



Committee on Financial Institutions

**Thursday, March 6, 2008
2:30 – 3:30 pm
24 House Office Building**

Committee Action

**Marco Rubio
Speaker**

**Jennifer Carroll
Chair**

COMMITTEE MEETING REPORT
Committee on Financial Institutions

3/6/2008 2:30:00PM

Location: 24 HOB

Attendance:

	<i>Present</i>	<i>Absent</i>	<i>Excused</i>
Jennifer Carroll (Chair)	X		
Thad Altman	X		
Thomas Anderson	X		
Charles Chestnut	X		
Paige Kreegel			X
Garrett Richter	X		
James Waldman	X		
Totals:	6	0	1

Committee meeting was reported out: Thursday, March 06, 2008 4:08:03PM

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Committee on Financial Institutions

Start Date and Time: Thursday, March 06, 2008 02:30 pm

End Date and Time: Thursday, March 06, 2008 03:30 pm

Location: 24 HOB

Duration: 1.00 hrs

Consideration of the following bill(s):

HB 643 Foreclosure Fraud by Ford

NOTICE FINALIZED on 03/04/2008 16:21 by COCHRAN.MARGARET

COMMITTEE MEETING REPORT
Committee on Financial Institutions

3/6/2008 2:30:00PM

Location: 24 HOB

Summary:

Committee on Financial Institutions

Thursday March 06, 2008 02:30 pm

HB 643 Favorable With Amendments (1)

Committee meeting was reported out: Thursday, March 06, 2008 4:08:03PM

COMMITTEE MEETING REPORT
Committee on Financial Institutions

3/6/2008 2:30:00PM

Location: 24 HOB

HB 643 : Foreclosure Fraud

Favorable With Amendments (1)

Appearances:

Foreclosure Fraud

Victoria Butler (State Employee) - Information Only

Attorney General's Office

PL01, The Capitol

Tallahassee Florida 32399

Phone: 850-245-0140

Foreclosure Fraud

Kimberly Case (Lobbyist) (State Employee) - Proponent

Attorney General's Office

PL01, The Capitol

Tallahassee Florida 32399

Phone: 850-245-0155

Foreclosure Fraud

Alice Vickers (Lobbyist) - Proponent

Florida Legal Services

2425 Torreya Dr.

Tallahassee Florida 32303

Phone: 850-385-7900

Committee meeting was reported out: Thursday, March 06, 2008 4:08:03PM

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 0643

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER _____



1 Council/Committee hearing bill: Committee on Financial
 2 Institutions
 3 Representative Ford offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
 7 Section 1. Section 501.2078, Florida Statutes, is amended
 8 to read:

9 (Substantial rewording of section. See
 10 s. 501.2078, F.S., for current text.)

11 501.2078 Violations involving homeowners during the course
 12 of residential foreclosure proceedings.--

13 (1) LEGISLATIVE FINDINGS AND INTENT.--The Legislature
 14 finds that homeowners who are in default on their mortgages, in
 15 foreclosure, or at risk of losing their homes due to nonpayment
 16 of taxes may be vulnerable to fraud, deception, and unfair
 17 dealings with foreclosure-rescue consultants or equity
 18 purchasers. The intent of this section is to provide a homeowner
 19 with information necessary to make an informed decision
 20 regarding the sale or transfer of his or her home to an equity
 21 purchaser. It is the further intent of this section to require

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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22 that foreclosure-related rescue services agreements be expressed
23 in writing in order to safeguard homeowners against deceit and
24 financial hardship; to ensure, foster, and encourage fair
25 dealing in the sale and purchase of homes in foreclosure or
26 default; to prohibit representations that tend to mislead; to
27 prohibit or restrict unfair contract terms; to provide a
28 cooling-off period for homeowners who enter into contracts for
29 services related to saving their homes from foreclosure or
30 preserving their rights to possession of their homes; to afford
31 homeowners a reasonable and meaningful opportunity to rescind
32 sales to equity purchasers; and to preserve and protect home
33 equity for the homeowners of this state.

