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Assemblymen Alban, Milam, Conners, Assemblywoman Wagner,
Assemblymen Moriarty, Scalera, Assemblywomen Riley, Lampitt,
Spencer, Jasey, Senators Turner, Stack, Cunningham, Gordon, Greenstein
and Ruiz

SYNOPSIS
The "Foreclosure Rescue Fraud Prevention Act."

CURRENT VERSION OF TEXT
As reported by the Senate Commerce Committee on March 3, 2011, with
amendments.

(Sponsorship Updated As Of: 6/30/2011)
AN ACT concerning certain mortgage foreclosure consultant practices, amending P.L. 2005, c.199 and supplementing Title 46 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. (New section) This act shall be known and may be cited as the "Foreclosure Rescue Fraud Prevention Act."

2. (New section) As used in this act:
   “Business day” means any day other than a Saturday, Sunday, or a federal holiday.
   "Conventional mortgage rate" means the highest mortgage rate published for the relevant loan product on the website of any generally accepted industry provider of such information, applicable to the week preceding the transaction.
   "Distressed property" means residential real property consisting of from one to six dwelling units, at least one of which is occupied by the owner as a primary residence, and which is the subject of a mortgage foreclosure or tax sale, or which is at risk of loss due to nonpayment of taxes or whose owner is more than 90 days delinquent on any loan that is secured by the property.
   "Distressed property purchaser" means a person who acquires an interest in a distressed property through a distressed property conditional conveyance or a distressed property conveyance, or a person who participates in a joint venture or joint enterprise involving a distressed property conditional conveyance or a distressed property conveyance. The term "distressed property purchaser" does not mean a federally insured financial institution or a person who acquires distressed property through a deed in lieu of foreclosure or a person acting in participation with any person who acquires distressed property through a deed in lieu of foreclosure, provided 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 conditional conveyance" means a transaction in which an owner transfers an interest in fee, or a beneficial interest created through a trust document, in the distressed property; the acquirer of the property allows the owner to occupy the property; and the acquirer of the property or a person acting in participation with the acquirer of the property conveys or

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
Assembly floor amendments adopted September 30, 2010.
Senate SCM committee amendments adopted March 3, 2011.
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.

“Distressed property conveyance” means a transaction in which
an owner transfers an interest in fee in a distressed property.

“Distressed property relief” or “relief” means, in connection
with a foreclosure consultant, any of the following:
(1) saving the owner’s property from foreclosure;
(2) postponing the foreclosure sale;
(3) obtaining a forbearance from the mortgagee;
(4) securing the right to exercise the right to reinstatement;
(5) obtaining an extension of the period within which the owner
may reinstate his or her mortgage obligation;
(6) obtaining a waiver of an acceleration clause;
(7) obtaining a modification of a mortgage;
(8) assisting the owner in obtaining a loan or advance of funds;
or
(9) avoiding the impairment of the owner’s credit.

"Distressed property service" or "service" means, without
limitation, in connection with a distressed property conditional
carrying or a distressed property conveyance, 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 mortgage or other lien on a distressed property;
(3) contacting creditors on behalf of an owner;
(4) arranging or attempting to arrange for an extension of the
period within which the owner may cure the owner's default and
reinstate a debt obligation;
(5) arranging or attempting to arrange for a delay or
postponement of the time of sale of the distressed property;
(6) advising with respect to the filing of any document or
assisting in any manner in the preparation of any document for
filing with any court; or
(7) giving advice, explanation, or instruction to an owner that in
any manner relates to the cure of a default or forfeiture or to the
postponement or avoidance of a sale of the distressed property.

"Foreclosure consultant": (1) means any person, located out-of-
State or within the State, who, directly or indirectly, for
compensation from an owner, makes any solicitation,
representation, or offer to perform, or who performs, any distressed
property service that the person represents will in any manner do
any of the following in relation to the owner’s distressed property:
(a) prevent or postpone the foreclosure sale [or the loss of]
the property [due to nonpayment of taxes];
(b) obtain any forbearance from any [beneficiary or]
mortgagee [or relief with respect to a tax sale of the property];
(c) assist the owner in exercising any right of reinstatement or right of redemption;
(d) obtain any extension of the period within which the owner may reinstate the owner’s rights with respect to the property;
(e) obtain any waiver of an acceleration clause contained in any promissory note, contract, or mortgage evidencing or securing a debt in relation to the property;
(f) assist the owner in obtaining a loan or advance of funds to pay off the promissory note, contract, or mortgage evidencing or securing a debt in relation to the property; or
(g) avoid or ameliorate the impairment of the owner’s credit resulting from default on the promissory note, contract, or mortgage, or the conduct of a foreclosure sale or tax sale or offer to repair the owner’s credit.

