

ASSEMBLY BILL No. 359
(Second Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 359 (Second Reprint) with my recommendations for reconsideration. This bill attempts to protect distressed homeowners from foreclosure rescue scams by regulating "foreclosure consultants," providing certain contractual rights to homeowners, and regulating the prices of distressed home sales. The protections provided by this bill are an important step towards safeguarding residents faced with the painful choices and consequences that come from home foreclosures. Real estate experts estimate that mortgage lenders in New Jersey are waiting to file an estimated 28,500 foreclosures, and that another 55,000 mortgage loans are currently more than 90 days delinquent. New Jersey homeowners deserve protections from the unlicensed and unsupervised individuals who might prey upon the vulnerable. With the improvements recommended below, I look forward to swiftly signing this bill into law.

As written, this bill subjects all foreclosure consultants to licensure by the Department of Banking and Insurance and requires consultants to adhere to a set of reasonable business standards. Licensing these consultants will appropriately supplement the protections already in place to help curb foreclosure rescue scams.

In addition, the bill attempts to ensure that homeowners receive appropriate compensation for their homes in certain distressed property transactions. The bill provides certain contractual rights to distressed property owners, and includes a requirement that the owner is paid at least 82% of the property's fair market value in consideration for the homeowner's transfer of title. Although establishing a safety net for homeowners is important, this bill as presently drafted is too broad and may

have the dangerous, unintended consequence of freezing the marketplace for legitimate distressed residential properties and short-sale transactions ultimately hurting the very people the bill purports to help.

Wisely, the original intent of the bill was to specifically target the unregulated foreclosure consultants who at times employ fraudulent methods to obtain distressed properties at reduced costs. Limiting the sales of these properties brokered through a foreclosure consultant to 82% of fair market value is consistent with the goal of protecting homeowners from sham transactions. However, this bill sweeps in all transactions involving distressed properties, with the exception of those involving federally insured institutions and acquirers through a deed in lieu of foreclosure, without distinguishing between fraud and financing. Attempting to regulate nearly all distressed properties could have the dire effect of curtailing legitimate transactions across the State, preventing homeowners from engaging in pre-foreclosure transactions to stem further losses, and forcing banks to foreclose on many of the thousands of financially distressed homes in New Jersey that are already "under water." Simply stated, without the option of legitimate, pre-foreclosure sales, many homeowners will end up in bankruptcy, while banks will end up with more foreclosed-upon property, more debt, and fresh requests for taxpayer-funded support. Recognizing these potential harms, comparable legislation enacted in other states, such as Illinois, is more narrowly crafted to curb foreclosure rescue scams without adversely impacting the residential real estate market.

In order to limit those potentially dangerous unintended consequences, I recommend that the bill be amended to clarify that only distressed property conveyances and distressed property "conditional conveyances" involving participation by a foreclosure

consultant be subject to the "82% of fair market value" requirement. Therefore, I herewith return Assembly Bill No. 359 (Second Reprint) and recommend that it be amended as follows:

Page 2, Section 2, Line 39: After "transaction" insert "involving any participation by, or any distressed property service or other service or other assistance provided by, a foreclosure consultant"

Page 3, Section 2, Line 3: After, "transaction" insert "involving any participation by, or any distressed property service or other service or other assistance provided by, a foreclosure consultant"

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Jeffrey S. Chiesa

Chief Counsel to the Governor