34 (2) DEFINITIONS.--As used in this section, the term:

35 (a) "Equity purchaser" means any person who acquires a
36 legal, equitable, or beneficial ownership interest in any
37 residential real property as a result of a foreclosure-rescue
38 transaction. The term does not apply to a person who acquires
39 the legal, equitable, or beneficial interest in such property:

40 1. By a certificate of title from a foreclosure sale
41 conducted under chapter 45;

42 2. At a sale of property authorized by statute;

43 3. By order or judgment of any court;

44 4. From a spouse, parent, grandparent, child, grandchild,
45 or sibling of the person or the person's spouse; or

46 5. As a deed in lieu of foreclosure, a workout agreement,
47 a bankruptcy plan, or any other agreement between a foreclosing
48 lender and a homeowner.

49 (b) "Foreclosure-rescue consultant" means a person who
50 directly or indirectly makes a solicitation, representation, or
51 offer to a homeowner to provide or perform, in return for

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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52 payment of money or other valuable consideration, foreclosure-
53 related rescue services. The term does not apply to:

54 1. A person excluded under s. 501.212.

55 2. A person acting under the express authority or written
56 approval of the United States Department of Housing and Urban
57 Development or other department or agency of the United States
58 or this state to provide foreclosure-related rescue services.

59 3. A charitable, not-for-profit agency or organization, as
60 determined by the United States Internal Revenue Service under
61 s. 501(c)(3) of the Internal Revenue Code, that offers
62 counseling or advice to an owner of residential real property in
63 foreclosure or loan default if the agency or organization does
64 not contract for foreclosure-related rescue services with a for-
65 profit lender or person facilitating or engaging in foreclosure-
66 rescue transactions.

67 4. A person who holds or is owed an obligation secured by
68 a lien on any residential real property in foreclosure if the
69 person performs foreclosure-related rescue services in
70 connection with this obligation or lien and the obligation or
71 lien was not the result of or part of a proposed foreclosure
72 reconveyance or foreclosure-rescue transaction.

73 5. A financial institution as defined in s. 655.05 and any
74 parent, subsidiary, or affiliate of the financial institution or
75 of the parent, subsidiary, or affiliate.

76 (c) "Foreclosure-related rescue services" means any good
77 or service related to, or promising assistance in connection
78 with:

79 1. Stopping, avoiding, or delaying foreclosure proceedings
80 concerning residential real property; or

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81 2. Curing or otherwise addressing a default or failure to
82 timely pay with respect to a residential mortgage loan
83 obligation.

84 (d) "Foreclosure-rescue transaction" means a transaction:

85 1. By which residential real property in foreclosure is
86 conveyed to an equity purchaser and the homeowner maintains a
87 legal or equitable interest in the residential real property
88 conveyed, including, without limitation, a lease option
89 interest, an option to acquire the property, an interest as
90 beneficiary or trustee to a land trust, or other interest in the
91 property conveyed; and

92 2. That is designed or intended by the parties to stop,
93 avoid, or delay foreclosure proceedings against a homeowner's
94 residential real property.

95 (e) "Homeowner" means any record title owner of
96 residential real property that is the subject of foreclosure
97 proceedings.

98 (f) "Residential real property" means real property
99 consisting of one-family to four-family dwelling units, one of
100 which is occupied by the owner as his or her principal place of
101 residence.

102 (g) "Residential real property in foreclosure" means
103 residential real property against which there is an outstanding
104 notice of the pendency of foreclosure proceedings recorded
105 pursuant to s. 48.23.

106 (3) PROHIBITED ACTS.--In the course of offering or
107 providing foreclosure-related rescue services, a foreclosure-
108 rescue consultant may not:

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109 (a) Engage in or initiate foreclosure-related rescue
110 services without first executing a written agreement with the
111 homeowner for foreclosure-related rescue services; or

112 (b) Solicit, charge, receive, or attempt to collect or
113 secure payment, directly or indirectly, for foreclosure-related
114 rescue services before completing or performing all services
115 contained in the agreement for foreclosure-related rescue
116 services.