(2) shall not include any of the following:
(a) a housing counseling agency contracted by the United States Department of Housing and Urban Development to provide counseling;
(b) a person who holds or is owed an obligation secured by a lien on any distressed property in situations in which the person performs services in connection with the obligation or lien, provided the obligation or lien did not arise as the result of, or as part of, a proposed distressed property conditional conveyance or a distressed property conveyance;
(c) a person licensed to practice law in this State while acting under the authority of that license;
(d) a nonprofit, charitable entity qualified pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. s.501(c)(3)), which is licensed pursuant to P.L.1979, c.16 (C.17:16G-1 et seq.) and which offers counseling or advice to an owner of a distressed property, provided the entity does not contract for services with for-profit lenders or distressed property purchasers or any person who structures or plans a distressed property conveyance;
(e) a municipality which has a tax lien on distressed property;
(f) an assignee or a purchaser of a municipal tax lien from a tax sale;
(g) a sponsor which is certified by the Commissioner of Community Affairs to participate in the “New Jersey Housing Assistance and Recovery Program” established pursuant to sections 8 through 14 of P.L.2008, c.127 (C.55:14K-88 et seq.) and a bank, savings bank, savings and loan association, credit union, or other federally insured financial institution, or insurance company, or affiliate or subsidiary thereof, organized, chartered, licensed, 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:
(i) a person licensed as a real estate broker, broker-salesperson, or salesperson pursuant to R.S.45:15-1 et seq., while acting under the authority of that license;

(j) a person licensed as a title insurance producer pursuant to the “New Jersey Insurance Producer Licensing Act of 2001,” P.L.2001, c.210 (C.17:22A-26 et seq.) while acting under the authority of that license or conducting the business of title insurance pursuant to P.L.1975, c.106 (C.17:46B-1 et seq);

(k) a mediator licensed pursuant to the Judiciary’s Mediation Program; or

(l) a person licensed pursuant to the “New Jersey Residential Mortgage Lending Act,” P.L.2009, c.53 (17:11C-51 et seq.), while acting under the authority of that license.

“Owner” means an owner of record of title to a distressed property.

“Owner’s current verified monthly income” means the monthly average of the owner’s most recent six months of wage receipts or pay stubs or if the owner has non-wage income by a verified statement of profit and loss or income from a certified public accountant who has reviewed the owner’s income.

“Reasonable ability to pay” means that the owner’s current verified monthly income is adequate to service a 30 year fixed rate loan at the conventional mortgage rate together with actual property taxes, homeowner’s insurance, condominium or association fees, if applicable, and reasonable and necessary living expenses.

“Reasonable and necessary living expenses” means not less than the average utility costs over the last twelve months, or if that figure is unavailable $200, and transportation, food, clothing, and other expenses equal to an amount not less than the Collection Financial Standards set forth by the Internal Revenue Service for transportation, food, clothing, and other items and out-of-pocket health care costs.

“Residual income” means an owner’s net income available to meet living expenses after the payment of all ordinary and necessary debt, including payments under an option to purchase back the owner’s property transferred in a distressed property conditional conveyance.

3. (New section) A foreclosure consultant shall not conduct any business in this State until the foreclosure consultant:

[registers with the Director of the Division of Consumer Affairs on] Obtains a license from the Commissioner of Banking and Insurance by filing an application form to be prescribed by the commissioner by regulation. As to

[registration] licensure by a business entity, the application shall be accompanied by documentation establishing the business entity, including incorporation documents, if the entity is incorporated.
(b) The application shall be accompanied by a reasonable fee, set by the director, in an amount sufficient to defray the division’s expenses incurred in administering and enforcing this act, as established by the commissioner by regulation.

(c) A person required to be registered licensed under this act shall register on an annual basis and file an amended registration amendment to their application within 20 days after any change in the information required to be included in the application.

