



Filed: 3/24/2006

09400SB2349ham001

LRB094 18521 LCT 57332 a

1 AMENDMENT TO SENATE BILL 2349

2 AMENDMENT NO. _____. Amend Senate Bill 2349 by replacing
3 everything after the enacting clause with the following:

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

1 owner may reinstate the owner's rights with respect to the
2 property;

3 (5) obtain any waiver of an acceleration clause
4 contained in any promissory note or contract secured by a
5 mortgage on a distressed property or contained in the
6 mortgage;

7 (6) assist the owner in foreclosure, loan default, or
8 post-tax sale redemption period to obtain a loan or advance
9 of funds;

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

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

15 A "distressed property consultant" does not include any of
16 the following:

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

20 (2) a person who holds or is owed an obligation secured
21 by a lien on any distressed property, or a person acting
22 under the express authorization or written approval of such
23 person, when the person performs services in connection
24 with the obligation or lien, if the obligation or lien did
25 not arise as the result of or as part of a proposed
26 distressed property conveyance;

27 (3) banks, savings banks, savings and loan
28 associations, credit unions, and insurance companies
29 organized, chartered, or holding a certificate of
30 authority to do business under the laws of this State or
31 any other state or under the laws of the United States;

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

33 (5) a Department of Housing and Urban Development
34 approved mortgagee and any subsidiary or affiliate of these

1 persons or entities, and any agent or employee of these
2 persons or entities, while engaged in the business of these
3 persons or entities;

4 (6) a 501(c)(3) nonprofit agency or organization,
5 doing business for no less than 5 years, that offers
6 counseling or advice to an owner of a distressed property,
7 if they do not contract for services with for-profit
8 lenders or distressed property purchasers, or any person
9 who structures or plans such a transaction;

10 (7) licensees of the Residential Mortgage License Act
11 of 1987;

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

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

16 "Distressed property purchaser" means any person who
17 acquires any interest in fee in a distressed property while
18 allowing the owner to possess, occupy, or retain any present or
19 future interest in fee in the property, or any person who
20 participates in a joint venture or joint enterprise involving a
21 distressed property conveyance.

22 "Distressed property conveyance" means a transaction in
23 which an owner of a distressed property transfers an interest
24 in fee in the distressed property; the acquirer of the property
25 allows the owner of the distressed property to occupy the
26 property; and the acquirer of the property or a person acting
27 in participation with the acquirer of the property conveys or
28 promises to convey an interest in fee back to the owner or
29 gives the owner an option to purchase the property at a later
30 date.

31 "Person" means any individual, partnership, corporation,
32 limited liability company, association, or other group or
33 entity, however organized.

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

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

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

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

7 (4) arranging or attempting to arrange for an extension
8 of the period within which the owner of a distressed
9 property may cure the owner's default and reinstate his or
10 her obligation;

11 (5) arranging or attempting to arrange for any delay or
12 postponement of the time of sale of the distressed
13 property;

14 (6) advising the filing of any document or assisting in
15 any manner in the preparation of any document for filing
16 with any court; or

17 (7) giving any advice, explanation, or instruction to
18 an owner of a distressed property that in any manner
19 relates to the cure of a default or forfeiture or to the
20 postponement or avoidance of sale of the distressed
21 property.

22 Section 10. Distressed property consultant contract terms.

23 (a) A distressed property consultant contract must be in
24 writing and must fully disclose the exact nature of the
25 distressed property consultant's services and the total amount
26 and terms of compensation.

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

31 "NOTICE REQUIRED BY ILLINOIS LAW
32 (name) or anyone working
33 for him or her CANNOT:

1 (1) Take any money from you or ask you for money until
 2 (Name) has
 3 completely finished doing everything he or she said he or
 4 she would do; or

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

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

14 "You, the owner, may cancel this transaction at any
 15 time until after the distressed property consultant has
 16 fully performed each and every service the distressed
 17 property consultant contracted to perform or represented
 18 he or she would perform. See the attached notice of
 19 cancellation form for an explanation of this right."

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

23 (1) the name and address of the distressed property
 24 consultant to which the notice of cancellation is to be
 25 mailed; and

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

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

33 "NOTICE OF CANCELLATION

34

1 (Enter date of transaction)

2 You may cancel this transaction, without any penalty or
3 obligation, at any time until after the distressed property
4 consultant has fully performed each and every service the
5 distressed property consultant contracted to perform or
6 represented he or she would perform.

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

10(Name of distressed property consultant) at
11(Address of distressed property
12 consultant's place of business)

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

15 (f) The distressed property consultant shall provide the
16 owner with a copy of a distressed property consultant contract
17 and the attached notice of cancellation immediately upon
18 execution of the contract.

19 Section 15. Rescission of distressed property consultant
20 contract.

21 (a) In addition to any other legal right to rescind a
22 contract, an owner has the right to cancel a distressed
23 property consultant contract at any time until after the
24 distressed property consultant has fully performed each
25 service the distressed property consultant contracted to
26 perform or represented he or she would perform.

