

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 distressed property,
33 if they do not contract for services with for-profit
34 lenders or distressed property purchasers, or any person
35 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 fee in a distressed property while
8 allowing the owner to possess, occupy, or retain any present or
9 future interest in fee in the property, or any person who
10 participates in a joint venture or joint enterprise involving a
11 distressed property conveyance. "Distressed property
12 purchaser" does not mean any person who acquires distressed
13 property at a short sale or any person acting in participation
14 with any person who acquires distressed property at a short
15 sale, if that person does not promise to convey an interest in
16 fee back to the owner or does not give the owner an option to
17 purchase the property at a later date.

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

27 "Person" means any individual, partnership, corporation,
28 limited liability company, association, or other group or
29 entity, however organized.

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

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

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

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

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

5 (5) arranging or attempting to arrange for any delay or
6 postponement of the time of sale of the distressed
7 property;

8 (6) advising the filing of any document or assisting in
9 any manner in the preparation of any document for filing
10 with any court; or

11 (7) giving any advice, explanation, or instruction to
12 an owner of a distressed property that in any manner
13 relates to the cure of a default or forfeiture or to the
14 postponement or avoidance of sale of the distressed
15 property.

16 Section 10. Distressed property consultant contract terms.

17 (a) A distressed property consultant contract must be in
18 writing and must fully disclose the exact nature of the
19 distressed property consultant's services and the total amount
20 and terms of compensation.

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

25 "NOTICE REQUIRED BY ILLINOIS LAW

26(Name) or anyone working
27 for him or her CANNOT:

28 (1) Take any money from you or ask you for money until
29 (Name) has
30 completely finished doing everything he or she said he or
31 she would do; or

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

34 (c) A distressed property consultant contract must be
35 written in the same language as principally used by the

1 distressed property consultant to describe his or her services
2 or to negotiate the contract, must be dated and signed by the
3 owner, and must contain in immediate proximity to the space
4 reserved for the owner's signature a conspicuous statement in a
5 size equal to at least 12-point boldface type, as follows:

6 "You, the owner, may cancel this transaction at any
7 time until after the distressed property consultant has
8 fully performed each and every service the distressed
9 property consultant contracted to perform or represented
10 he or she would perform. See the attached notice of
11 cancellation form for an explanation of this right."

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

- 15 (1) the name and address of the distressed property
16 consultant to which the notice of cancellation is to be
17 mailed; and
- 18 (2) the date the owner signed the contract.

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

"NOTICE OF CANCELLATION

.....

(Enter date of transaction)

28 You may cancel this transaction, without any penalty or
29 obligation, at any time until after the distressed property
30 consultant has fully performed each and every service the
31 distressed property consultant contracted to perform or
32 represented he or she would perform.

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

36(Name of distressed property consultant) at

1(Address of distressed property
2 consultant's place of business)

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

5 (f) The distressed property consultant shall provide the
6 owner with a copy of a distressed property consultant contract
7 and the attached notice of cancellation immediately upon
8 execution of the contract.

9 Section 15. Rescission of distressed property consultant
10 contract.

11 (a) In addition to any other legal right to rescind a
12 contract, an owner has the right to cancel a distressed
13 property consultant contract at any time until after the
14 distressed property consultant has fully performed each
15 service the distressed property consultant contracted to
16 perform or represented he or she would perform.

17 (b) Cancellation occurs when the owner gives written notice
18 of cancellation to the distressed property consultant at the
19 address specified in the distressed property consultant
20 contract.

21 (c) Notice of cancellation, if given by mail, is effective
22 when deposited in the mail properly addressed with postage
23 prepaid. Notice by certified mail, return receipt requested,
24 addressed to the address specified in the distressed property
25 consultant contract, shall be conclusive proof of notice of
26 service.

27 (d) Notice of cancellation given by the owner need not take
28 the particular form as provided with the distressed property
29 consultant contract and, however expressed, is effective if it
30 indicates the intention of the owner not to be bound by the
31 contract.

32 Section 20. Waiver of a distressed property consultant
33 contract.

34 (a) Any waiver by an owner of the provisions of Section 10

1 or 15 is void and unenforceable as contrary to public policy.

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

5 Section 25. Distressed property conveyance contract. A
6 distressed property purchaser shall enter into every
7 distressed property conveyance in the form of a written
8 contract. Every distressed property conveyance contract must
9 be written in letters of a size equal to at least 12-point
10 boldface type, in the same language principally used by the
11 owner of the distressed property to negotiate the sale of the
12 distressed property, must be fully completed, signed, and dated
13 by the owner of the distressed property and the distressed
14 property purchaser, and must be witnessed and acknowledged by a
15 notary public, before the execution of any instrument of
16 conveyance of the distressed property.