(d) Licenses issued pursuant to this section shall expire biennially and may be renewed upon submission of a renewal application to the department; obtains a bond from a surety company authorized to do business in the State in a form and an amount to be prescribed by the Director of the Division of Consumer Affairs; commissioner by regulation; and obtains written approval of the bond from the commissioner; submits to the commissioner the name, address, fingerprints and written consent for a criminal history record background check to be performed on any officer, director, partner or owner of a controlling interest, or any employee engaged in mortgage foreclosure consulting activities, of the foreclosure consultant. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. This information shall be collected for the purposes of facilitating determinations concerning licensure eligibility for the foreclosure consultant, based upon any findings related to an employee engaged in mortgage foreclosure consultant activities, officer, director, partner or owner. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event an employee engaged in mortgage foreclosure consultant activities, officer, director, partner or owner of the foreclosure consultant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed, whether the foreclosure consultant is a prospective new registrant, or subsequently, a current registrant license, and
(4) provides the name and street address of an agent in the State of New Jersey for service of process.

b. The commissioner may refuse to issue or renew, and may revoke, any license:
(1) for failure to comply with, or violation of, the provisions of this act or for any other good cause shown within the meaning and purpose of this act. A refusal or revocation shall not be made except upon reasonable notice to, and opportunity to be heard by, the applicant or licensee; or
(2) upon proof that the applicant or registrant has been convicted of any crime of moral turpitude or any crime relating adversely to the activity regulated by this act. For purposes of this subsection, a plea of guilty, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction.

c. For the purposes of complying with the requirements of this section, “foreclosure consultant” shall not include:
(1) a bank, savings bank, savings and loan association, credit union, or other federally insured financial institution, or insurance company organized, chartered, licensed, 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;
(2) a person licensed pursuant to the “New Jersey Residential Mortgage Lending Act,” P.L.2009, c.53 (17:11C-51 et seq.), while acting under the authority of that license;
(3) a person licensed as a real estate broker, broker-salesperson, or salesperson pursuant to R.S.45:15-1 et seq., while acting under the authority of that license;
(4) an attorney licensed to practice law in this State, while acting under the authority of that license.

d. A person who registers as a foreclosure consultant pursuant to this act shall not be subject to the provisions of P.L.1979, c.16 (C.17:16G-1 et seq.) while acting under the authority of this act.

e. A person shall not present himself to the public as a foreclosure consultant licensed as a foreclosure consultant pursuant to this act shall not be subject to the provisions of P.L.1979, c.16 (C.17:16G-1 et seq.) while acting under the authority of this act.

4. (New section) a. A foreclosure consultant contract shall be written in plain language and shall fully disclose the exact nature of the foreclosure consultant’s services, the distressed property relief to be secured, and the total amount and terms of compensation.
b. The following notice, printed in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, and completed with the name of the foreclosure consultant, shall be printed immediately above the statement required by subsection c. of this section:

"NOTICE REQUIRED BY NEW JERSEY LAW

.........................................(Name) or anyone working for him or her CANNOT:

(1) Take any money from you or ask you for money until .........................................(Name) has completely finished doing everything he or she said would be done; or

(2) Ask you to sign or have you sign any lien, mortgage, or deed unless all provisions of the “Foreclosure Rescue Fraud Prevention Act,” P.L. , c. (C. ) (pending before the Legislature as this bill), and any other applicable federal and State laws have been complied with.

(3) Guarantee that they will be able to refinance a loan on your home or arrange for you to keep your home.”

c. A foreclosure consultant contract shall be written in the same language as principally used by the foreclosure consultant to describe the consultant’s services or to negotiate the contract to be performed and the distressed property relief to be secured for the owner, shall be dated and signed by the owner, and shall contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, as follows:

"You, the owner, may cancel this transaction at any time until after the foreclosure consultant has fully performed every service the foreclosure consultant contracted to perform or represented would be performed and has secured the distressed property relief for the owner. See the attached notice of cancellation form for an explanation of this right."

d. A foreclosure consultant contract shall contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) the name and address of the foreclosure consultant to which the notice of cancellation is to be mailed; and

(2) the date the owner signed the contract.

e. A foreclosure consultant contract shall be accompanied by a completed form, captioned "NOTICE OF CANCELLATION" which shall be attached to the contract and easily detachable, and shall contain, in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, the following statement written in the same language as used in the contract:
"NOTICE OF CANCELLATION

(Enter date of transaction)

You may cancel this transaction, without any penalty or obligation, at any time until after the foreclosure consultant has fully performed every service \[\text{the foreclosure consultant contracted to perform or represented would be performed}\] and has secured the relief for the owner.

