



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB2349

Introduced 1/18/2006, by Sen. Jacqueline Y. Collins - Terry Link - Donne E. Trotter

SYNOPSIS AS INTRODUCED:

New Act
815 ILCS 505/2Z

from Ch. 121 1/2, par. 262Z

Creates the Mortgage Rescue Fraud Act. Outlines the terms that must be contained in a distressed property consultant contract and a distressed property reconveyance contract. Provides notice requirements for a distressed property consultant contract. Provides the right to cancel a distressed property consultant contract at any time until after the distressed property consultant has fully performed each contracted service. Provides the owner of the distressed property has a right to cancel a distressed property reconveyance contract at any time until midnight of the fifth business day following the day on which the owner of the distressed property signs the contract or until 8:00 a.m. on the last day of the period during which the owner of the distressed property has a right of redemption. Lists actions that constitute a violation of the Act. Provides for civil remedies for violation of the Act. Provides that a person who commits an intentional violation of one of the listed violations of the Act commits criminal mortgage rescue fraud. Provides criminal penalties for a person who commits criminal mortgage rescue fraud. Amends the Consumer Fraud and Deceptive Business Practices Act. Provides that a violation of the Mortgage Rescue Fraud Act is a violation of the Consumer Fraud and Deceptive Business Practices Act. Effective January 1, 2007.

LRB094 18521 LCT 53849 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning mortgages.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Mortgage Rescue Fraud Act.

6 Section 5. Definitions. As used in this Act:

7 "Distressed property" means residential real property
8 consisting of one to 6 family dwelling units that is in
9 foreclosure or at risk of loss due to nonpayment of taxes, or
10 whose owner is more than 90 days delinquent on any loan that is
11 secured by the property.

12 "Distressed property consultant" means any person who,
13 directly or indirectly, makes any solicitation,
14 representation, or offer to any owner to perform for
15 compensation or who, for compensation, performs any service
16 that the person in any manner represents will in any manner do
17 any of the following:

18 (1) stop or postpone the foreclosure sale or the loss
19 of the home due to nonpayment of taxes;

20 (2) obtain any forbearance from any beneficiary or
21 mortgagee, or relief with respect to a tax sale of the
22 property;

23 (3) assist the owner to exercise any right of
24 reinstatement or right of redemption;

25 (4) obtain any extension of the period within which the
26 owner may reinstate the owner's rights with respect to the
27 property;

28 (5) obtain any waiver of an acceleration clause
29 contained in any promissory note or contract secured by a
30 mortgage on a distressed property or contained in the
31 mortgage;

32 (6) assist the owner in foreclosure, loan default, or

1 post-tax sale redemption period to obtain a loan or advance
2 of funds;

3 (7) avoid or ameliorate the impairment of the owner's
4 credit resulting from the recording of a notice of default
5 or the conduct of a foreclosure sale or tax sale; or

6 (8) save the owner's residence from foreclosure or loss
7 of home due to nonpayment of taxes.

8 A "distressed property consultant" does not include any of
9 the following:

10 (1) a person or the person's authorized agent acting
11 under the express authority or written approval of the
12 Department of Housing and Urban Development or other
13 department or agency of the United States or this State to
14 provide services;

15 (2) a person who holds or is owed an obligation secured
16 by a lien on any distressed property when the person
17 performs services in connection with the obligation or
18 lien, if the obligation or lien did not arise as the result
19 of or as part of a proposed distressed property
20 reconveyance;

21 (3) banks, savings banks, savings and loan
22 associations, credit unions, and insurance companies
23 organized, chartered, or holding a certificate of
24 authority to do business under the laws of this State or
25 any other state or under the laws of the United States;

26 (4) licensed attorneys engaged in the practice of law;

27 (5) a Department of Housing and Urban Development
28 approved mortgagee and any subsidiary or affiliate of these
29 persons or entities, and any agent or employee of these
30 persons or entities, while engaged in the business of these
31 persons or entities; or

32 (6) a 501(c)(3) nonprofit agency or organization,
33 doing business for no less than 5 years, that offers
34 counseling or advice to an owner of a home in foreclosure
35 or loan default, if they do not contract for services with
36 for-profit lenders or distressed property purchasers.

1 "Distressed property purchaser" means any person who
2 acquires any interest in a distressed property while allowing
3 the owner to possess, occupy, or retain any present or future
4 interest in the property.

5 "Distressed property reconveyance" means a transaction in
6 which an owner of a distressed property transfers an interest
7 in the distressed property; the acquirer of the property allows
8 the owner of the distressed property to occupy the property;
9 and the acquirer of the property or a person acting in
10 participation with the acquirer of the property conveys or
11 promises to convey an interest back to the owner or gives the
12 owner an option to purchase the property at a later date.

