Waiver of a distressed property conveyance
34 contract. Any waiver of the provisions of Sections 35 and 40
35 are void and unenforceable as contrary to public policy, except

1 that a consumer may waive the 5-day right to cancel provided in
2 Section 35 if the property is subject to a foreclosure sale
3 within the 5 business days and the owner of the distressed
4 property agrees to waive his or her right to cancel in a
5 handwritten statement that is signed by all parties holding
6 title to the distressed property.

7 Section 50. Violations.

8 (a) It is a violation for a distressed property consultant
9 to:

10 (1) claim, demand, charge, collect, or receive any
11 compensation until after the distressed property
12 consultant has fully performed each service the distressed
13 property consultant contracted to perform or represented
14 he or she would perform;

15 (2) claim, demand, charge, collect, or receive any fee,
16 interest, or any other compensation for any reason that
17 exceeds 2 monthly mortgage payments of principal and
18 interest or the most recent tax installment on the
19 distressed property, whichever is less;

20 (3) take a wage assignment, a lien of any type on real
21 or personal property, or other security to secure the
22 payment of compensation. Any such security is void and
23 unenforceable;

24 (4) receive any consideration from any third party in
25 connection with services rendered to an owner unless the
26 consideration is first fully disclosed to the owner;

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

31 (6) take any power of attorney from an owner for any
32 purpose, except to inspect documents as provided by law; or

33 (7) induce or attempt to induce an owner to enter a
34 contract that does not comply in all respects with Sections
35 10 and 15 of this Act.

1 (b) A distressed property purchaser, in the course of a
2 distressed property conveyance, shall not:

3 (1) enter into, or attempt to enter into, a distressed
4 property conveyance unless the distressed property
5 purchaser verifies and can demonstrate that the owner of
6 the distressed property has a reasonable ability to pay for
7 the subsequent conveyance of an interest back to the owner
8 of the distressed property and to make monthly or any other
9 required payments due prior to that time;

10 (2) fail to make a payment to the owner of the
11 distressed property at the time the title is conveyed so
12 that the owner of the distressed property has received
13 consideration in an amount of at least 82% of the fair
14 market value of the property;

15 (3) enter into repurchase or lease terms as part of the
16 subsequent conveyance that are unfair or commercially
17 unreasonable, or engage in any other unfair conduct;

18 (4) represent, directly or indirectly, that the
19 distressed property purchaser is acting as an advisor or a
20 consultant, or in any other manner represent that the
21 distressed property purchaser is acting on behalf of the
22 homeowner, or the distressed property purchaser is
23 assisting the owner of the distressed property to "save the
24 house", "buy time", or do anything couched in substantially
25 similar language;

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

28 (6) do any of the following until after the time during
29 which the owner of a distressed property may cancel the
30 transaction:

31 (A) accept from the owner of the distressed
32 property an execution of any instrument of conveyance
33 of any interest in the distressed property;

34 (B) induce the owner of the distressed property to
35 execute an instrument of conveyance of any interest in
36 the distressed property; or

1 (C) record with the county recorder of deeds any
2 document signed by the owner of the distressed
3 property, including but not limited to any instrument
4 of conveyance;

5 (7) fail to reconvey title to the distressed property
6 when the terms of the conveyance contract have been
7 fulfilled;

8 (8) induce the owner of the distressed property to
9 execute a quit claim deed when entering into a distressed
10 property conveyance;

11 (9) enter into a distressed property conveyance where
12 any party to the transaction is represented by power of
13 attorney;

14 (10) fail to extinguish all liens encumbering the
15 distressed property, immediately following the conveyance
16 of the distressed property, or fail to assume all liability
17 with respect to the lien in foreclosure and prior liens
18 that will not be extinguished by such foreclosure, which
19 assumption shall be accomplished without violations of the
20 terms and conditions of the lien being assumed. Nothing
21 herein shall preclude a lender from enforcing any provision
22 in a contract that is not otherwise prohibited by law;

23 (11) fail to complete a distressed property conveyance
24 before a notary in the offices of a title company licensed
25 by the Department of Financial and Professional
26 Regulation; or

27 (12) cause the property to be conveyed or encumbered
28 without the knowledge or permission of the distressed
29 property owner, or in any way frustrate the ability of the
30 distressed property owner to complete the conveyance back
31 to the distressed property owner.

