



Committee on Financial Institutions

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

REVISED

Meeting Packet

**Marco Rubio
Speaker**

**Jennifer Carroll
Chair**

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 643 Foreclosure Fraud
SPONSOR(S): Ford and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 992

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Financial Institutions</u>	_____	<u>Holt/Bradford</u>	<u>Haug</u>
2) <u>Jobs & Entrepreneurship Council</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 643 addresses two types of practices that comprise the foundation for foreclosure rescue schemes, foreclosure-rescue consultants and equity purchasers. The bill:

- Defines the following seven terms: Equity purchaser, Foreclosure-rescue consultant, Foreclosure-related rescue services, Foreclosure-rescue transaction, Homeowner, Residential real property, and Residential real property in foreclosure.
- Requires a foreclosure-rescue consultant, or its agents, to have a written agreement before initiating or engaging in any services. Certain disclosures are required to be in the agreement, such as the exact details of the service to be provided, terms of payment, total charges, and a notice of right to cancel. Further, a consultant is prohibited from charging or collecting a fee prior to completing or performing the agreed upon services.
- Requires an equity purchaser to have a written agreement signed by the homeowner prior to any instrument transferring the title can be given to the homeowner for signature. The Act creates a rebuttable presumption that the transaction between the homeowner and the foreclosure purchaser is a loan with a mortgage rather than a sale with a lease. The agreement must disclose all the material terms and conditions of the transaction, including cancellation rights. Also, the homeowner has a 30-day right to cure any default of the contract, and this right may be exercised on at least three separate occasions during the life of the agreement.
- Provides that a repurchase price offered within 2 years after the sale of the residential real property must not be unconscionable. In any foreclosure-rescue transaction, before or at the time of conveyance, the equity purchaser must fully assume or discharge any and all liens.
- Establishes a rebuttable presumption that the homeowner has a reasonable ability to make payments and to repurchase the property if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt do not exceed 60 percent of the homeowner's monthly gross income.
- Penalizes violators of any provision for unfair and deceptive trade practice. Violators are subject to the penalties and remedies provided in part II of chapter 501, F.S., including a monetary penalty not to exceed \$15,000 per violation.
- There is no fiscal impact relating to this bill. The amount of potential revenues received by the state for penalties and remedies as provided in part II of chapter 501, F.S. is indeterminate at this time.

This act shall take effect July 1, 2008.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0643a.FI.doc
DATE: 3/4/2008

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families: The bill provides educational insight that may enable homeowners who are faced with foreclosure the ability to make informed decisions regarding foreclosure rescue transactions.

Maintain public security: The bill has the potential to provide the Office of the Attorney General enforcement tools that may save expenses by a reduction in litigation costs.

B. EFFECT OF PROPOSED CHANGES:

Background:

It is estimated that over 150,000 mortgage foreclosures have occurred in Florida during 2007. National ranking of foreclosures place Florida second on the list. As the foreclosure numbers ascend, there is a correlated rise in mortgage related crimes. According to Florida Attorney General data, criminals and scam artists have found a new market of consumers to defraud by making false promises to rescue homeowners from foreclosures. Homeowners victimized by these crimes have unknowingly signed over their deeds or even their accumulated equity has been stolen.

Generally, homeowners who are in serious default of mortgage payments are targeted by foreclosure consultants. Concisely, the scheme is initiated by a telephone call from the consultant to the homeowner in which a repayment resolution ensues. Absent the homeowner submitting documentation for the consultant to conduct a complete financial analysis, the homeowner is "qualified" over the phone for services, provided a fee "generally in the range of \$1200 to \$2000" is paid up-front. Moreover, during the telephone call, the fee is collected via credit card, electronic debit, or check, but the contractual terms and conditions are not discussed in detail. However, there are embedded in the contract that the homeowner receives from the consultant numerous limitations to the services and to the homeowner's refund and cancellation rights.