17 Section 30. Distressed property conveyance contract terms.
18 Every contract required by Section 25 must contain the entire
19 agreement of the parties, be fully assignable, and survive
20 delivery of any instrument of conveyance of the distressed
21 property. Every lease entered into pursuant to a contract
22 required by Section 25 is terminable at will by the distressed
23 property owner, without liability. Every contract required by
24 Section 25 must include the following terms:

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

27 (2) the address of the distressed property;

28 (3) the total consideration to be given by the
29 distressed property purchaser or tax lien payor in
30 connection with or incident to the sale;

31 (4) a complete description of the terms of payment or
32 other consideration including, but not limited to, any
33 services of any nature that the distressed property
34 purchaser represents he or she will perform for the owner

1 of the distressed property before or after the sale;

2 (5) a complete description of the terms of any related
3 agreement designed to allow the owner of the distressed
4 property to remain in the home such as a rental agreement,
5 repurchase agreement, contract for deed, or lease with
6 option to buy;

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

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

14 "NOTICE REQUIRED BY ILLINOIS LAW

15 Until your right to cancel this contract has ended,
16(Name) or anyone working for
17(Name) CANNOT ask you to sign or have
18 you sign any deed or any other document. You are urged to
19 have this contract reviewed by an attorney of your choice
20 within 5 business days of signing it."; and

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

28 "NOTICE REQUIRED BY ILLINOIS LAW

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

31 Section 35. Cancellation of a distressed property
32 conveyance contract.

33 (a) In addition to any other right of rescission, the owner
34 of the distressed property has the right to cancel any contract
35 with a distressed property purchaser until midnight of the

1 fifth business day following the day on which the owner of the
 2 distressed property signs a contract that complies with
 3 Sections 25 and 30 or until 8:00 a.m. on the last day of the
 4 period during which the owner of the distressed property has a
 5 right of redemption under the Illinois Mortgage Foreclosure Law
 6 or the Property Tax Code, whichever occurs first.

7 (b) Cancellation occurs when the owner of the distressed
 8 property delivers, by any means, written notice of cancellation
 9 to the address specified in the distressed property conveyance
 10 contract.

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

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

19 Section 40. Notice of cancellation of a distressed property
 20 conveyance contract.

21 (a) The contract must contain in immediate proximity to the
 22 space reserved for the owner of the distressed property's
 23 signature a conspicuous statement in a size equal to at least
 24 12-point boldface type, if the contract is printed, or in
 25 capital letters, if the contract is typed, as follows:

26 "You may cancel this contract for the sale of your
 27 house, without any penalty or obligation, at any time
 28 before(Date and time of
 29 day). See the attached notice of cancellation form for an
 30 explanation of this right."

31 The distressed property purchaser shall accurately
 32 enter the date and time of day on which the cancellation
 33 right ends.

34 (b) The contract must be accompanied by a completed form in
 35 duplicate, captioned "NOTICE OF CANCELLATION" in a size equal

1 to a 12-point boldface type, if the contract is printed, or in
 2 capital letters, if the contract is typed, followed by a space
 3 in which the distressed property purchaser shall enter the date
 4 on which the owner of the distressed property executes any
 5 contract. This form must be attached to the contract, must be
 6 easily detachable, and must contain in at least 12-point type,
 7 if the contract is printed, or in capital letters, if the
 8 contract is typed, the following statement written in the same
 9 language as used in the contract:

10 "NOTICE OF CANCELLATION

11

12 (Enter date contract signed)

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

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

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

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

34 (e) The 5 business days during which the owner of the
 35 distressed property may cancel the contract shall not begin to
 36 run until all parties to the contract have executed the

1 contract and the distressed property purchaser has complied
2 with all the requirements of this Section.

3 Section 45. Waiver of a distressed property conveyance
4 contract. Any waiver of the provisions of Sections 35 and 40
5 are void and unenforceable as contrary to public policy, except
6 that a consumer may waive the 5-day right to cancel provided in
7 Section 35 if the property is subject to a foreclosure sale
8 within the 5 business days and the owner of the distressed
9 property agrees to waive his or her right to cancel in a
10 handwritten statement that is signed by all parties holding
11 title to the distressed property.

12 Section 50. Violations.

13 (a) It is a violation for a distressed property consultant
14 to:

15 (1) claim, demand, charge, collect, or receive any
16 compensation until after the distressed property
17 consultant has fully performed each service the distressed
18 property consultant contracted to perform or represented
19 he or she would perform;

20 (2) claim, demand, charge, collect, or receive any fee,
21 interest, or any other compensation for any reason that
22 exceeds 2 monthly mortgage payments of principal and
23 interest or the most recent tax installment on the
24 distressed property, whichever is less;

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

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

32 (5) acquire any interest, directly or indirectly, or by
33 means of a subsidiary or affiliate in a distressed property
34 from an owner with whom the distressed property consultant

1 has contracted;

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

4 (7) induce or attempt to induce an owner to enter a
5 contract that does not comply in all respects with Sections
6 10 and 15 of this Act.