27 (b) Cancellation occurs when the owner gives written notice
28 of cancellation to the distressed property consultant at the
29 address specified in the distressed property consultant
30 contract.

31 (c) Notice of cancellation, if given by mail, is effective
32 when deposited in the mail properly addressed with postage
33 prepaid. Notice by certified mail, return receipt requested,

1 addressed to the address specified in the distressed property
2 consultant contract, shall be conclusive proof of notice of
3 service.

4 (d) Notice of cancellation given by the owner need not take
5 the particular form as provided with the distressed property
6 consultant contract and, however expressed, is effective if it
7 indicates the intention of the owner not to be bound by the
8 contract.

9 Section 20. Waiver of a distressed property consultant
10 contract.

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

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

16 Section 25. Distressed property conveyance contract. A
17 distressed property purchaser shall enter into every
18 distressed property conveyance in the form of a written
19 contract. Every distressed property conveyance contract must
20 be written in letters of a size equal to at least 12-point
21 boldface type, in the same language principally used by the
22 owner of the distressed property to negotiate the sale of the
23 distressed property, must be fully completed, signed, and dated
24 by the owner of the distressed property and the distressed
25 property purchaser, and must be witnessed and acknowledged by a
26 notary public, before the execution of any instrument of
27 conveyance of the distressed property.

28 Section 30. Distressed property conveyance contract terms.
29 Every contract required by Section 25 must contain the entire
30 agreement of the parties, be fully assignable, and survive
31 delivery of any instrument of conveyance of the distressed

1 property. Every lease entered into pursuant to a contract
2 required by Section 25 is terminable at will by the distressed
3 property owner, without liability. Every contract required by
4 Section 25 must include the following terms:

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

7 (2) the address of the distressed property;

8 (3) the total consideration to be given by the
9 distressed property purchaser or tax lien payor in
10 connection with or incident to the sale;

11 (4) a complete description of the terms of payment or
12 other consideration including, but not limited to, any
13 services of any nature that the distressed property
14 purchaser represents he or she will perform for the owner
15 of the distressed property before or after the sale;

16 (5) a complete description of the terms of any related
17 agreement designed to allow the owner of the distressed
18 property to remain in the home such as a rental agreement,
19 repurchase agreement, contract for deed, or lease with
20 option to buy;

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

23 (7) the following notice in at least 12-point boldface
24 type, if the contract is printed, or in capital letters, if
25 the contract is typed, and completed with the name of the
26 distressed property purchaser, immediately above the
27 statement required by this Section:

28 "NOTICE REQUIRED BY ILLINOIS LAW

29 Until your right to cancel this contract has ended,
30(Name) or anyone working for
31(Name) CANNOT ask you to sign or have
32 you sign any deed or any other document. You are urged to
33 have this contract reviewed by an attorney of your choice
34 within 5 business days of signing it."; and

1 (8) if title to the distressed property will be
2 transferred in the conveyance transaction, the following
3 notice in at least 14-point boldface type if the contract
4 is printed, or in capital letters if the contract is typed,
5 and completed with the name of the distressed property
6 purchaser, immediately above the statement required by
7 this Section:

8 "NOTICE REQUIRED BY ILLINOIS LAW

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

11 Section 35. Cancellation of a distressed property
12 conveyance contract.

13 (a) In addition to any other right of rescission, the owner
14 of the distressed property has the right to cancel any contract
15 with a distressed property purchaser until midnight of the
16 fifth business day following the day on which the owner of the
17 distressed property signs a contract that complies with
18 Sections 25 and 30 or until 8:00 a.m. on the last day of the
19 period during which the owner of the distressed property has a
20 right of redemption under the Illinois Mortgage Foreclosure Law
21 or the Property Tax Code, whichever occurs first.

22 (b) Cancellation occurs when the owner of the distressed
23 property delivers, by any means, written notice of cancellation
24 to the address specified in the distressed property conveyance
25 contract.

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

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

1 Section 40. Notice of cancellation of a distressed property
2 conveyance contract.

3 (a) The contract must contain in immediate proximity to the
4 space reserved for the owner of the distressed property's
5 signature a conspicuous statement in a size equal to at least
6 12-point boldface type, if the contract is printed, or in
7 capital letters, if the contract is typed, as follows:

8 "You may cancel this contract for the sale of your
9 house, without any penalty or obligation, at any time
10 before(Date and time of
11 day). See the attached notice of cancellation form for an
12 explanation of this right."

13 The distressed property purchaser shall accurately
14 enter the date and time of day on which the cancellation
15 right ends.