In exchange for the fee, the consultant, for example, makes inquiries to the lender regarding a plan for repayment that the lender will accept. These negotiations are done by the consultant without knowledge of the homeowner's financial condition or ability to meet any repayment plan. The resulting repayment plan represents the consultant fulfilling his service obligations. Consequently, the homeowner could be further burdened with a predatory or unachievable repayment plan. The consultant has collected his fee, with no contractual obligation to return any portion of it, despite the homeowner's inability to adhere to the new repayment plan.

An unscrupulous equity purchaser is usually involved in a lease/buy back scheme. A lease/buy back is a foreclosure rescue scam in which the homeowner (usually unknowingly) deeds the house to the rescuer and leases it back with an option to repurchase, normally after a year. The rescuer pays arrearages (usually nothing more) in exchange for the deed. The buyback price is normally at fair market value, which usually nets the rescuer many times his initial investment. More often than not, the homeowner is unable to afford the rent, which exceeds the mortgage payment he initially could not afford, and is evicted, forfeiting the right to repurchase. The rescuer then simply sells the house on the open market and keeps the equity.

Effect of Proposed Changes:

Section 1: The bill provides legislative findings and intent.

Section 2: HB 643 defines the term "foreclosure-rescue consultant" as "a person who directly or indirectly makes a solicitation, representation, or offer to a homeowner to provide or perform, in return

for payment of money or other valuable consideration, consideration, foreclosure related rescue services." The term "Equity purchaser" as used in the bill "means any person who acquires title to any residential real property as a result of a foreclosure rescue transaction." Exceptions are provided in the bill for both definitions. The bill includes additional definitions for the terms: 1) foreclosure-rescue transaction, 2) homeowner, 3) residential real property, and 4) residential real property in foreclosure.

Section 3: Prohibited acts: In the course of offering or providing foreclosure-related rescue services, a foreclosure rescue consultant, including the consultant's salespersons, agents, representatives, or independent contractors, may not:

1. Engage in or initiate foreclosure-related rescue services without first executing a written agreement for foreclosure-related rescue services; or
2. Solicit, charge, receive, or attempt to collect or secure payment, directly or indirectly, for foreclosure-related rescue services before successfully completing or performing all services contained in the agreement for foreclosure-related rescue services.

Section 4: Foreclosure-related rescue services; written agreement.

This section addresses foreclosure-rescue consultant agreements. The bill requires several disclosures be incorporated into an agreement as a means to enhance vulnerable homeowner protection. The agreement must be printed in a minimum 12-point type, and the homeowner has at least a 24-hour review period prior to signing. Among the many disclosures is a recommendation disclosure. A recommendation disclosure must direct the homeowner to contact his lending provider prior to signing the agreement; because, an opportunity may exist to negotiate a payment plan free of charge through the lender.

Cancellation disclosures must be printed in bold 14-point type, and the agreement must describe in detail the procedure for notifying the consultant of cancellation. Also, the agreement must be signed by both parties, but the bill provides that the homeowner receives a copy immediately upon his signing the agreement. Additionally, the agreement must allow a homeowner at least 5 business days from the signing date to cancel without penalty. If an agreement is cancelled, any payments are to be returned within 10 days. Moreover, the right to cancel may not be waived by the homeowner or limited in any manner by the foreclosure-rescue consultant.

Section 5: Foreclosure-rescue transactions; written agreement.

This section addresses equity purchasers' agreements. Several disclosures are also required to be included in these agreements. The bill requires at least a 12-point bold type written agreement signed by the homeowner prior to executing any instrument quitclaiming, assigning, transferring, conveying, or encumbering an interest in the foreclosure property. Specific disclosures must be in the agreement that describe all the material terms of the transaction. The bill requires that among those disclosures there be an option or right to repurchase the property that list such things as the purchase price, down payment amount, closing costs, and fees.