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

\(\text{Name of foreclosure consultant} \text{ at} \text{Address of foreclosure consultant's place of business}\)

I hereby cancel this transaction on \(\text{Date} \text{ (Owner's signature)}\)."

f. The foreclosure consultant shall provide the owner with a copy of a foreclosure consultant contract and the attached notice of cancellation in duplicate immediately upon execution of the contract.

g. The foreclosure consultant shall record the contract with the county clerk in the county in which the distressed property is located, within 10 business days of its execution.

5. (New section) a. In addition to any other legal right to rescind a foreclosure consultant contract, an owner has the right to cancel a foreclosure consultant contract at any time until after the foreclosure consultant has fully performed every service the foreclosure consultant contracted to perform \[\text{or represented would be performed}\] and has secured the relief for the owner.

b. Cancellation occurs when the owner delivers by any means, written notice of cancellation to the foreclosure consultant at the address specified in the foreclosure consultant contract. A notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. A notice of cancellation sent by certified mail, return receipt requested, to the address specified in the foreclosure consultant contract, shall be conclusive proof of notice of cancellation.

c. A notice of cancellation given by the owner need not take the particular form as provided with the foreclosure consultant contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

6. (New section) It is a violation of this act for a foreclosure consultant to:

a. claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed every distressed property service the foreclosure consultant contracted to
perform or represented would be performed, unless compensation
for partial performance is expressly agreed to by both parties in the
foreclosure contract and has secured the distressed property relief
for the owner;

b. claim, demand, charge, collect, or receive any fee, interest,
or any other compensation for any reason, in excess of two monthly
mortgage payments of principal and interest, or the most recent
quarterly property tax installment on the distressed property,
whichever is less;

c. take a wage assignment, a lien of any type on real or
personal property, or other security to secure the payment of
compensation. Any agreement to take such security is void and
unenforceable;

d. receive any consideration from any third party in connection
with distressed property services rendered to an owner;

e. acquire any interest, directly or indirectly, or by means of a
subsidiary or affiliate in a distressed property from an owner with
whom the foreclosure consultant has contracted;

f. accept any power of attorney from an owner for any
purpose, except to inspect documents as provided by law; or

g. induce or attempt to induce an owner to enter a contract that
does not comply in all respects with sections 4 and 5 of this act.

7. (New section) a. Any waiver by an owner of the provisions
of section 4, 5, or 6 of this act is void and unenforceable as contrary
to public policy.

b. Any attempt by a foreclosure consultant to induce an owner
to waive the owner's rights is a violation of this act.

8. (New section) a. A distressed property purchaser who enters
into a distressed property conditional conveyance or a distressed
property conveyance shall do so in the form of a written contract. A
distressed property conditional conveyance contract and a distressed
property conveyance contract shall be written in at least 14-point
boldface type, in the same language principally used by the owner
to negotiate the sale of the distressed property, shall be fully
completed, signed, and dated by the owner and the distressed
property purchaser, and shall be witnessed and acknowledged by a
notary public, before the owner executes a deed or any other
instrument of conveyance of the distressed property.

b. A distressed property conditional conveyance contract and a
distressed property conveyance contract shall contain the entire
agreement of the parties, be fully assignable, and survive delivery
of any deed or any other instrument of conveyance of the distressed
property.

c. A distressed property conditional conveyance contract and a
distressed property conveyance contract shall include the following
terms, except that a distressed property conveyance contract shall not be required to contain the terms set forth in paragraph (5):

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

(2) the address of the distressed property;

(3) the total consideration to be given by the distressed property purchaser in connection with or incident to the transaction;

(4) a complete description of the terms of payment or other consideration including, but not limited to, any distressed property services of any nature that the distressed property purchaser represents will be performed for the owner before or after the transaction;

(5) a complete description of the terms of any related agreement designed to allow the owner to remain in the dwelling including, but not limited to, a lease agreement, repurchase agreement, contract for deed, or a lease agreement with an option to purchase;

(6) a notice of cancellation as provided in this section;

(7) the following notice in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, and completed with the name of the distressed property purchaser immediately above the statement required by this section:

"NOTICE REQUIRED BY NEW JERSEY LAW

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

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

"NOTICE REQUIRED BY NEW JERSEY LAW

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

9. (New section) a. In addition to any other right of rescission provided by applicable State or federal laws, the owner has the right to cancel a distressed property conditional conveyance contract or a distressed property conveyance contract with a distressed property purchaser until midnight of the 10th business day following the day on which the owner signs the contract, or until the conclusion of a sheriff’s sale pursuant to the provisions of the “Fair Foreclosure Act,” P.L. 1995, c.244 (C.2A:50-53 et seq.) or the conclusion of a municipal tax sale foreclosure pursuant to the provisions of the “tax sale law,” chapter 5 of Title 54 of the Revised Statutes].
whichever occurs first during which the owner may have an attorney review the contract.