13 "Person" means any individual, partnership, corporation,
14 limited liability company, association, or other group or
15 entity, however organized.

16 "Service" means, without limitation, any of the following:

17 (1) debt, budget, or financial counseling of any type;

18 (2) receiving money for the purpose of distributing it
19 to creditors in payment or partial payment of any
20 obligation secured by a lien on a distressed property;

21 (3) contacting creditors on behalf of an owner of a
22 residence that is distressed property;

23 (4) arranging or attempting to arrange for an extension
24 of the period within which the owner of a distressed
25 property may cure the owner's default and reinstate his or
26 her obligation;

27 (5) arranging or attempting to arrange for any delay or
28 postponement of the time of sale of the residence in
29 foreclosure;

30 (6) advising the filing of any document or assisting in
31 any manner in the preparation of any document for filing
32 with any court; or

33 (7) giving any advice, explanation, or instruction to
34 an owner of a distressed property that in any manner
35 relates to the cure of a default or forfeiture or to the
36 postponement or avoidance of sale of the distressed

1 property.

2 Section 10. Distressed property consultant contract terms.

3 (a) A distressed property consultant contract must be in
4 writing and must fully disclose the exact nature of the
5 distressed property consultant's services and the total amount
6 and terms of compensation.

7 (b) The following notice, printed in at least 12-point
8 boldface type and completed with the name of the distressed
9 property consultant, must be printed immediately above the
10 statement required by subsection (c) of this Section:

11 "NOTICE REQUIRED BY ILLINOIS LAW

12(name) or anyone working
13 for him or her CANNOT:

14 (1) Take any money from you or ask you for money until
15 (Name) has
16 completely finished doing everything he or she said he or
17 she would do; or

18 (2) Ask you to sign or have you sign any lien,
19 mortgage, or deed."

20 (c) A distressed property consultant contract must be
21 written in the same language as principally used by the
22 distressed property consultant to describe his or her services
23 or to negotiate the contract, must be dated and signed by the
24 owner, and must contain in immediate proximity to the space
25 reserved for the owner's signature a conspicuous statement in a
26 size equal to at least 12-point boldface type, as follows:

27 "You, the owner, may cancel this transaction at any
28 time until after the distressed property consultant has
29 fully performed each and every service the distressed
30 property consultant contracted to perform or represented
31 he or she would perform. See the attached notice of
32 cancellation form for an explanation of this right."

33 (d) A distressed property contract must contain on the
34 first page, in a type size no smaller than that generally used
35 in the body of the document, each of the following:

1 (1) the name and address of the distressed property
2 consultant to which the notice of cancellation is to be
3 mailed; and

4 (2) the date the owner signed the contract.

5 (e) A distressed property consultant contract must be
6 accompanied by a completed form in duplicate, captioned "NOTICE
7 OF CANCELLATION," which must be attached to the contract, must
8 be easily detachable, and must contain, in at least 12-point
9 boldface type, the following statement written in the same
10 language as used in the contract:

11 "NOTICE OF CANCELLATION

12

13 (Enter date of transaction)

14 You may cancel this transaction, without any penalty or
15 obligation, at any time until after the distressed property
16 consultant has fully performed each and every service the
17 distressed property consultant contracted to perform or
18 represented he or she would perform.

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

22(Name of distressed property consultant) at

23(Address of distressed property
24 consultant's place of business)

25 I hereby cancel this transaction on(Date)

26(Owner's signature)".

27 (f) The distressed property consultant shall provide the
28 owner with a copy of a distressed property consultant contract
29 and the attached notice of cancellation immediately upon
30 execution of the contract.

31 Section 15. Rescission of distressed property consultant
32 contract.

33 (a) In addition to any other legal right to rescind a
34 contract, an owner has the right to cancel a distressed
35 property consultant contract at any time until after the

1 distressed property consultant has fully performed each
2 service the distressed property consultant contracted to
3 perform or represented he or she would perform.

4 (b) Cancellation occurs when the owner gives written notice
5 of cancellation to the distressed property consultant at the
6 address specified in the distressed property consultant
7 contract.

8 (c) Notice of cancellation, if given by mail, is effective
9 when deposited in the mail properly addressed with postage
10 prepaid. Notice by certified mail, return receipt requested,
11 addressed to the address specified in the distressed property
12 consultant contract, shall be conclusive proof of notice of
13 service.