If the homeowner has the right to repurchase the property, the equity purchaser has the burden of verifying and demonstrating the homeowner has a reasonable ability to exercise the repurchase option. The price the homeowner pays may not be unfair or commercially unreasonable. A repurchase price offered within 2 years after the sale of the property that exceeds 25 percent of the price at which the equity purchaser acquired the property creates a rebuttable presumption that the foreclosure-rescue transaction was unconscionable. The acquisition price paid by the equity purchaser may include any actual costs incurred by the purchaser in acquiring the property. The homeowner shall also have a

right in the agreement to cure any default in terms on at least three separate occasions during the life of the transaction.

An equity purchaser must give the homeowner, at the time the written agreement is signed, a notice stating that the homeowner may cancel the transaction without penalty within 5 business days. Notice of the right to cancel must serve as a separate cover sheet to the written agreement with no other written or pictorial material in at a least a 12-point bold.

The right to cancel does not limit or otherwise affect the homeowner's right to cancel the transaction under any other law. The right to cancel is not conditioned upon the homeowner's repayment of money paid to the homeowner under the foreclosure-rescue transaction. The right to cancel may not be waived by the homeowner or limited in any way by the equity purchaser. Any money paid by the homeowner is to be returned within 30 days after a cancellation notification.

In any foreclosure-rescue transaction, before or at the time of conveyance, the equity purchaser must fully assume or discharge any and all liens.

For purposes of this section, there is a rebuttable presumption that the homeowner has a reasonable ability to make payments and to repurchase the property if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt do not exceed 60 percent of the homeowner's monthly gross income.

Section 6: Rebuttable presumption.

Any 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.

Section 7: Violations.

A person who violates any provision of this act commits an unfair and deceptive trade practice as defined in part II of chapter 501, Florida Statutes. Violators are subject to the penalties and remedies provided in part II of chapter 501, Florida Statutes, including a monetary penalty not to exceed \$15,000 per violation.

Section 8:

This act shall take effect July 1, 2008.

C. SECTION DIRECTORY:

- Section 1: Legislative findings and intent
- Section 2: Definitions
- Section 3: Prohibited acts
- Section 4: Foreclosure-related rescue services; written agreement (foreclosure-rescue consultants)
- Section 5: Foreclosure-rescue transactions; written agreement (equity purchaser)
- Section 6: Rebuttable presumption
- Section 7: Violations
- Section 8: Effective date

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The amount of potential revenues received by the state for penalties and remedies as provided in part II of chapter 501, F.S. is indeterminate at this time.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

There is no fiscal impact relating to this bill. The amount of potential revenues received by the state for penalties and remedies as provided in part II of chapter 501, F.S. is indeterminate at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Research from office of the Attorney General indicates that legislation similar to HB 643 exists in 13 other states and 6 states have similar legislation pending. Currently, there are approximately 20 active investigations, and litigation is underway involving foreclosure-rescue consultants and equity purchasers, according to Attorney General's staff.

D. STATEMENT OF THE SPONSOR

None

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to foreclosure fraud; providing
 3 legislative findings and intent with respect to the need
 4 to protect homeowners who enter into agreements designed
 5 to save their homes from foreclosure; providing
 6 definitions; prohibiting a foreclosure-rescue consultant
 7 from engaging in certain acts or failing to perform
 8 contracted services; requiring that all agreements for
 9 foreclosure-related rescue services and foreclosure-rescue
 10 transactions be in writing; specifying information that
 11 must be in the written agreement; requiring that certain
 12 statements in the written agreement be in bold type, in
 13 uppercase letters, and of a specified size; providing that
 14 the homeowner has a right to cancel the agreement for a
 15 specified period and the right may not be waived;
 16 providing that the homeowner has a specified period during
 17 which to cure a default under certain circumstances;
 18 requiring equity purchasers to assume or discharge certain
 19 liens; requiring that an equity purchaser verify the
 20 homeowner's ability to make payments under a repurchase
 21 agreement; providing price limitations for repurchase
 22 transactions; providing that a foreclosure-rescue
 23 transaction involving a lease option or other repurchase
 24 agreement creates a rebuttable presumption that the
 25 transaction is a loan transaction and the conveyance from

26 | the homeowner to the equity purchaser is a mortgage;
 27 | providing that a person who violates certain provisions of
 28 | the act commits an unfair and deceptive trade practice as
 29 | defined in ch. 501, F.S.; providing penalties; providing
 30 | an effective date.