117 (4) FORECLOSURE-RELATED RESCUE SERVICES; WRITTEN
118 AGREEMENT.--

119 (a) The written agreement for foreclosure-related rescue
120 services must be printed in at least 12-point uppercase type and
121 signed by both parties. The agreement must include the name and
122 address of the person providing foreclosure-related rescue
123 services, the exact nature and specific detail of each service
124 to be provided, the total amount and terms of charges to be paid
125 by the homeowner for the services, and the date of the
126 agreement. The date of the agreement may not be earlier than the
127 date the homeowner signed the agreement. The foreclosure-rescue
128 consultant must give the homeowner a copy of the agreement to
129 review not less than 1 business day before the homeowner is to
130 sign the agreement.

131 (b) The homeowner has the right to cancel the written
132 agreement without any penalty or obligation if the homeowner
133 cancels the agreement within 5 business days after signing the
134 written agreement. The right to cancel may not be waived by the
135 homeowner or limited in any manner by the foreclosure-rescue
136 consultant. If the homeowner cancels the agreement, any payments
137 that have been given to the foreclosure-rescue consultant must

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138 be returned to the homeowner within 10 business days after
139 receipt of the notice of cancellation.

140 (c) An agreement for foreclosure-related rescue services
141 must contain, immediately above the signature line, a statement
142 in at least 12-point uppercase type that substantially complies
143 with the following:

144
145 HOMEOWNER'S RIGHT OF CANCELLATION

146
147 YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED
148 RESCUE SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 5
149 BUSINESS DAYS FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY
150 YOU.

151
152 THE FORECLOSURE-RESCUE CONSULTANT IS PROHIBITED BY LAW FROM
153 ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT FROM YOU
154 UNTIL ALL PROMISED SERVICES ARE COMPLETE. IF FOR ANY REASON YOU
155 HAVE PAID THE CONSULTANT BEFORE CANCELLATION, YOUR PAYMENT MUST
156 BE RETURNED TO YOU NO LATER THAN 10 BUSINESS DAYS AFTER THE
157 CONSULTANT RECEIVES YOUR CANCELLATION NOTICE.

158
159 TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A
160 STATEMENT THAT YOU ARE CANCELLING THE AGREEMENT SHOULD BE MAILED
161 (POSTMARKED) OR DELIVERED TO (NAME) AT
162 (ADDRESS) NO LATER THAN MIDNIGHT OF
163 (DATE).

164
165 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR LENDER
166 OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR LENDER

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167 OR MORTGAGE SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN
168 OR RESTRUCTURING WITH YOU FREE OF CHARGE.

169
170 (d) The inclusion of the statement does not prohibit the
171 foreclosure-rescue consultant from giving the homeowner more
172 time in which to cancel the agreement than is set forth in the
173 statement, provided all other requirements of this subsection
174 are met.

175 (e) The foreclosure-rescue consultant must give the
176 homeowner a copy of the signed agreement within 1 business day
177 after the homeowner signs the agreement.

178 (5) FORECLOSURE-RESCUE TRANSACTIONS; WRITTEN AGREEMENT.--

179 (a)1. A foreclosure-rescue transaction must include a
180 written agreement prepared in at least 12-point uppercase type
181 that is completed, signed, and dated by the homeowner and the
182 equity purchaser before executing any instrument from the
183 homeowner to the equity purchaser quitclaiming, assigning,
184 transferring, conveying, or encumbering an interest in the
185 residential real property in foreclosure. The equity purchaser
186 must give the homeowner a copy of the completed agreement within
187 1 business day after the homeowner signs the agreement. The
188 agreement must contain the entire understanding of the parties
189 and must include:

190 a. The name, business address, and telephone number of the
191 equity purchaser.

192 b. The street address and full legal description of the
193 property.

194 c. Clear and conspicuous disclosure of any financial or
195 legal obligations of the homeowner that will be assumed by the
196 equity purchaser.

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197 d. The total consideration to be paid by the equity
198 purchaser in connection with or incident to the acquisition of
199 the property by the equity purchaser.