14 (d) Notice of cancellation given by the owner need not take
15 the particular form as provided with the distressed property
16 consultant contract and, however expressed, is effective if it
17 indicates the intention of the owner not to be bound by the
18 contract.

19 Section 20. Waiver of a distressed property consultant
20 contract.

21 (a) Any waiver by an owner of the provisions of Section 10
22 or 15 is void and unenforceable as contrary to public policy.

23 (b) Any attempt by a distressed property consultant to
24 induce an owner to waive the owner's rights is a violation of
25 the Act.

26 Section 25. Distressed property reconveyance contract. A
27 distressed property purchaser shall enter into every
28 distressed property reconveyance in the form of a written
29 contract. Every distressed property reconveyance contract must
30 be written in letters of a size equal to at least 12-point
31 boldface type, in the same language principally used by the
32 distressed property purchaser and owner of the distressed
33 property to negotiate the sale of the distressed property, must
34 be fully completed, signed, and dated by the owner of the

1 distressed property and the distressed property purchaser, and
2 must be witnessed and acknowledged by a real estate notary
3 public, before the execution of any instrument of conveyance of
4 the distressed property.

5 Section 30. Distressed property reconveyance contract
6 terms. Every contract required by Section 25 must contain the
7 entire agreement of the parties, be fully assignable, and
8 survive delivery of any instrument of conveyance of the
9 distressed property. Every lease entered into pursuant to a
10 contract required by Section 25 is terminable at will by the
11 distressed property owner, without liability. Every contract
12 required by Section 25 must include the following terms:

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

15 (2) the address of the distressed property;

16 (3) the total consideration to be given by the
17 foreclosure purchaser in connection with or incident to the
18 sale;

19 (4) a complete description of the terms of payment or
20 other consideration including, but not limited to, any
21 services of any nature that the distressed property
22 purchaser represents he or she will perform for the owner
23 of the distressed property before or after the sale;

24 (5) a complete description of the terms of any related
25 agreement designed to allow the owner of the distressed
26 property to remain in the home such as a rental agreement,
27 repurchase agreement, contract for deed, or lease with
28 option to buy;

29 (6) a notice of cancellation as provided in this
30 Section; and

31 (7) the following notice in at least 12-point boldface
32 type, if the contract is printed, or in capital letters, if
33 the contract is typed, and completed with the name of the
34 distressed property purchaser, immediately above the
35 statement required by this Section:

1 "NOTICE REQUIRED BY ILLINOIS LAW

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

8 Section 35. Cancellation of a distressed property
9 reconveyance contract.

10 (a) In addition to any other right of rescission, the owner
11 of the distressed property has the right to cancel any contract
12 with a distressed property purchaser until midnight of the
13 fifth business day following the day on which the owner of the
14 distressed property signs a contract that complies with
15 Sections 25 and 30 or until 8:00 a.m. on the last day of the
16 period during which the owner of the distressed property has a
17 right of redemption, whichever occurs first.

18 (b) Cancellation occurs when the owner of the distressed
19 property delivers, by any means, written notice of cancellation
20 to the address specified in the distressed property
21 reconveyance contract.

22 (c) A notice of cancellation given by the owner of the
23 distressed property need not take the particular form as
24 provided with the distressed property reconveyance contract.

25 (d) Within 10 days following receipt of a notice of
26 cancellation given in accordance with this Section, the
27 distressed property purchaser shall return, without condition,
28 any original contract and any other documents signed by the
29 owner of the distressed property.

30 Section 40. Notice of cancellation of a distressed property
31 reconveyance contract.

32 (a) The contract must contain in immediate proximity to the
33 space reserved for the owner of the distressed property's
34 signature a conspicuous statement in a size equal to at least

1 12-point boldface type, if the contract is printed, or in
2 capital letters, if the contract is typed, as follows:

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

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

11 (b) The contract must be accompanied by a completed form in
12 duplicate, captioned "NOTICE OF CANCELLATION" in a size equal
13 to a 12-point boldface type, if the contract is printed, or in
14 capital letters, if the contract is typed, followed by a space
15 in which the distressed property purchaser shall enter the date
16 on which the owner of the distressed property executes any
17 contract. This form must be attached to the contract, must be
18 easily detachable, and must contain in type of at least 12
19 points, if the contract is printed, or in capital letters, if
20 the contract is typed, the following statement written in the
21 same language as used in the contract:

22 "NOTICE OF CANCELLATION

23

24 (Enter date contract signed)

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

35 I hereby cancel this transaction on (Date)
36 (Seller's

1 signature)".

2 (c) The distressed property purchaser shall provide the
3 owner of the distressed property with a copy of the contract
4 and the attached notice of cancellation immediately at the time
5 the contract is executed by all parties.