31 |
 32 | Be It Enacted by the Legislature of the State of Florida:

33 |
 34 | Section 1. Legislative findings and intent.--The
 35 | Legislature finds that homeowners who are in default on their
 36 | mortgages, in foreclosure, or at risk of losing their homes due
 37 | to nonpayment of taxes may be vulnerable to fraud, deception,
 38 | and unfair dealings with foreclosure-rescue consultants or
 39 | foreclosure purchasers. The intent of this act is to provide a
 40 | homeowner with information necessary to make an informed and
 41 | intelligent decision regarding the sale or transfer of his or
 42 | her home to an equity purchaser. It is the further intent of
 43 | this act to require that sales agreements be expressed in
 44 | writing in order to safeguard homeowners against deceit and
 45 | financial hardship; to ensure, foster, and encourage fair
 46 | dealing in the sale and purchase of homes in foreclosure or
 47 | default; to prohibit representations that tend to mislead; to
 48 | prohibit or restrict unfair contract terms; to provide a
 49 | cooling-off period for homeowners who enter into contracts for
 50 | services related to saving their homes from foreclosure or

51 preserving their rights to possession of their homes; to afford
 52 homeowners a reasonable and meaningful opportunity to rescind
 53 sales to equity purchasers; and to preserve and protect home
 54 equity for the homeowners of this state.

55 Section 2. Definitions.--As used in this act, the term:

56 (1) "Equity purchaser" means any person who acquires title
 57 to any residential real property as a result of a foreclosure-
 58 rescue transaction. The term does not apply to a person who
 59 acquires the title:

60 (a) To occupy the property as his or her primary
 61 residence;

62 (b) By a deed from a foreclosure sale conducted under
 63 chapter 45, Florida Statutes;

64 (c) At a sale of property authorized by statute;

65 (d) By order or judgment of any court;

66 (e) From a spouse, parent, grandparent, child, grandchild,
 67 or sibling of the person or the person's spouse; or

68 (f) As a deed in lieu of foreclosure, a workout agreement,
 69 a bankruptcy plan, or any other agreement between a foreclosing
 70 lender and a homeowner.

71 (2) "Foreclosure-rescue consultant" means a person who
 72 directly or indirectly makes a solicitation, representation, or
 73 offer to a homeowner to provide or perform, in return for
 74 payment of money or other valuable consideration, foreclosure-
 75 related rescue services. The term does not apply to:

76 (a) A person licensed to practice law in this state when
 77 rendering foreclosure-related rescue services in the course of
 78 his or her practice as an attorney at law.

79 (b) A person licensed as a real estate broker under
 80 chapter 475, Florida Statutes, if the person is acting within
 81 the course and scope of a broker as defined in s. 475.01,
 82 Florida Statutes.

83 (c) A person licensed as a mortgage broker or mortgage
 84 lender under chapter 494, Florida Statutes, if the person is
 85 acting within the course and scope of a mortgage broker as
 86 defined in part II of chapter 494, Florida Statutes, or a
 87 mortgage lender as described in part III of chapter 494, Florida
 88 Statutes.

89 (d) A person acting under the express authority or written
 90 approval of the United States Department of Housing and Urban
 91 Development or other department or agency of the United States
 92 or this state to provide foreclosure-related rescue services.