200 e. The terms of payment or other consideration, including,
201 but not limited to, any services that the equity purchaser
202 represents will be performed for the homeowner before or after
203 the sale.

204 f. The date and time when possession of the property is to
205 be transferred to the equity purchaser.

206 2. A foreclosure-rescue transaction agreement must
207 contain, above the signature line, a statement in at least 12-
208 point uppercase type that substantially complies with the
209 following:

210
211 I understand that under this agreement I am selling my home
212 to the other undersigned party.

213
214 3. A foreclosure-rescue transaction agreement must state
215 the specifications of any option or right to repurchase the
216 residential real property in foreclosure, including the specific
217 amounts of any escrow payments or deposit, down payment,
218 purchase price, closing costs, commissions, or other fees or
219 costs.

220 4. A foreclosure-rescue transaction agreement must comply
221 with all applicable provisions of 15 U.S.C. ss. 1600 et seq. and
222 related regulations.

223 (b) The homeowner may cancel the foreclosure-rescue
224 transaction agreement without penalty if the homeowner notifies
225 the equity purchaser of such cancellation no later than 5:00
226 p.m. on the 5th business day after signing the written

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227 agreement. The equity purchaser must return to the homeowner any
228 moneys paid by the homeowner within 30 days after the homeowner
229 notifies the equity purchaser of such cancellation. The right to
230 cancel does not limit or otherwise affect the homeowner's right
231 to cancel the transaction under any other law. The right to
232 cancel is not conditioned upon the homeowner's repayment of
233 money paid to the homeowner under the foreclosure-rescue
234 transaction. The right to cancel may not be waived by the
235 homeowner or limited in any way by the equity purchaser. The
236 equity purchaser must give the homeowner, at the time the
237 written agreement is signed, a notice of the homeowner's right
238 to cancel the foreclosure-rescue transaction as set forth in
239 this subsection. The notice, which must be set forth on a
240 separate cover sheet to the written agreement that contains no
241 other written or pictorial material, must be in at least 12-
242 point uppercase type, double-spaced, and read as follows:

243
244 NOTICE TO THE HOMEOWNER/SELLER

245
246 PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. IT CONTAINS
247 VALUABLE INFORMATION REGARDING CANCELLATION RIGHTS.

248
249 BY THIS CONTRACT, YOU ARE AGREEING TO SELL YOUR HOME. YOU
250 MAY CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. OF THE
251 FIFTH BUSINESS DAY FOLLOWING RECEIPT OF THIS NOTICE.

252
253 THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY
254 YOU OR BY THE PURCHASER.

255

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256 ANY MONEY PAID TO YOU MUST BE RETURNED TO THE PURCHASER
257 WITHIN 30 DAYS AFTER CANCELLATION.

258
259 TO CANCEL, SIGN THIS FORM AND RETURN IT TO THE PURCHASER BY
260 5:00 P.M. ON (DATE) AT
261 (ADDRESS) . IT IS BEST TO MAIL IT BY CERTIFIED MAIL OR OVERNIGHT
262 DELIVERY, RETURN RECEIPT REQUESTED, AND TO KEEP A PHOTOCOPY OF
263 THE SIGNED FORM AND YOUR POST OFFICE RECEIPT.

264
265 I (we) hereby cancel this transaction.

266 _____ Seller's Signature

267 _____ Printed Name of Seller

268 _____ Seller's Signature

269 _____ Printed Name of Seller

270 _____ Date

271
272 (c) In any foreclosure-rescue transaction in which the
273 homeowner is provided the right to repurchase the residential
274 real property, the homeowner has a 30-day right to cure any
275 default of the terms of the contract with the equity purchaser,
276 and this right to cure may be exercised on up to three separate
277 occasions. The homeowner's right to cure must be included in any
278 written agreement required by this subsection.

279 (d) In any foreclosure-rescue transaction, before or at
280 the time of conveyance, the equity purchaser must fully assume
281 or discharge any lien in foreclosure as well as any prior liens
282 that will not be extinguished by the foreclosure.