b. Cancellation of the contract occurs when the owner or an attorney representing the owner delivers, by any means, written notice of cancellation to the address specified in the contract. Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. Notice by certified mail, return receipt requested, to the address specified in the contract, shall be conclusive proof of notice of cancellation.

c. A notice of cancellation given by the owner or an attorney representing the owner need not take the particular form as provided with the contract, and however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

d. Within 10 business days following receipt of a notice of cancellation delivered in accordance with this section, the distressed property purchaser shall return to the owner, without condition, any original contract and any other documents signed by the owner.

e. The 10 business days during which the owner, or an attorney representing the owner, may cancel the contract shall not begin to run until all parties to the contract have executed the contract and the distressed property purchaser has complied with all the requirements of this section.

10. (New section) a. A distressed property conditional conveyance contract and a distressed property conveyance contract with a distressed property purchaser shall contain in immediate proximity to the space reserved for the owner’s signature a conspicuous statement in a size equal to at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, as follows:

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

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

b. A contract with a distressed property purchaser shall be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION" in a size equal to a 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, followed by a space in which the distressed property purchaser shall enter the date on which the owner executes any contract. This form shall be attached to the contract, shall be easily detachable, and shall contain in at least 14-point type, if the contract is printed, or in capital letters, if the contract is typed, the following statement written in the same language as used in the contract:
"NOTICE OF CANCELLATION

(Enter date contract signed)

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

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

c. The distressed property purchaser shall provide the owner with a copy of the contract and the attached notice of cancellation in duplicate at the time the contract is executed by all parties.
d. The distressed property purchaser shall record the contract and the attached notice of cancellation with the county clerk in the county in which the distressed property is located within 10 business days of the signing of the contract by both parties.
(3) enter into an option to purchase or lease as part of a 
distressed property conditional conveyance containing terms that 
are unfair or commercially unreasonable, or engage in any other 
unfair conduct;
(4) represent, directly or indirectly, that the distressed property 
purchaser is acting as an advisor or a consultant, or in any other 
manner represent that the distressed property purchaser is acting on 
behalf of the homeowner;
(5) misrepresent the distressed property purchaser’s status as to 
licensure or certification;
(6) do any of the following until after the time during which the 
owner may cancel the transaction:
   (a) accept from the owner an execution of a deed or any other 
instrument of conveyance of any interest in the distressed property;
   (b) induce the owner to execute a deed or any other instrument 
of conveyance of any interest in the distressed property; or
   (c) record with the county recorder of deeds any document 
signed by the owner, including but not limited to a deed or any 
other instrument of conveyance;
(7) fail to convey title to the distressed property to the owner 
under an option to purchase provided for in the distressed property 
conveyance contract, in situations in which the terms of the 
conveyance contract have been fulfilled;
(8) enter into a distressed property conditional conveyance if 
any party to the transaction is represented by way of a power of 
attorney;
(9) fail to extinguish all liens encumbering the distressed 
property, immediately following the conveyance of the distressed 
property, or fail to assume all liability with respect to the lien in 
foreclosure and prior liens that will not be extinguished by the 
foreclosure, which assumption shall be accomplished without 
violations of the terms and conditions of the lien being assumed;
(10) cause the property to be conveyed or encumbered without 
the knowledge or permission of the owner, or in any way frustrate 
the ability of the owner to complete the conveyance back to the 
owner;
(11) fail to have all documents executed as part of a distressed 
property conditional conveyance also signed by a notary public 
licensed in the State who is unrelated in any way to the distressed 
property purchaser or any participant in the distressed property 
conveyance;
(12) fail to complete a distressed property conditional 
conveyance in the office of a title insurance producer licensed 
pursuant to the “New Jersey Insurance Producer Licensing Act of 
attorney licensed to practice law in this State;
(13) fail to provide to the owner, prior to the time of completion of a distressed property conditional conveyance, a disclosure statement in a form to be designed and prescribed by regulation by [the Director of the Division of Consumer Affairs, within the Department of Law and Public Safety, in consultation with the Commissioner of Banking and Insurance, which statement shall require disclosure to the owner of all costs that the owner will incur in connection with the conveyance and any option for the owner to purchase the property, including a schedule of monthly and annual payments, closing costs, and any additional costs and fees related to the conveyance;](14) claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason from an owner, for services or as consideration for offering or providing any option to purchase to the owner or for otherwise participating in the conveyance transaction, in excess of two monthly mortgage payments of principal and interest, or the most recent quarterly property tax installment on the distressed property, whichever is less;  