93 (e) A charitable, not-for-profit agency or organization,
 94 as determined by the United States Internal Revenue Service
 95 under s. 501(c)(3) of the Internal Revenue Code, that offers
 96 counseling or advice to an owner of residential real property in
 97 foreclosure or loan default if the agency or organization does
 98 not contract for foreclosure-related rescue services with a for-
 99 profit lender or person facilitating or engaging in foreclosure-
 100 rescue transactions.

101 (f) A person who holds or is owed an obligation secured by
 102 a lien on any residential real property in foreclosure if the
 103 person performs foreclosure-related rescue services in
 104 connection with this obligation or lien and the obligation or
 105 lien was not the result of or part of a proposed foreclosure
 106 reconveyance or foreclosure-rescue transaction.

107 (g) A financial institution as defined in s. 655.005,
 108 Florida Statutes, or any subsidiary or affiliate thereof.

109 (3) "Foreclosure-related rescue services" means any good
 110 or service related to, or promising assistance in connection
 111 with:

112 (a) Stopping, avoiding, or delaying actual or anticipated
 113 foreclosure proceedings concerning residential real property; or

114 (b) Curing or otherwise addressing a default or failure to
 115 timely pay with respect to a residential mortgage loan
 116 obligation.

117 (4) "Foreclosure-rescue transaction" means a transaction:

118 (a) By which residential real property is conveyed to an
 119 equity purchaser and the homeowner maintains a legal or
 120 equitable interest in the residential real property conveyed,
 121 including, without limitation, a lease interest, an option to
 122 acquire the property, an interest as beneficiary or trustee to a
 123 land trust, or other interest in the property conveyed; and

124 (b) That is designed or intended by the parties to stop,
 125 avoid, or delay actual or anticipated foreclosure proceedings
 126 against a homeowner's residential real property.

127 (5) "Homeowner" means any record title owner of
 128 residential real property that is the subject of actual or
 129 anticipated foreclosure proceedings.

130 (6) "Residential real property" means real property
 131 consisting of one-family to four-family dwelling units, one of
 132 which is occupied by the owner as his or her principal place of
 133 residence.

134 (7) "Residential real property in foreclosure" means
 135 residential real property against which there is an outstanding
 136 notice of the pendency of foreclosure recorded pursuant to s.
 137 48.23, Florida Statutes, against which a summons and a complaint
 138 have been served under chapter 702, Florida Statutes, or that is
 139 owned by a person who is more than 90 days delinquent on any
 140 loan that is secured by the property.

141 Section 3. Prohibited acts.--In the course of offering or
 142 providing foreclosure-related rescue services, a foreclosure-
 143 rescue consultant, including the consultant's salespersons,
 144 agents, representatives, or independent contractors, may not:

145 (1) Engage in or initiate foreclosure-related rescue
 146 services without first executing a written agreement for
 147 foreclosure-related rescue services; or

148 (2) Solicit, charge, receive, or attempt to collect or
 149 secure payment, directly or indirectly, for foreclosure-related
 150 rescue services before successfully completing or performing all
 151 services contained in the agreement for foreclosure-related
 152 rescue services.

153 Section 4. Foreclosure-related rescue services; written
 154 agreement.--

155 (1) The written agreement for foreclosure-related rescue
 156 services must be printed in at least 12-point type and signed by
 157 both parties. The agreement must include the name and address of
 158 the person providing foreclosure-related rescue services, the
 159 exact nature and specific detail of each service to be provided,
 160 the total amount and terms of charges to be paid by the
 161 homeowner for the services, and the date of the agreement. The
 162 date of the agreement may not be earlier than the date the
 163 homeowner signed the agreement. The foreclosure-rescue
 164 consultant must give the homeowner a copy of the agreement to
 165 review not less than 24 hours before the homeowner is to sign
 166 the agreement.

