SYNOPSIS AS INTRODUCED:

765 ILCS 940/5

Amends the Mortgage Rescue Fraud Act. Changes definition of "distressed property consultant" by narrowing the attorney exception to the definition, so that an attorney is only considered to be excluded from the definition of "distressed property consultant" if the attorney is licensed in Illinois and is providing distressed property consultant services as an ancillary matter to the attorney's representation of an owner of distressed property as a client. Effective immediately.
AN ACT concerning civil law.

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

Section 5. The Mortgage Rescue Fraud Act is amended by changing Section 5 as follows:

(765 ILCS 940/5)

Sec. 5. Definitions. As used in this Act:

"Distressed property" means residential real property consisting of one to 6 family dwelling units that is in foreclosure or at risk of loss due to nonpayment of taxes, or whose owner is more than 30 days delinquent on any loan that is secured by the property.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) an attorney licensed in Illinois who is
providing distressed property consultant services as an
ancillary matter to the attorney's representation of an
owner of distressed property as a client engaged in the
practice of law;

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

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

(7) (blank);

(8) licensees of the Consumer Installment Loan Act who
are authorized to make loans secured by real property; or
(9) licensees of the Real Estate License Act of 2000 when providing licensed activities.

"Distressed property purchaser" means any person who acquires any interest in fee in a distressed property or a beneficial interest in a trust holding title to a distressed property while allowing the owner to possess, occupy, or retain any present or future interest in fee in the property, or any person who participates in a joint venture or joint enterprise involving a distressed property conveyance. "Distressed property purchaser" does not mean any person who acquires distressed property at a short sale or any person acting in participation with any person who acquires distressed property at a short sale, if that person does not promise to convey an interest in fee back to the owner or does not give the owner an option to purchase the property at a later date.

"Distressed property conveyance" means a transaction in which an owner of a distressed property transfers an interest in fee in the distressed property or in which the holder of all or some part of the beneficial interest in a trust holding title to a distressed property transfers that interest; the acquirer of the property allows the owner of the distressed property to occupy the property; and the acquirer of the property or a person acting in participation with the acquirer of the property conveys or promises to convey an interest in fee back to the owner or gives the owner an option to purchase the property at a later date.
"Person" means any individual, partnership, corporation, limited liability company, association, or other group or entity, however organized.

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

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

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

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

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

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

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

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

(Source: P.A. 94-822, eff. 1-1-07; 95-691, eff. 6-1-08;
Section 99. Effective date. This Act takes effect upon becoming law.