



Sen. Jacqueline Y. Collins

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LRB094 18521 LCT 55158 a

1 AMENDMENT TO SENATE BILL 2349

2 AMENDMENT NO. _____. Amend Senate Bill 2349 by replacing
3 everything after the enacting clause with the following:

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;

1 (4) obtain any extension of the period within which the
2 owner may reinstate the owner's rights with respect to the
3 property;

4 (5) obtain any waiver of an acceleration clause
5 contained in any promissory note or contract secured by a
6 mortgage on a distressed property or contained in the
7 mortgage;

8 (6) assist the owner in foreclosure, loan default, or
9 post-tax sale redemption period to obtain a loan or advance
10 of funds;

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

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

16 A "distressed property consultant" does not include any of
17 the following:

18 (1) a person or the person's authorized agent acting
19 under the express authority or written approval of the
20 Department of Housing and Urban Development;

21 (2) a person who holds or is owed an obligation secured
22 by a lien on any distressed property when the person
23 performs services in connection with the obligation or
24 lien, if the obligation or lien did not arise as the result
25 of or as part of a proposed distressed property conveyance;

26 (3) banks, savings banks, savings and loan
27 associations, credit unions, and insurance companies
28 organized, chartered, or holding a certificate of
29 authority to do business under the laws of this State or
30 any other state or under the laws of the United States;

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

32 (5) a Department of Housing and Urban Development
33 approved mortgagee and any subsidiary or affiliate of these
34 persons or entities, and any agent or employee of these

1 persons or entities, while engaged in the business of these
2 persons or entities; or

3 (6) a 501(c)(3) nonprofit agency or organization,
4 doing business for no less than 5 years, that offers
5 counseling or advice to an owner of a home in foreclosure
6 or loan default, if they do not contract for services with
7 for-profit lenders or distressed property purchasers, or
8 any person who structures or plans such a transaction.

9 "Distressed property purchaser" means any person who
10 acquires any interest in a distressed property while allowing
11 the owner to possess, occupy, or retain any present or future
12 interest in the property, or any person who structures or plans
13 such a transaction.

14 "Distressed property conveyance" means a transaction in
15 which an owner of a distressed property transfers an interest
16 in the distressed property; the acquirer of the property allows
17 the owner of the distressed property to occupy the property;
18 and the acquirer of the property or a person acting in
19 participation with the acquirer of the property conveys or
20 promises to convey an interest back to the owner or gives the
21 owner an option to purchase the property at a later date.

22 "Person" means any individual, partnership, corporation,
23 limited liability company, association, or other group or
24 entity, however organized.

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

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

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

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

32 (4) arranging or attempting to arrange for an extension
33 of the period within which the owner of a distressed
34 property may cure the owner's default and reinstate his or

1 her obligation;

2 (5) arranging or attempting to arrange for any delay or
3 postponement of the time of sale of the residence in
4 foreclosure;

5 (6) advising the filing of any document or assisting in
6 any manner in the preparation of any document for filing
7 with any court; or

8 (7) giving any advice, explanation, or instruction to
9 an owner of a distressed property that in any manner
10 relates to the cure of a default or forfeiture or to the
11 postponement or avoidance of sale of the distressed
12 property.

13 Section 10. Distressed property consultant contract terms.

14 (a) A distressed property consultant contract must be in
15 writing and must fully disclose the exact nature of the
16 distressed property consultant's services and the total amount
17 and terms of compensation.

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

22 "NOTICE REQUIRED BY ILLINOIS LAW

23(name) or anyone working
24 for him or her CANNOT:

25 (1) Take any money from you or ask you for money until
26 (Name) has
27 completely finished doing everything he or she said he or
28 she would do; or

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

31 (c) A distressed property consultant contract must be
32 written in the same language as principally used by the
33 distressed property consultant to describe his or her services

1 or to negotiate the contract, must be dated and signed by the
2 owner, and must contain in immediate proximity to the space
3 reserved for the owner's signature a conspicuous statement in a
4 size equal to at least 12-point boldface type, as follows:

5 "You, the owner, may cancel this transaction at any
6 time until after the distressed property consultant has
7 fully performed each and every service the distressed
8 property consultant contracted to perform or represented
9 he or she would perform. See the attached notice of
10 cancellation form for an explanation of this right."