(15) in situations in which the distressed property conditional conveyance involves a transfer of an interest in fee from an owner to a distressed property purchaser, fail to record the deed to the purchaser in the county clerk’s office in which the property is located, or fail to include a statement on the recorded deed that the deed was obtained through a transaction governed by the “Foreclosure Rescue Fraud Prevention Act”;  

(16) fail to notify in writing all existing mortgage lien holders of the distressed property purchaser’s intent to accept conveyance of an interest in the property from the owner;  

(17) fail to fully comply with all terms and conditions contained in the mortgage lien documents, including but not limited to due-on-sale provisions;  

(18) fail to satisfy all qualification requirements for assuming the repayment of mortgage;  

(19) enter into an option to purchase or lease as part of a distressed property conditional conveyance in which the agreement fails to provide for a length of time of at least three years within which the owner may exercise his right to purchase back the property.  

b. For purposes of paragraph (1) of subsection a. of this section, an evaluation of “reasonable ability to pay” shall include the owner’s debt to income ratio, the owner’s residual income, the fair market value of the distressed property, and the owner’s credit history. There shall be a rebuttable presumption that the distressed property purchaser has not verified reasonable payment ability if the distressed property purchaser has not obtained documents of assets, liabilities, and income, other than a statement by the owner.
c. For purposes of paragraph (2) of subsection a. of this section: (1) an appraisal at the time that the distressed property is conveyed by a person licensed or certified by an agency of this State or the federal government shall create a rebuttable presumption that the appraisal is an accurate determination of the fair market value of the property; and (2) "consideration" means any payment or thing of value provided to the owner, including reasonable costs paid to independent third parties necessary to complete the distressed property conveyance or payment of money to satisfy a debt or legal obligation of the owner. "Consideration" shall not include amounts imputed as a down payment or fee to the distressed property purchaser, or a person acting in participation with the distressed property purchaser.

d. If an owner fails to make a required payment or otherwise defaults under a distressed property conditional conveyance contract which contains an owner's option to purchase or a promise to convey an interest in fee back to the owner, the distressed property purchaser shall only enforce the forfeiture of the owner's interest under the contract as follows:

(1) for purposes of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.), the distressed property conditional conveyance contract shall be deemed to be a residential mortgage, the distressed property purchaser shall be deemed to be a lender, and the owner shall be deemed to be a debtor; and

(2) the distressed property purchaser may bring an action to enforce the forfeiture of the owner's interest in the property and for recovery of possession of the property by use of the procedures for foreclosure and judicial sale of residential real property available to lenders pursuant to the provisions of the "Fair Foreclosure Act."

e. With respect to the amount of any fee or other consideration provided by an owner to a distressed property purchaser at the time of the execution of an option to purchase, as part of any distressed property conditional conveyance, and as consideration for that agreement:

(1) the entire fee or other consideration shall be provided by the owner at the time of the execution of the option to purchase or lease agreement;

(2) the distressed property purchaser may declare some or all of the fee or other consideration to be non-refundable, regardless of whether the owner exercises his right to purchase back the property from the distressed property purchaser pursuant to the option to purchase or lease agreement, or declare that some or all of the fee or other consideration shall be applied as credit toward the purchase of the property, if the owner does exercise his right to purchase back the property, so long as this declaration is agreed to by the owner and expressly stated in the agreement; and
(3) the fee or other consideration provided to the distressed property purchaser shall not constitute an equitable ownership interest in the property.

f. With respect to any money provided by the owner to the distressed property purchaser pursuant to any distressed property conditional conveyance, remitted as a monthly credit towards the purchase of the property in excess of any monthly rental obligation established pursuant to any agreement designed to allow the owner to remain in the property, including, but not limited to, a lease agreement between the parties:

(1) the distressed property purchaser may declare some or all of the money to be non-refundable, if the owner does not exercise his right to purchase back the property from the distressed property purchaser pursuant to the option to purchase or lease agreement, so long as this declaration is agreed to by the owner and expressly stated in the agreement;