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

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

16 (2) fail to make a payment to the owner of the
17 distressed property at the time the title is conveyed so
18 that the owner of the distressed property has received
19 consideration in an amount of at least 82% of the
20 property's fair market value, or, in the alternative, fail
21 to pay the owner of the distressed property no more than
22 the costs necessary to extinguish all of the existing
23 obligations on the distressed property, as set forth in
24 subdivision (b)(10) of Section 45, provided that the
25 owner's costs to repurchase the distressed property
26 pursuant to the terms of the distressed property conveyance
27 contract do not exceed 125% of the distressed property
28 purchaser's costs to purchase the property. If an owner is
29 unable to repurchase the property pursuant to the terms of
30 the distressed property conveyance contract, the
31 distressed property purchaser shall not fail to make a
32 payment to the owner of the distressed property so that the
33 owner of the distressed property has received
34 consideration in an amount of at least 82% of the
35 property's fair market value at the time of conveyance or
36 at the expiration of the owner's option to repurchase.

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

4 (4) represent, directly or indirectly, that the
5 distressed property purchaser is acting as an advisor or a
6 consultant, or in any other manner represent that the
7 distressed property purchaser is acting on behalf of the
8 homeowner, or the distressed property purchaser is
9 assisting the owner of the distressed property to "save the
10 house", "buy time", or do anything couched in substantially
11 similar language;

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

14 (6) do any of the following until after the time during
15 which the owner of a distressed property may cancel the
16 transaction:

17 (A) accept from the owner of the distressed
18 property an execution of any instrument of conveyance
19 of any interest in the distressed property;

20 (B) induce the owner of the distressed property to
21 execute an instrument of conveyance of any interest in
22 the distressed property; or

23 (C) record with the county recorder of deeds any
24 document signed by the owner of the distressed
25 property, including but not limited to any instrument
26 of conveyance;

27 (7) fail to reconvey title to the distressed property
28 when the terms of the conveyance contract have been
29 fulfilled;

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

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

36 (10) fail to extinguish all liens encumbering the

1 distressed property, immediately following the conveyance
2 of the distressed property, or fail to assume all liability
3 with respect to the lien in foreclosure and prior liens
4 that will not be extinguished by such foreclosure, which
5 assumption shall be accomplished without violations of the
6 terms and conditions of the lien being assumed. Nothing
7 herein shall preclude a lender from enforcing any provision
8 in a contract that is not otherwise prohibited by law;

9 (11) fail to complete a distressed property conveyance
10 before a notary in the offices of a title company licensed
11 by the Department of Financial and Professional
12 Regulation, before an agent of such a title company, a
13 notary in the office of a bank, or a licensed attorney
14 where the notary is employed; or

15 (12) cause the property to be conveyed or encumbered
16 without the knowledge or permission of the distressed
17 property owner, or in any way frustrate the ability of the
18 distressed property owner to complete the conveyance back
19 to the distressed property owner.

20 (c) There is a rebuttable presumption that an appraisal by
21 a person licensed or certified by an agency of this State or
22 the federal government is an accurate determination of the fair
23 market value of the property.

24 (d) "Consideration" in item (2) of subsection (b) means any
25 payment or thing of value provided to the owner of the
26 distressed property, including reasonable costs paid to
27 independent third parties necessary to complete the distressed
28 property conveyance or payment of money to satisfy a debt or
29 legal obligation of the owner of the distressed property.

30 "Consideration" shall not include amounts imputed as a
31 downpayment or fee to the distressed property purchaser, or a
32 person acting in participation with the distressed property
33 purchaser.

34 (e) An evaluation of "reasonable ability to pay" under
35 subsection (b)(1) of this Section 50 shall include debt to
36 income ratio, fair market value of the distressed property, and

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

7 Section 55. Civil remedies.

8 (a) A violation of any of the provisions of this Act
9 constitutes an unlawful practice under the Consumer Fraud and
10 Deceptive Business Practices Act. All remedies, penalties, and
11 authority granted to the Attorney General or State's Attorney
12 by the Consumer Fraud and Deceptive Business Practices Act
13 shall be available to him or her for the enforcement of this
14 Act.

15 (b) A consumer who suffers loss by reason of any violation
16 of any provision of this Act may bring a civil action in
17 accordance with the Consumer Fraud and Deceptive Business
18 Practices Act to enforce that provision. All remedies and
19 rights granted to a consumer by the Consumer Fraud and
20 Deceptive Business Practices Act shall be available to the
21 consumer bringing such an action. The remedies and rights
22 provided for in this Act are not exclusive, but cumulative, and
23 all other applicable claims, including, but not limited to,
24 those brought under the doctrine of equitable mortgage, are
25 specifically preserved.

26 Section 60. Criminal mortgage rescue fraud. A person
27 commits the offense of criminal mortgage rescue fraud when he
28 or she intentionally violates any provision enumerated in
29 Section 50 of this Act.

30 Section 65. Criminal penalties. A person who commits the
31 offense of criminal mortgage rescue fraud is guilty of a Class
32 2 felony.

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

3 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

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

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

28 Section 999. Effective date. This Act takes effect January
29 1, 2007.