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

14 (1) the name and address of the distressed property
15 consultant to which the notice of cancellation is to be
16 mailed; and

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

18 (e) A distressed property consultant contract must be
19 accompanied by a completed form in duplicate, captioned "NOTICE
20 OF CANCELLATION," which must be attached to the contract, must
21 be easily detachable, and must contain, in at least 12-point
22 boldface type, the following statement written in the same
23 language as used in the contract:

24 "NOTICE OF CANCELLATION
25
26 (Enter date of transaction)

27 You may cancel this transaction, without any penalty or
28 obligation, at any time until after the distressed property
29 consultant has fully performed each and every service the
30 distressed property consultant contracted to perform or
31 represented he or she would perform.

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

1(Name of distressed property consultant) at
 2(Address of distressed property
 3 consultant's place of business)

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

6 (f) The distressed property consultant shall provide the
 7 owner with a copy of a distressed property consultant contract
 8 and the attached notice of cancellation immediately upon
 9 execution of the contract.

10 Section 15. Rescission of distressed property consultant
 11 contract.

12 (a) In addition to any other legal right to rescind a
 13 contract, an owner has the right to cancel a distressed
 14 property consultant contract at any time until after the
 15 distressed property consultant has fully performed each
 16 service the distressed property consultant contracted to
 17 perform or represented he or she would perform.

18 (b) Cancellation occurs when the owner gives written notice
 19 of cancellation to the distressed property consultant at the
 20 address specified in the distressed property consultant
 21 contract.

22 (c) Notice of cancellation, if given by mail, is effective
 23 when deposited in the mail properly addressed with postage
 24 prepaid. Notice by certified mail, return receipt requested,
 25 addressed to the address specified in the distressed property
 26 consultant contract, shall be conclusive proof of notice of
 27 service.

28 (d) Notice of cancellation given by the owner need not take
 29 the particular form as provided with the distressed property
 30 consultant contract and, however expressed, is effective if it
 31 indicates the intention of the owner not to be bound by the
 32 contract.

1 Section 20. Waiver of a distressed property consultant
2 contract.

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

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

8 Section 25. Distressed property conveyance contract. A
9 distressed property purchaser shall enter into every
10 distressed property conveyance in the form of a written
11 contract. Every distressed property conveyance contract must
12 be written in letters of a size equal to at least 12-point
13 boldface type, in the same language principally used by the
14 owner of the distressed property to negotiate the sale of the
15 distressed property, must be fully completed, signed, and dated
16 by the owner of the distressed property and the distressed
17 property purchaser, and must be witnessed and acknowledged by a
18 notary public, before the execution of any instrument of
19 conveyance of the distressed property.

20 Section 30. Distressed property conveyance contract terms.
21 Every contract required by Section 25 must contain the entire
22 agreement of the parties, be fully assignable, and survive
23 delivery of any instrument of conveyance of the distressed
24 property. Every lease entered into pursuant to a contract
25 required by Section 25 is terminable at will by the distressed
26 property owner, without liability. Every contract required by
27 Section 25 must include the following terms:

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

30 (2) the address of the distressed property;

31 (3) the total consideration to be given by the
32 foreclosure purchaser in connection with or incident to the

1 sale;

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

7 (5) a complete description of the terms of any related
8 agreement designed to allow the owner of the distressed
9 property to remain in the home such as a rental agreement,
10 repurchase agreement, contract for deed, or lease with
11 option to buy;

12 (6) a notice of cancellation as provided in this
13 Section;

14 (7) the following notice in at least 12-point boldface
15 type, if the contract is printed, or in capital letters, if
16 the contract is typed, and completed with the name of the
17 distressed property purchaser, immediately above the
18 statement required by this Section:

19 "NOTICE REQUIRED BY ILLINOIS LAW

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

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

33 "NOTICE REQUIRED BY ILLINOIS LAW

34 As part of this transaction, you are giving up title to

1 your home.".