283 (e) If the homeowner has the right to repurchase the
284 residential real property, the equity purchaser must verify and
285 be able to demonstrate that the homeowner has or will have a

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

286 reasonable ability to make the required payments to exercise the
287 option to repurchase under the written agreement. For purposes
288 of this subsection, there is a rebuttable presumption that the
289 homeowner has a reasonable ability to make the payments required
290 to repurchase the property if the homeowner's monthly payments
291 for primary housing expenses and regular monthly principal and
292 interest payments on other personal debt do not exceed 60
293 percent of the homeowner's monthly gross income.

294 (f) If the homeowner has the right to repurchase the
295 residential real property, the price the homeowner pays may not
296 be unconscionable, unfair, or commercially unreasonable. A
297 rebuttable presumption arises that the foreclosure-rescue
298 transaction was unconscionable if the homeowner's repurchase
299 price is greater than 17 percent per annum more than the total
300 amount paid by the equity purchaser to acquire, improve,
301 maintain, and hold the property.

302 (6) REBUTTABLE PRESUMPTION.--Any foreclosure-rescue
303 transaction involving a lease option or other repurchase
304 agreement creates a rebuttable presumption that the transaction
305 is a loan transaction and the conveyance from the homeowner to
306 the equity purchaser is a mortgage under s. 697.01.

307 (7) VIOLATIONS.--A person who violates any provision of
308 this section commits an unfair and deceptive trade practice as
309 defined in part II of this chapter. Violators are subject to the
310 penalties and remedies provided in part II of this chapter,
311 including a monetary penalty not to exceed \$15,000 per
312 violation.

313 Section 2. This act shall take effect October 1, 2008.

314
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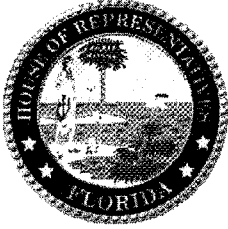
T I T L E A M E N D M E N T
Remove the entire title and insert:
A bill to be entitled
An act relating to foreclosure fraud; amending s.
501.2078, F.S.; providing legislative findings and intent
with respect to the need to protect homeowners who enter
into agreements designed to save their homes from
foreclosure; providing definitions; prohibiting a
foreclosure-rescue consultant from engaging in certain
acts or failing to perform contracted services; requiring
that all agreements for foreclosure-related rescue
services and foreclosure-rescue transactions be in
writing; specifying information that must be in the
written agreement; requiring that certain statements in
the written agreement be in uppercase letters and of a
specified size; providing that the homeowner has a right
to cancel the agreement for a specified period and the
right may not be waived; providing that the homeowner has
a specified period during which to cure a default under
certain circumstances; requiring equity purchasers to
assume or discharge certain liens; requiring that an
equity purchaser verify the homeowner's ability to make
payments under a repurchase agreement; providing price
limitations for repurchase transactions; providing that a
foreclosure-rescue transaction involving a lease option or
other repurchase agreement creates a rebuttable
presumption that the transaction is a loan transaction and
the conveyance from the homeowner to the equity purchaser
is a mortgage; providing that a person who violates

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

346 certain provisions commits an unfair and deceptive trade
347 practice as defined in part II of ch. 501, F.S.; providing
348 penalties; providing an effective date.

Spoke



COUNCIL/COMMITTEE APPEARANCE RECORD

Bill No. 643 Date 3/6/08
Name Victoria Butler
Title Bureau Chief, Economic Crimes Division
Address PL 01 The Capitol
City Tallahassee State/Zip FL 32349
Phone Number 850-245-0140
Representing Attorney General's Office

Lobbyist (registered) YES [] NO [x]
State Employee YES [x] NO []

I wish to speak: [] Proponent []
* I have been requested to speak [] Opponent []
Information [x]

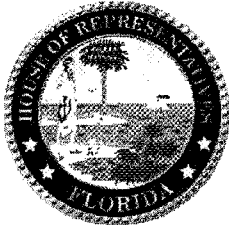
Subject matter: HB 643

Council/Committee: Financial Inst.