167 (2) The written agreement must clearly state that the
 168 homeowner may cancel the written agreement without any penalty
 169 or obligation if the homeowner cancels the agreement within 5
 170 business days after signing the written agreement. The right to
 171 cancel may not be waived by the homeowner or limited in any
 172 manner by the foreclosure-rescue consultant. If the homeowner

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198 (DATE) .
199

200 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR LENDER
201 OR MORTGAGE SERVICE BEFORE SIGNING THIS AGREEMENT. YOUR LENDER
202 OR MORTGAGE SERVICE MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN
203 WITH YOU FREE OF CHARGE.
204

205 (4) The inclusion of the disclosures does not prohibit the
206 foreclosure-rescue consultant from giving the homeowner more
207 time in which to cancel the agreement than is set forth in the
208 disclosures.

209 (5) The foreclosure-rescue consultant must give the
210 homeowner a copy of the signed agreement immediately after the
211 homeowner signs the agreement.

212 Section 5. Foreclosure-rescue transactions; written
213 agreement.--

214 (1) (a) A foreclosure-rescue transaction must include a
215 written agreement prepared in at least 12-point bold type that
216 is fully completed, signed, and dated by the homeowner and the
217 equity purchaser before executing any instrument quitclaiming,
218 assigning, transferring, conveying, or encumbering an interest
219 in the residential real property subject to foreclosure. The
220 equity purchaser must give the homeowner a copy of the completed
221 agreement immediately after the homeowner signs the agreement.

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222 The agreement must contain the entire understanding of the
 223 parties and must include:

224 1. The name, business address, and telephone number of the
 225 equity purchaser.

226 2. The street address and full legal description of the
 227 property.

228 3. Clear and conspicuous disclosure of any financial or
 229 legal obligations of the homeowner that will be assumed by the
 230 equity purchaser.

231 4. The total consideration to be paid by the equity
 232 purchaser in connection with or incident to the acquisition of
 233 the property by the equity purchaser.

234 5. The terms of payment or other consideration, including,
 235 but not limited to, any services that the equity purchaser
 236 represents will be performed for the homeowner before or after
 237 the sale.

238 6. The date and time when possession of the property is to
 239 be transferred to the equity purchaser.

240 (b) Every foreclosure-rescue transaction agreement must
 241 contain, above the signature line for the homeowner, a statement
 242 in 16-point bold type that complies substantially with the
 243 following:

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 245 I understand that under this agreement I am selling my
 246 house to the other undersigned party.

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(c) Each foreclosure-rescue transaction agreement must state the specifications of any option or right to repurchase the residential real property in foreclosure, including the specific amounts of any escrow payments or deposit, down payment, purchase price, closing costs, commissions, or other fees or costs.

(2) An equity purchaser must give the homeowner, at the time the written agreement is signed, a notice stating that the homeowner may cancel the transaction without penalty if the homeowner cancels the transaction within 5 business days after signing the agreement. The equity purchaser must return to the homeowner any moneys paid by the homeowner within 30 days after the homeowner notifies the equity purchaser of such cancellation. The right to cancel does not limit or otherwise affect the homeowner's right to cancel the transaction under any other law. The right to cancel is not conditioned upon the homeowner's repayment of money paid to the homeowner under the foreclosure-rescue transaction. The right to cancel may not be waived by the homeowner or limited in any way by the equity purchaser. Notice of the right to cancel must serve as the cover sheet to the written agreement to enter into a foreclosure-rescue transaction. The notice must be on a separate sheet of paper with no other written or pictorial material, be in at

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271 least 12-point bold, uppercase, double-spaced type, and read as
 272 follows:

273
 274 NOTICE TO THE HOMEOWNER/SELLER

275
 276 PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. IT CONTAINS
 277 VALUABLE INFORMATION REGARDING CANCELLATION RIGHTS.

278
 279 BY THIS CONTRACT, YOU ARE AGREEING TO SELL YOUR HOME. YOU
 280 MAY CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. OF THE
 281 FIFTH BUSINESS DAY FOLLOWING RECEIPT OF THIS NOTICE.

