

SB0061



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB0061

Introduced 1/27/2011, by Sen. Ira I. Silverstein

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.

LRB097 00511 AJ0 40529 b

A BILL FOR

1 AN ACT concerning civil law.

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

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

6 (765 ILCS 940/5)

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

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

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

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

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

23 (3) assist the owner to exercise any right of

1 reinstatement or right of redemption;

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

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

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

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

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

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

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

22 (2) a person who holds or is owed an obligation secured
23 by a lien on any distressed property, or a person acting
24 under the express authorization or written approval of such
25 person, when the person performs services in connection
26 with the obligation or lien, if the obligation or lien did

1 not arise as the result of or as part of a proposed
2 distressed property conveyance;

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

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

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

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

24 (7) (blank);

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

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

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

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

1 "Person" means any individual, partnership, corporation,
2 limited liability company, association, or other group or
3 entity, however organized.

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

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

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

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

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

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

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

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

26 (Source: P.A. 94-822, eff. 1-1-07; 95-691, eff. 6-1-08;

1 95-1047, eff. 4-6-09.)

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.