32 (c) There is a rebuttable presumption that an appraisal by
33 a person licensed or certified by an agency of this State or
34 the federal government is an accurate determination of the fair
35 market value of the property.

36 (d) "Consideration" in item (2) of subsection (b) means any

1 payment or thing of value provided to the owner of the
2 distressed property, including reasonable costs paid to
3 independent third parties necessary to complete the distressed
4 property conveyance or payment of money to satisfy a debt or
5 legal obligation of the owner of the distressed property.

6 "Consideration" shall not include amounts imputed as a
7 downpayment or fee to the distressed property purchaser, or a
8 person acting in participation with the distressed property
9 purchaser.

10 (e) An evaluation of "reasonable ability to pay" under
11 subsection (b)(1) of this Section 50 shall include debt to
12 income ratio, fair market value of the distressed property, and
13 the distressed property owner's payment history. There is a
14 rebuttable presumption that the distressed property purchaser
15 has not verified reasonable payment ability if the distressed
16 property purchaser has not obtained documents of assets,
17 liabilities, and income, other than a statement by the owner of
18 the distressed property.

19 Section 55. Civil remedies.

20 (a) A violation of any of the provisions of this Act
21 constitutes an unlawful practice under the Consumer Fraud and
22 Deceptive Business Practices Act. All remedies, penalties, and
23 authority granted to the Attorney General or State's Attorney
24 by the Consumer Fraud and Deceptive Business Practices Act
25 shall be available to him or her for the enforcement of this
26 Act.

27 (b) A consumer who suffers loss by reason of any violation
28 of any provision of this Act may bring a civil action in
29 accordance with the Consumer Fraud and Deceptive Business
30 Practices Act to enforce that provision. All remedies and
31 rights granted to a consumer by the Consumer Fraud and
32 Deceptive Business Practices Act shall be available to the
33 consumer bringing such an action. The remedies and rights
34 provided for in this Act are not exclusive, but cumulative, and
35 all other applicable claims, including, but not limited to,

1 those brought under the doctrine of equitable mortgage, are
2 specifically preserved.

3 Section 60. Criminal mortgage rescue fraud. A person
4 commits the offense of criminal mortgage rescue fraud when he
5 or she intentionally violates any provision enumerated in
6 Section 50 of this Act.

7 Section 65. Criminal penalties. A person who commits the
8 offense of criminal mortgage rescue fraud is guilty of a Class
9 2 felony.

10 Section 300. The Consumer Fraud and Deceptive Business
11 Practices Act is amended by changing Section 2Z as follows:

12 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

13 Sec. 2Z. Violations of other Acts. Any person who knowingly
14 violates the Automotive Repair Act, the Automotive Collision
15 Repair Act, the Home Repair and Remodeling Act, the Dance
16 Studio Act, the Physical Fitness Services Act, the Hearing
17 Instrument Consumer Protection Act, the Illinois Union Label
18 Act, the Job Referral and Job Listing Services Consumer
19 Protection Act, the Travel Promotion Consumer Protection Act,
20 the Credit Services Organizations Act, the Automatic Telephone
21 Dialers Act, the Pay-Per-Call Services Consumer Protection
22 Act, the Telephone Solicitations Act, the Illinois Funeral or
23 Burial Funds Act, the Cemetery Care Act, the Safe and Hygienic
24 Bed Act, the Pre-Need Cemetery Sales Act, the High Risk Home
25 Loan Act, the Payday Loan Reform Act, the Mortgage Rescue Fraud
26 Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax
27 Act, the Payday Loan Reform Act, subsection (a) or (b) of
28 Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail
29 Act, paragraph (6) of subsection (k) of Section 6-305 of the
30 Illinois Vehicle Code, Article 3 of the Residential Real
31 Property Disclosure Act, the Automatic Contract Renewal Act, or
32 the Personal Information Protection Act commits an unlawful

1 practice within the meaning of this Act.

2 (Source: P.A. 93-561, eff. 1-1-04; 93-950, eff. 1-1-05; 94-13,
3 eff. 12-6-05; 94-36, eff. 1-1-06; 94-280, eff. 1-1-06; 94-292,
4 eff. 1-1-06; revised 8-19-05.)

5 Section 999. Effective date. This Act takes effect January
6 1, 2007.