2 Section 35. Cancellation of a distressed property
3 conveyance contract.

4 (a) In addition to any other right of rescission, the owner
5 of the distressed property has the right to cancel any contract
6 with a distressed property purchaser until midnight of the
7 fifth business day following the day on which the owner of the
8 distressed property signs a contract that complies with
9 Sections 25 and 30 or until 8:00 a.m. on the last day of the
10 period during which the owner of the distressed property has a
11 right of redemption under the Illinois Mortgage Foreclosure Law
12 or the Property Tax Code, whichever occurs first.

13 (b) Cancellation occurs when the owner of the distressed
14 property delivers, by any means, written notice of cancellation
15 to the address specified in the distressed property conveyance
16 contract.

17 (c) A notice of cancellation given by the owner of the
18 distressed property need not take the particular form as
19 provided with the distressed property conveyance contract.

20 (d) Within 10 days following receipt of a notice of
21 cancellation given in accordance with this Section, the
22 distressed property purchaser shall return, without condition,
23 any original contract and any other documents signed by the
24 owner of the distressed property.

25 Section 40. Notice of cancellation of a distressed property
26 conveyance contract.

27 (a) The contract must contain in immediate proximity to the
28 space reserved for the owner of the distressed property's
29 signature a conspicuous statement in a size equal to at least
30 12-point boldface type, if the contract is printed, or in
31 capital letters, if the contract is typed, as follows:

32 "You may cancel this contract for the sale of your

1 house, without any penalty or obligation, at any time
 2 before(Date and time of
 3 day). See the attached notice of cancellation form for an
 4 explanation of this right."

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

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

19 "NOTICE OF CANCELLATION

20

21 (Enter date contract signed)

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

32 I hereby cancel this transaction on (Date)
 33 (Seller's
 34 signature)".

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

5 (d) The distressed property purchaser shall record the
6 contract with the recorder of deeds in the county where the
7 distressed property is located within 10 days of its execution,
8 provided the contract has not been canceled. If the contract is
9 not recorded, the contract and any conveyance made or given
10 pursuant to the terms of the contract are void ab initio.

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

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

25 Section 50. Violations.

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

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

1 (2) claim, demand, charge, collect, or receive any fee,
2 interest, or any other compensation for any reason that
3 exceeds 2 monthly mortgage payments of principal and
4 interest or the most recent tax installment on the
5 distressed property, whichever is less;

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

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

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

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

19 (7) induce or attempt to induce an owner to enter a
20 contract that does not comply in all respects with Sections
21 10 and 15 of this Act.

22 (b) A distressed property purchaser shall not:

23 (1) enter into, or attempt to enter into, a distressed
24 property conveyance unless the distressed property
25 purchaser verifies and can demonstrate that the owner of
26 the distressed property has a reasonable ability to pay for
27 the subsequent conveyance of an interest back to the owner
28 of the distressed property and to make monthly or any other
29 required payments due prior to that time;

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

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

4 (4) represent, directly or indirectly, that the
5 distressed property purchaser is acting as an advisor or a
6 consultant, or in any other manner represent that the
7 distressed property purchaser is acting on behalf of the
8 homeowner, or the distressed property purchaser is
9 assisting the owner of the distressed property to "save the
10 house", "buy time", or do anything couched in substantially
11 similar language;

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

14 (6) do any of the following until after the time during
15 which the owner of a distressed property may cancel the
16 transaction:

17 (A) accept from the owner of the distressed
18 property an execution of any instrument of conveyance
19 of any interest in the distressed property;

20 (B) induce the owner of the distressed property to
21 execute an instrument of conveyance of any interest in
22 the distressed property; or