282
 283 THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY
 284 YOU OR BY THE PURCHASERS.

285
 286 ANY MONEY PAID TO YOU MUST BE RETURNED TO THE PURCHASER
 287 WITHIN 30 DAYS AFTER CANCELLATION.

288
 289 TO CANCEL, SIGN THIS FORM AND RETURN IT TO THE PURCHASER BY
 290 5:00 P.M. ON _____ (DATE) AT _____
 291 (ADDRESS) . IT IS BEST TO MAIL IT BY CERTIFIED MAIL OR OVERNIGHT
 292 DELIVERY, RETURN RECEIPT REQUESTED, AND TO KEEP A PHOTOCOPY OF
 293 THE SIGNED FORM AND YOUR POST OFFICE RECEIPT.

294
 295 I (we) hereby cancel this transaction.

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296 _____ Seller's Signature
 297 _____ Printed Name of Seller
 298 _____ Seller's Signature
 299 _____ Printed Name of Seller
 300 _____ Date

301
 302 (3) In any foreclosure-rescue transaction in which the
 303 homeowner is provided the right to repurchase the residential
 304 real property, the homeowner has a 30-day right to cure any
 305 default of the terms of the contract, and this right to cure may
 306 be exercised on at least three separate occasions during the
 307 life of the foreclosure-rescue transaction or any agreement by
 308 the parties. The homeowner's right to cure must be included in
 309 any written agreement required by this section.

310 (4) In any foreclosure-rescue transaction, before or at
 311 the time of conveyance, the equity purchaser must fully assume
 312 or discharge any lien in foreclosure as well as any prior liens
 313 that will not be extinguished by the foreclosure, which
 314 assumption or discharge must be accomplished without violating
 315 the terms and conditions of the liens being assumed or
 316 discharged.

317 (5) If the homeowner has the right to repurchase the
 318 residential real property, the equity purchaser must verify and
 319 be able to demonstrate that the homeowner has or will have a
 320 reasonable ability to make the required payments to exercise the

321 option to repurchase under the written agreement. For purposes
 322 of this section, there is a rebuttable presumption that the
 323 homeowner has a reasonable ability to make payments and to
 324 repurchase the property if the homeowner's payments for primary
 325 housing expenses and regular principal and interest payments on
 326 other personal debt do not exceed 60 percent of the homeowner's
 327 monthly gross income.

328 (6) If the homeowner has the right to repurchase the
 329 residential real property, the price the homeowner pays may not
 330 be unconscionable, unfair, or commercially unreasonable. A
 331 repurchase price offered within 2 years after the sale of the
 332 residential real property in foreclosure that exceeds 25 percent
 333 of the price at which the equity purchaser acquired the property
 334 creates a rebuttable presumption that the foreclosure-rescue
 335 transaction was unconscionable. The acquisition price paid by
 336 the equity purchaser may include any actual costs incurred by
 337 the purchaser in acquiring the property.

338 Section 6. Rebuttable presumption.--Any foreclosure-rescue
 339 transaction involving a lease option or other repurchase
 340 agreement creates a rebuttable presumption that the transaction
 341 is a loan transaction and the conveyance from the homeowner to
 342 the equity purchaser is a mortgage.

343 Section 7. Violations.--A person who violates any
 344 provision of this act commits an unfair and deceptive trade
 345 practice as defined in part II of chapter 501, Florida Statutes.

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346 Violators are subject to the penalties and remedies provided in
347 part II of chapter 501, Florida Statutes, including a monetary
348 penalty not to exceed \$15,000 per violation.

349 Section 8. This act shall take effect July 1, 2008.



Committee on Financial Institutions

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

Amendment(s) Addendum 1

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)

Remove everything after the enacting clause and insert:

Section 1. Section 501.2078, Florida Statutes, is amended to read:

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

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

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

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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

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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

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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.

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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

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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.