



Sen. Jacqueline Y. Collins

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LRB094 18521 LCT 56040 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, for compensation from the owner, makes  
14 any solicitation, representation, or offer to perform or who,  
15 for compensation from the owner, performs any service that the  
16 person represents will in any manner do any of the following:

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

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

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

24 (4) obtain any extension of the period within which the

1 owner may reinstate the owner's rights with respect to the  
2 property;

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

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

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

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

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

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

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

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

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

33 (5) a Department of Housing and Urban Development  
34 approved mortgagee and any subsidiary or affiliate of these

1 persons or entities, and any agent or employee of these  
2 persons or entities, while engaged in the business of these  
3 persons or entities;

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

10 (7) licensees of the Residential Mortgage License Act  
11 of 1987; or

12 (8) licensees under the Consumer Installment Loan Act  
13 who are authorized to make loans secured by real property.

14 "Distressed property purchaser" means any person who  
15 acquires any interest in a distressed property while allowing  
16 the owner to possess, occupy, or retain any present or future  
17 interest in the property, or any person who structures or plans  
18 such a transaction.

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

27 "Person" means any individual, partnership, corporation,  
28 limited liability company, association, or other group or  
29 entity, however organized.

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

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

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

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

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

7 (5) arranging or attempting to arrange for any delay or  
8 postponement of the time of sale of the residence in  
9 foreclosure;

10 (6) advising the filing of any document or assisting in  
11 any manner in the preparation of any document for filing  
12 with any court; or

13 (7) giving any advice, explanation, or instruction to  
14 an owner of a distressed property that in any manner  
15 relates to the cure of a default or forfeiture or to the  
16 postponement or avoidance of sale of the distressed  
17 property.

18 Section 10. Distressed property consultant contract terms.

19 (a) A distressed property consultant contract must be in  
20 writing and must fully disclose the exact nature of the  
21 distressed property consultant's services and the total amount  
22 and terms of compensation.

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

27 "NOTICE REQUIRED BY ILLINOIS LAW

28 .....(name) or anyone working  
29 for him or her CANNOT:

30 (1) Take any money from you or ask you for money until  
31 ..... (Name) has  
32 completely finished doing everything he or she said he or  
33 she would do; or

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

3           (c) A distressed property consultant contract must be  
4 written in the same language as principally used by the  
5 distressed property consultant to describe his or her services  
6 or to negotiate the contract, must be dated and signed by the  
7 owner, and must contain in immediate proximity to the space  
8 reserved for the owner's signature a conspicuous statement in a  
9 size equal to at least 12-point boldface type, as follows:

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

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

- 19           (1) the name and address of the distressed property
- 20           consultant to which the notice of cancellation is to be
- 21           mailed; and
- 22           (2) the date the owner signed the contract.

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

29                           "NOTICE OF CANCELLATION

30                           .....

31                           (Enter date of transaction)

32           You may cancel this transaction, without any penalty or  
33 obligation, at any time until after the distressed property  
34 consultant has fully performed each and every service the

1 distressed property consultant contracted to perform or  
2 represented he or she would perform.

3 To cancel this transaction, mail or deliver a signed and  
4 dated copy of this cancellation notice, or any other written  
5 notice to:

6 .....(Name of distressed property consultant) at  
7 .....(Address of distressed property  
8 consultant's place of business)

9 I hereby cancel this transaction on .....(Date)  
10 .....(Owner's signature)".

11 (f) The distressed property consultant shall provide the  
12 owner with a copy of a distressed property consultant contract  
13 and the attached notice of cancellation immediately upon  
14 execution of the contract.

15 Section 15. Rescission of distressed property consultant  
16 contract.

17 (a) In addition to any other legal right to rescind a  
18 contract, an owner has the right to cancel a distressed  
19 property consultant contract at any time until after the  
20 distressed property consultant has fully performed each  
21 service the distressed property consultant contracted to  
22 perform or represented he or she would perform.