6 (d) The distressed property purchaser shall record the
7 contract with the recorder of deeds in the county where the
8 distressed property is located within 10 days of its execution,
9 provided the contract has not been canceled.

10 (e) The 5 business days during which the owner of the
11 distressed property may cancel the contract shall not begin to
12 run until all parties to the contract have executed the
13 contract and the distressed property purchaser has complied
14 with all the requirements of this Section.

15 Section 45. Waiver of a distressed property reconveyance
16 contract. Any waiver of the provisions of Sections 35 and 40
17 are void and unenforceable as contrary to public policy, except
18 that a consumer may waive the 5-day right to cancel provided in
19 Section 35 if the property is subject to a foreclosure sale
20 within the 5 business days and the owner of the distressed
21 property agrees to waive his or her right to cancel in a
22 handwritten statement that is signed by all parties holding
23 title to the distressed property.

24 Section 50. Violations.

25 (a) It is a violation for a distressed property consultant
26 to:

27 (1) claim, demand, charge, collect, or receive any
28 compensation until after the distressed property
29 consultant has fully performed each service the distressed
30 property consultant contracted to perform or represented
31 he or she would perform;

32 (2) claim, demand, charge, collect, or receive any fee,
33 interest, or any other compensation for any reason that
34 exceeds 2 monthly mortgage payments of principal and

1 interest or the most recent tax installment on the
2 distressed property, whichever is less;

3 (3) take a wage assignment, a lien of any type on real
4 or personal property, or other security to secure the
5 payment of compensation. Any such security is void and
6 unenforceable;

7 (4) receive any consideration from any third party in
8 connection with services rendered to an owner unless the
9 consideration is first fully disclosed to the owner;

10 (5) acquire any interest, directly or indirectly, or by
11 means of a subsidiary or affiliate in a distressed property
12 from an owner with whom the distressed property consultant
13 has contracted;

14 (6) take any power of attorney from an owner for any
15 purpose, except to inspect documents as provided by law; or

16 (7) induce or attempt to induce an owner to enter a
17 contract that does not comply in all respects with Sections
18 10 and 15 of this Act.

19 (b) A distressed property purchaser shall not:

20 (1) enter into, or attempt to enter into, a distressed
21 property reconveyance unless the distressed property
22 purchaser verifies and can demonstrate that the owner of
23 the distressed property has a reasonable ability to pay for
24 the subsequent conveyance of an interest back to the owner
25 of the distressed property;

26 (2) fail to make a payment to the owner of the
27 distressed property at the time the title is conveyed so
28 that the owner of the distressed property has received
29 consideration in an amount of at least 82% of the fair
30 market value of the property;

31 (3) enter into repurchase or lease terms as part of the
32 subsequent conveyance that are unfair or commercially
33 unreasonable, or engage in any other unfair conduct;

34 (4) represent, directly or indirectly, that the
35 distressed property purchaser is acting as an advisor or a
36 consultant, or in any other manner represent that the

1 distressed property purchaser is acting on behalf of the
2 homeowner, or the distressed property purchaser is
3 assisting the owner of the distressed property to "save the
4 house", "buy time", or do anything couched in substantially
5 similar language;

6 (5) misrepresent the distressed property purchaser's
7 status as to licensure or certification;

8 (6) do any of the following until after the time during
9 which the owner of a distressed property may cancel the
10 transaction:

11 (A) accept from the owner of the distressed
12 property an execution of any instrument of conveyance
13 of any interest in the distressed property;

14 (B) induce the owner of the distressed property to
15 execute an instrument of conveyance of any interest in
16 the distressed property; or

17 (C) record with the county recorder of deeds any
18 document signed by the owner of the distressed
19 property, including but not limited to any instrument
20 of conveyance;

21 (7) fail to reconvey title to the distressed property
22 when the terms of the reconveyance contract have been
23 fulfilled;

24 (8) induce the owner of the distressed property to
25 execute a quit claim deed when entering into a distressed
26 property reconveyance;

27 (9) fail to use a notarized warranty deed to convey an
28 interest in a distressed property from the owner of the
29 distressed property to the distressed property purchaser;

30 (10) enter into a distressed property reconveyance
31 where any party to the transaction is represented by power
32 of attorney;

33 (11) fail to extinguish all liens encumbering the
34 distressed property, immediately following the conveyance
35 of the distressed property; or

36 (12) fail to complete a distressed property

1 reconveyance in the offices of a title company licensed by
2 the Department of Financial and Professional Regulation.