(2) the money provided to the distressed property purchaser shall not constitute an equitable ownership interest in the property; and

(3) the money shall continue to be the property of the owner and shall be held in trust by the distressed property purchaser for use as a credit towards the purchase of the property, subject to any agreement pursuant to paragraph (1) of this subsection.

g. If the owner exercises his right to purchase back the property from the distressed property purchaser pursuant to the option to purchase agreement: (1) any amount still owed toward the purchase price or other consideration on the property, as set forth in the agreement, following the application of any fee, money, or other consideration agreed to be applied towards the purchase by the distressed property purchaser as credit towards the purchase, shall be the sole responsibility of the owner; and (2) a new deed for the property shall be executed by the distressed property purchaser and filed with the office of the county clerk in the county in which the property resides. 2

12. (New section) A distressed property purchaser, in the course of a distressed property conveyance, shall not fail to:

a. make a payment to the owner at the time the title to the distressed property is conveyed from the owner to the distressed property purchaser, so that the owner has received consideration, as defined by paragraph (2) of subsection c. of section 11 of this act, in an amount of at least 82% of the property’s fair market value;

b. have all documents executed as part of a distressed property conveyance also signed by a notary public licensed in the State who is unrelated in any way to the distressed property purchaser or any participant in the distressed property conveyance;

c. complete a distressed property conveyance in the office of a title insurance producer licensed pursuant to the “New Jersey
(C.17:22A-26 et seq.), or in the office of an attorney licensed to
practice law in the State;

d. provide to the owner, prior to the time of completion of a
distressed property conveyance, a disclosure statement in a form to
be designed and prescribed by regulation by [the Director of the
Division of Consumer Affairs, within the Department of Law and
Public Safety, in consultation with] the Commissioner of Banking
and Insurance, which statement shall require disclosure to the
owner of all costs and fees that the owner will incur in connection
with the conveyance;

e. notify in writing all existing mortgage lien holders of the
distressed property purchaser’s intent to accept conveyance of an
interest in the property from the owner;

f. fully comply with all terms and conditions contained in the
mortgage lien documents, including but not limited to due-on-sale
provisions; and

g. satisfy all qualification requirements for assuming the
repayment of the mortgage.

13. (New section) Any waiver of the provisions of sections 8, 9,
10, 11, or 12 of this act is void and unenforceable as contrary to
public policy.

14. (New section) a. The [Director of the Division of
Consumer Affairs] Commissioner of Banking and Insurance may
investigate or examine any foreclosure consultant, or other person
as the [director] commissioner deems necessary to determine
compliance with this act. For these purposes, the [director]
commissioner may examine the books, accounts, records and other
documents or matters of any foreclosure consultant or other person.
Each foreclosure consultant shall be subject to an examination by
the [director] commissioner, not more than once in any 12 month
period, unless the [director] commissioner has reason to believe
that the foreclosure consultant is not complying with the provisions
of this act, or is not transacting business in accordance with law, in
which case the [director] commissioner may conduct an
examination at any time. The [director] commissioner shall have
the power to compel by subpoena the production of all relevant
books, accounts, records and other documents and materials relative
to an examination or investigation.

b. The [director] commissioner or the [director’s]
designee shall have power to issue subpoenas to
compel the attendance of witnesses and the production of
documents, papers, books, accounts, records and other evidence
before him in any matter over which he has jurisdiction pursuant to
this act, and to administer oaths and affirmations to any person.

c. If any person shall refuse to obey a subpoena, or to give
testimony or to produce evidence as required thereby, the
director commissioner^{2} may apply ex parte to any court having
jurisdiction over that person for an order compelling the appearance
of the witness before the director commissioner^{2} to give
testimony or to produce evidence as required thereby, or both.

d. A foreclosure consultant shall have its financial records
audited annually by a certified public accountant, which audit shall
be filed with the director commissioner^{2}. After reviewing the
audit, or for reasons the director deems appropriate, the director
may cause an examination of the consultant to be made. The actual
expenses of the examination shall be paid by the foreclosure
consultant, and the director may maintain any action against a
foreclosure consultant to recover any unpaid expenses in connection
with the examination. The commissioner shall conduct at least one
examination of the financial records of every foreclosure consultant
licensed in the State every two years.^{2}