16 (b) The contract must be accompanied by a completed form in
17 duplicate, captioned "NOTICE OF CANCELLATION" in a size equal
18 to a 12-point boldface type, if the contract is printed, or in
19 capital letters, if the contract is typed, followed by a space
20 in which the distressed property purchaser shall enter the date
21 on which the owner of the distressed property executes any
22 contract. This form must be attached to the contract, must be
23 easily detachable, and must contain in at least 12-point type,
24 if the contract is printed, or in capital letters, if the
25 contract is typed, the following statement written in the same
26 language as used in the contract:

27 "NOTICE OF CANCELLATION
28
29 (Enter date contract signed)

30 You may cancel this contract for the sale of your home,
31 without any penalty or obligation, at any time before
32(enter date and time of day). To
33 cancel this transaction, mail or deliver a signed and dated

1 copy of this cancellation notice to
 2(Name of purchaser) at
 3 (Street
 4 address of purchaser's place of business) NOT LATER THAN
 5 (Enter date and time of
 6 day).

7 I hereby cancel this transaction on (Date)
 8 (Seller's
 9 signature)".

10 (c) The distressed property purchaser shall provide the
 11 owner of the distressed property with a copy of the contract
 12 and the attached notice of cancellation immediately at the time
 13 the contract is executed by all parties.

14 (d) The distressed property purchaser shall record the
 15 contract with the recorder of deeds in the county where the
 16 distressed property is located within 10 days of its execution,
 17 provided the contract has not been canceled.

18 (e) The 5 business days during which the owner of the
 19 distressed property may cancel the contract shall not begin to
 20 run until all parties to the contract have executed the
 21 contract and the distressed property purchaser has complied
 22 with all the requirements of this Section.

23 Section 45. Waiver of a distressed property conveyance
 24 contract. Any waiver of the provisions of Sections 35 and 40
 25 are void and unenforceable as contrary to public policy, except
 26 that a consumer may waive the 5-day right to cancel provided in
 27 Section 35 if the property is subject to a foreclosure sale
 28 within the 5 business days and the owner of the distressed
 29 property agrees to waive his or her right to cancel in a
 30 handwritten statement that is signed by all parties holding
 31 title to the distressed property.

32 Section 50. Violations.

1 (a) It is a violation for a distressed property consultant
2 to:

3 (1) claim, demand, charge, collect, or receive any
4 compensation until after the distressed property
5 consultant has fully performed each service the distressed
6 property consultant contracted to perform or represented
7 he or she would perform;

8 (2) claim, demand, charge, collect, or receive any fee,
9 interest, or any other compensation for any reason that
10 exceeds 2 monthly mortgage payments of principal and
11 interest or the most recent tax installment on the
12 distressed property, whichever is less;

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

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

20 (5) acquire any interest, directly or indirectly, or by
21 means of a subsidiary or affiliate in a distressed property
22 from an owner with whom the distressed property consultant
23 has contracted;

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

26 (7) induce or attempt to induce an owner to enter a
27 contract that does not comply in all respects with Sections
28 10 and 15 of this Act.

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

31 (1) enter into, or attempt to enter into, a distressed
32 property conveyance unless the distressed property
33 purchaser verifies and can demonstrate that the owner of
34 the distressed property has a reasonable ability to pay for

1 the subsequent conveyance of an interest back to the owner
2 of the distressed property and to make monthly or any other
3 required payments due prior to that time;

4 (2) fail to make a payment to the owner of the
5 distressed property at the time the title is conveyed so
6 that the owner of the distressed property has received
7 consideration in an amount of at least 82% of the fair
8 market value of the property;

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

12 (4) represent, directly or indirectly, that the
13 distressed property purchaser is acting as an advisor or a
14 consultant, or in any other manner represent that the
15 distressed property purchaser is acting on behalf of the
16 homeowner, or the distressed property purchaser is
17 assisting the owner of the distressed property to "save the
18 house", "buy time", or do anything couched in substantially
19 similar language;

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

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

25 (A) accept from the owner of the distressed
26 property an execution of any instrument of conveyance
27 of any interest in the distressed property;

28 (B) induce the owner of the distressed property to
29 execute an instrument of conveyance of any interest in
30 the distressed property; or

31 (C) record with the county recorder of deeds any
32 document signed by the owner of the distressed
33 property, including but not limited to any instrument
34 of conveyance;

1 (7) fail to reconvey title to the distressed property
2 when the terms of the conveyance contract have been
3 fulfilled;

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

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

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

19 (11) fail to complete a distressed property conveyance
20 before a notary in the offices of a title company licensed
21 by the Department of Financial and Professional
22 Regulation, before an agent of such a title company, a
23 notary in the office of a bank, or a licensed attorney
24 where the notary is employed; or

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

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

34 (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

1 provided for in this Act are not exclusive, but cumulative, and
2 all other applicable claims, including, but not limited to,
3 those brought under the doctrine of equitable mortgage, are
4 specifically preserved.

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

9 Section 65. Criminal penalties. A person who commits the
10 offense of criminal mortgage rescue fraud is guilty of a Class
11 2 felony.

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

14 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

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

1 Act, paragraph (6) of subsection (k) of Section 6-305 of the
2 Illinois Vehicle Code, Article 3 of the Residential Real
3 Property Disclosure Act, the Automatic Contract Renewal Act, or
4 the Personal Information Protection Act commits an unlawful
5 practice within the meaning of this Act.

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

9 Section 999. Effective date. This Act takes effect January
10 1, 2007."