23 (C) record with the county recorder of deeds any
24 document signed by the owner of the distressed
25 property, including but not limited to any instrument
26 of conveyance;

27 (7) fail to reconvey title to the distressed property
28 when the terms of the conveyance contract have been
29 fulfilled;

30 (8) induce the owner of the distressed property to
31 execute a quit claim deed when entering into a distressed
32 property conveyance;

33 (9) enter into a distressed property conveyance where
34 any party to the transaction is represented by power of

1 attorney;

2 (10) fail to extinguish all liens encumbering the
3 distressed property, immediately following the conveyance
4 of the distressed property; or

5 (11) fail to complete a distressed property conveyance
6 before a notary in the offices of a title company licensed
7 by the Department of Financial and Professional
8 Regulation.

9 (12) cause the property to be conveyed or encumbered
10 without the knowledge or permission of the distressed
11 property owner, or in any way frustrate the ability of the
12 distressed property owner to complete conveyance.

13 (c) There is a rebuttable presumption that an appraisal by
14 a person licensed or certified by an agency of this State or
15 the federal government is an accurate determination of the fair
16 market value of the property.

17 (d) "Consideration" in item (2) of subsection (b) means any
18 payment or thing of value provided to the owner of the
19 distressed property, including reasonable costs paid to
20 independent third parties necessary to complete the distressed
21 property conveyance or payment of money to satisfy a debt or
22 legal obligation of the owner of the distressed property.

23 "Consideration" shall not include amounts imputed as a
24 downpayment or fee to the distressed property purchaser, or a
25 person acting in participation with the distressed property
26 purchaser.

27 (e) An evaluation of "reasonable ability to pay" under
28 subsection (b)(1) of this Section 50 shall include debt to
29 income ratio, fair market value of the distressed property, and
30 the distressed property owner's payment history. There is a
31 rebuttable presumption that the distressed property purchaser
32 has not verified reasonable payment ability if the distressed
33 property purchaser has not obtained documents of assets,
34 liabilities, and income, other than a statement by the owner of

1 the distressed property.

2 Section 55. Civil remedies.

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

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

21 Section 60. Criminal mortgage rescue fraud. A person
22 commits the offense of criminal mortgage rescue fraud when he
23 or she intentionally violates any provision enumerated in
24 Section 50 of this Act.

25 Section 65. Criminal penalties. A person who commits the
26 offense of criminal mortgage rescue fraud is guilty of a Class
27 2 felony.

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

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

2 Sec. 2Z. Violations of other Acts. Any person who knowingly
3 violates the Automotive Repair Act, the Automotive Collision
4 Repair Act, the Home Repair and Remodeling Act, the Dance
5 Studio Act, the Physical Fitness Services Act, the Hearing
6 Instrument Consumer Protection Act, the Illinois Union Label
7 Act, the Job Referral and Job Listing Services Consumer
8 Protection Act, the Travel Promotion Consumer Protection Act,
9 the Credit Services Organizations Act, the Automatic Telephone
10 Dialers Act, the Pay-Per-Call Services Consumer Protection
11 Act, the Telephone Solicitations Act, the Illinois Funeral or
12 Burial Funds Act, the Cemetery Care Act, the Safe and Hygienic
13 Bed Act, the Pre-Need Cemetery Sales Act, the High Risk Home
14 Loan Act, the Payday Loan Reform Act, the Mortgage Rescue Fraud
15 Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax
16 Act, the Payday Loan Reform Act, subsection (a) or (b) of
17 Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail
18 Act, paragraph (6) of subsection (k) of Section 6-305 of the
19 Illinois Vehicle Code, Article 3 of the Residential Real
20 Property Disclosure Act, the Automatic Contract Renewal Act, or
21 the Personal Information Protection Act commits an unlawful
22 practice within the meaning of this Act.

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

26 Section 999. Effective date. This Act takes effect January
27 1, 2007."