14. (New section) a. Any person who violates any
provision of this act shall, in addition to any other penalty provided
by law, be liable to a penalty of not more than $10,000 for the first
offense, and not more than $20,000 for the second and each
subsequent offense, which penalty may be collected in a summary
proceeding pursuant to the “Penalty Enforcement Law of 1999,”

b. A person who violates any provision of this act is guilty of a
crime of the third degree. A person who violates any provision of
this act in connection with a pattern of foreclosure rescue fraud or a
conspiracy or endeavor to engage in a pattern of foreclosure rescue
fraud is guilty of a crime of the second degree.

c. 1(1) Except as provided in paragraph (2) of this subsection, any
distressed property conditional conveyance involving
the transfer of an interest in fee or a beneficial interest created
through a trust document, in a distressed property, and involving the
acquirer of the property allowing the owner to occupy the property,
which is made in violation of any provision of this act, is voidable
and the transfer may be rescinded by the owner within two years of
the date of the transfer, provided that the right, title or interest in
the property of a bona fide purchaser or mortgagee for value shall
not be affected thereby. Nothing herein shall limit the right of an
owner to recover damages from a distressed property purchaser.

(2) A violation of paragraph (2) of subsection a. of section 11
of this act or of subsection a. of subsection 12 of this act, shall not
be a violation of this act that may cause a transfer described in
paragraph (1) of this subsection to be voidable or subject to
rescission.]1

d. [(1) Except as provided in paragraph (2) of this subsection,
an owner or a municipal lien tax holder of interest in a
distressed property on behalf of an owner may bring an action in
Superior Court against a foreclosure consultant or a distressed
property purchaser for any violation of this act, for treble damages,
attorney’s fees, costs of suit and appropriate equitable relief. In an
action under this paragraph, the owner or municipal lien tax
holder may:

[I(a)(1) cause a notice of lis pendens to be filed in the office
of the county clerk in the county in which the property is located,
pursuant to N.J.S.2A:15-6 et seq.; and

[I(b)(2) introduce or provide as evidence in the action, any
contemporaneous oral agreements or representations made to the
owner by any party to a foreclosure consultant contract, distressed
property conditional conveyance contract, or distressed property
conveyance contract signed by the owner.

[(2) For a violation of paragraph (2) of subsection a. of section
11 of this act or of subsection 12 of this act, an
owner may bring an action in Superior Court against a distressed
property purchaser for actual damages. In an action under this
paragraph, the court may award attorney’s fees and costs of suit to
the prevailing party.]1

e. The remedies and rights provided for in this act are not
exclusive, but cumulative, and all other remedies or rights provided
by State or federal law, including, but not limited to, those brought
under the doctrine of equitable mortgage or pursuant to the “Fair
Foreclosure Act,” P.L.1995, c.244 (C.2A:50-53 et seq.) are
specifically preserved. Nothing in this act shall be construed to
limit the application of the consumer fraud act, P.L.1960, c 39
(C.56:8-1 et seq.).

[f. If the Director of the Division of Consumer Affairs
Commissioner of Banking and Insurance determines that there has
been any substantial violation of this act by a professional licensed
under a licensing board in this State, the director commissioner shall provide a written notice describing the violation to the
licensing board having jurisdiction over the profession, for such
action as the board deems appropriate.]1

[15.] 16 (New section) The Director of the Division of
Consumer Affairs, within the Department of Law and Public Safety,
in consultation with the Commissioner of Banking and Insurance
shall enforce the provisions of this act, and may promulgate
regulations pursuant to the “Administrative Procedure Act,”
P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the purposes of the act.

2. Section 2 of P.L.2005, c.199 (C.17:1C-34) is amended to read as follows:

2. For the purposes of this act:

"Assessment" means the assessment imposed pursuant to section 3 of this act for the special functions of the division as provided in that section.

"Commissioner" means the Commissioner of Banking and Insurance.

"Department" means the Department of Banking and Insurance.

"Depository institution" means any entity holding a state charter for a bank, savings bank, savings and loan association or credit union, irrespective of whether the entity accepts deposits.

"Division" means the Division of Banking in the Department of Banking and Insurance.


"Nationwide Mortgage Licensing System and Registry" means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successors, and utilized in this State pursuant to the provisions of the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.).
"Regulated entity" means a depository institution, other financial entity or person chartered, licensed or registered by the Division of Banking or who should be chartered, licensed or registered. 

(cf: 2009, c.53, s.63)

This act shall take effect on the 90th day following enactment, but the Commissioner of Banking and Insurance may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.