*If you are appearing at the request of the Chair, you must get signature of the Chair before leaving.
Appearing at request of Chair []
Approved by _____ Chair

Copies to:
Original - Council/Committee
Copy - Person requested to appear

Spoke



COUNCIL/COMMITTEE APPEARANCE RECORD

Bill No. 643 Date 3/6/08
 Name Kimberly Case
 Title Legislative Director
 Address PL-01
 City Tallahassee State/Zip FL 32399
 Phone Number 245-0155
 Representing AG Bill Mc Collum

Lobbyist (registered) YES NO

State Employee YES NO

I wish to speak:

Proponent

* I have been requested to speak

Opponent

Information

Subject matter: 643

Council/Committee: Financial Institutions

*If you are appearing at the request of the Chair, you must get signature of the Chair before leaving.

Appearing at request of Chair

Approved by _____ Chair

Copies to:
 Original - Council/Committee
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Spoke ✓

COUNCIL/COMMITTEE APPEARANCE RECORD

Bill No. 643 Date 3/6/08
 Name Alice Vickers
 Title Attorney
 Address 2425 Torneya Dr.
 City Tallahassee State/Zip FL 32303
 Phone Number 850 375-7900
 Representing Florida Legal Services

Lobbyist (registered) YES NO
 State Employee YES NO

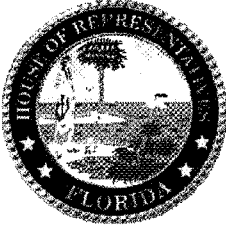
I wish to speak: Proponent
 * I have been requested to speak Opponent
 Information

Subject matter: Mortgage foreclosure fraud

Council/Committee: Financial Institutions

***If you are appearing at the request of the Chair, you must get signature of the Chair before leaving.**
 Appearing at request of Chair
 Approved by _____ Chair

Copies to:
 Original - Council/Committee
 Copy - Person requested to appear



W/S

COUNCIL/COMMITTEE APPEARANCE RECORD

Bill No. 43 Date 3.6.08

Name Andrea Meland

Title Legislative Director

Address 101 E. Gaines St.

City Tallahassee State/Zip FL

Phone Number 904-9662

Representing Office of Financial Regulation

Lobbyist (registered) YES NO

State Employee YES NO

I wish to speak:

Proponent

* I have been requested to speak

Opponent

Information

Subject matter: Foreclosure Fraud

Council/Committee: _____

***If you are appearing at the request of the Chair, you must get signature of the Chair before leaving.**

Appearing at request of Chair

Approved by _____ Chair

Copies to:
 Original - Council/Committee
 Copy - Person requested to appear



W/S

COUNCIL/COMMITTEE APPEARANCE RECORD

Bill No. 643 Date 3/6/05
 Name Anthony DiMarco
 Title EVP
 Address 1081 Thomarville Rd
 City Tallahassee State/Zip FL/32303
 Phone Number 224-2265
 Representing Florida Bankers Assoc

Lobbyist (registered) YES NO
 State Employee YES NO

I wish to speak: Proponent
 * I have been requested to speak Opponent
 Information

Subject matter: Bill

Council/Committee: Financial Institutions

***If you are appearing at the request of the Chair, you must get signature of the Chair before leaving.**
 Appearing at request of Chair
 Approved by _____ Chair

Copies to:
 Original - Council/Committee
 Copy - Person requested to appear



W/S

COUNCIL/COMMITTEE APPEARANCE RECORD

Bill No. 643 Date 3/6/08
 Name Leslie Spnar
 Title Associate State Director for Advocacy
 Address 200 West College Avenue
 City Tallahassee State/Zip FL 32301
 Phone Number 850-577-5165
 Representing AARP

Lobbyist (registered) YES NO

State Employee YES NO

I wish to speak: Proponent

* I have been requested to speak Opponent

Information

Subject matter: Foreclosures

Council/Committee: Financial Institutions

***If you are appearing at the request of the Chair, you must get signature of the Chair before leaving.**

Appearing at request of Chair

Approved by _____ Chair

Copies to:
 Original - Council/Committee
 Copy - Person requested to appear