3 (c) There is a rebuttable presumption that an appraisal by
4 a person licensed or certified by an agency of this State or
5 the federal government is an accurate determination of the fair
6 market value of the property.

7 (d) "Consideration" in item (2) of subsection (b) means any
8 payment or thing of value provided to the owner of the
9 distressed property, including unpaid rent or contract for deed
10 payments owed by the owner of the distressed property prior to
11 the date of eviction or voluntary relinquishment of the
12 property, reasonable costs paid to third parties necessary to
13 complete the distressed property reconveyance transaction,
14 payment of money to satisfy a debt or legal obligation of the
15 owner of the distressed property, or the reasonable cost of
16 repairs for damage to the dwelling caused by the owner of the
17 distressed property.

18 "Consideration" shall not include amounts imputed as a
19 downpayment or fee to the distressed property purchaser, or a
20 person acting in participation with the distressed property
21 purchaser, incident to a contract for deed, lease, or option to
22 purchase entered into as part of the distressed property
23 reconveyance, except for reasonable costs paid to third parties
24 necessary to complete the distressed property reconveyance.

25 (e) In the case of a lease with an option to purchase,
26 payment ability also includes the reasonable ability to make
27 the lease payments and purchase the property within the term of
28 the option to purchase after considering medical bills, child
29 support obligations, and debt to income ratio. There is a
30 rebuttable presumption that the distressed property purchaser
31 has not verified reasonable payment ability if the distressed
32 property purchaser has not obtained documents of assets,
33 liabilities, and income, other than a statement by the owner of
34 the distressed property.

35 Section 55. Civil remedies.

1 (a) A violation of any of the provisions of this Act
2 constitutes an unlawful practice under the Consumer Fraud and
3 Deceptive Business Practices Act. All remedies, penalties, and
4 authority granted to the Attorney General or State's Attorney
5 by the Consumer Fraud and Deceptive Business Practices Act
6 shall be available to him or her for the enforcement of this
7 Act.

8 (b) A consumer who suffers loss by reason of any violation
9 of any provision of this Act may bring a civil action in
10 accordance with the Consumer Fraud and Deceptive Business
11 Practices Act to enforce that provision. All remedies and
12 rights granted to a consumer by the Consumer Fraud and
13 Deceptive Business Practices Act shall be available to the
14 consumer bringing such an action. The remedies and rights
15 provided for in this Act are not exclusive, but cumulative, and
16 the doctrine of equitable mortgage is specifically preserved.

17 Section 60. Criminal mortgage rescue fraud. A person
18 commits the offense of criminal mortgage rescue fraud when he
19 or she intentionally violates any provision enumerated in
20 Section 50 of this Act.

21 Section 65. Criminal penalties. A person who commits the
22 offense of criminal mortgage rescue fraud is guilty of a Class
23 2 felony.

24 Section 300. The Consumer Fraud and Deceptive Business
25 Practices Act is amended by changing Section 2Z as follows:

26 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

27 Sec. 2Z. Violations of other Acts. Any person who knowingly
28 violates the Automotive Repair Act, the Automotive Collision
29 Repair Act, the Home Repair and Remodeling Act, the Dance
30 Studio Act, the Physical Fitness Services Act, the Hearing
31 Instrument Consumer Protection Act, the Illinois Union Label
32 Act, the Job Referral and Job Listing Services Consumer

1 Protection Act, the Travel Promotion Consumer Protection Act,
2 the Credit Services Organizations Act, the Automatic Telephone
3 Dialers Act, the Pay-Per-Call Services Consumer Protection
4 Act, the Telephone Solicitations Act, the Illinois Funeral or
5 Burial Funds Act, the Cemetery Care Act, the Safe and Hygienic
6 Bed Act, the Pre-Need Cemetery Sales Act, the High Risk Home
7 Loan Act, the Payday Loan Reform Act, the Mortgage Rescue Fraud
8 Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax
9 Act, the Payday Loan Reform Act, subsection (a) or (b) of
10 Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail
11 Act, paragraph (6) of subsection (k) of Section 6-305 of the
12 Illinois Vehicle Code, Article 3 of the Residential Real
13 Property Disclosure Act, the Automatic Contract Renewal Act, or
14 the Personal Information Protection Act commits an unlawful
15 practice within the meaning of this Act.

16 (Source: P.A. 93-561, eff. 1-1-04; 93-950, eff. 1-1-05; 94-13,
17 eff. 12-6-05; 94-36, eff. 1-1-06; 94-280, eff. 1-1-06; 94-292,
18 eff. 1-1-06; revised 8-19-05.)

19 Section 999. Effective date. This Act takes effect January
20 1, 2007.