



Committee on Financial Institutions

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

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

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

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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

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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

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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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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:

244
 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

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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.