23 (b) Cancellation occurs when the owner gives written notice  
24 of cancellation to the distressed property consultant at the  
25 address specified in the distressed property consultant  
26 contract.

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

33 (d) Notice of cancellation given by the owner need not take

1 the particular form as provided with the distressed property  
2 consultant contract and, however expressed, is effective if it  
3 indicates the intention of the owner not to be bound by the  
4 contract.

5 Section 20. Waiver of a distressed property consultant  
6 contract.

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

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

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

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

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

3 (2) the address of the distressed property;

4 (3) the total consideration to be given by the  
5 foreclosure purchaser in connection with or incident to the  
6 sale;

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

12 (5) a complete description of the terms of any related  
13 agreement designed to allow the owner of the distressed  
14 property to remain in the home such as a rental agreement,  
15 repurchase agreement, contract for deed, or lease with  
16 option to buy;

17 (6) a notice of cancellation as provided in this  
18 Section;

19 (7) the following notice in at least 12-point boldface  
20 type, if the contract is printed, or in capital letters, if  
21 the contract is typed, and completed with the name of the  
22 distressed property purchaser, immediately above the  
23 statement required by this Section:

24 "NOTICE REQUIRED BY ILLINOIS LAW

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

31 (8) if title to the distressed property will be  
32 transferred in the conveyance transaction, the following  
33 notice in at least 14-point boldface type if the contract  
34 is printed, or in capital letters if the contract is typed,



1 and completed with the name of the distressed property  
2 purchaser, immediately above the statement required by  
3 this Section:

4 "NOTICE REQUIRED BY ILLINOIS LAW

5 As part of this transaction, you are giving up title to  
6 your home.".

7 Section 35. Cancellation of a distressed property  
8 conveyance contract.

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

32 (a) The contract must contain in immediate proximity to the

1 space reserved for the owner of the distressed property's  
2 signature a conspicuous statement in a size equal to at least  
3 12-point boldface type, if the contract is printed, or in  
4 capital letters, if the contract is typed, as follows:

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

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

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

24 "NOTICE OF CANCELLATION

25 .....

26 (Enter date contract signed)

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

1 ..... (Enter date and time of  
2 day).

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

6 (c) The distressed property purchaser shall provide the  
7 owner of the distressed property with a copy of the contract  
8 and the attached notice of cancellation immediately at the time  
9 the contract is executed by all parties.

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

16 (e) The 5 business days during which the owner of the  
17 distressed property may cancel the contract shall not begin to  
18 run until all parties to the contract have executed the  
19 contract and the distressed property purchaser has complied  
20 with all the requirements of this Section.

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

30 Section 50. Violations.

31 (a) It is a violation for a distressed property consultant  
32 to:

1           (1) claim, demand, charge, collect, or receive any  
2 compensation until after the distressed property  
3 consultant has fully performed each service the distressed  
4 property consultant contracted to perform or represented  
5 he or she would perform;

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

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

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

18           (5) acquire any interest, directly or indirectly, or by  
19 means of a subsidiary or affiliate in a distressed property  
20 from an owner with whom the distressed property consultant  
21 has contracted;

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

24           (7) induce or attempt to induce an owner to enter a  
25 contract that does not comply in all respects with Sections  
26 10 and 15 of this Act.

27           (b) A distressed property purchaser, in the course of a  
28 distress property conveyance, shall not:

29           (1) enter into, or attempt to enter into, a distressed  
30 property conveyance unless the distressed property  
31 purchaser verifies and can demonstrate that the owner of  
32 the distressed property has a reasonable ability to pay for  
33 the subsequent conveyance of an interest back to the owner  
34 of the distressed property and to make monthly or any other

1 required payments due prior to that time;

2 (2) fail to make a payment to the owner of the  
3 distressed property at the time the title is conveyed so  
4 that the owner of the distressed property has received  
5 consideration in an amount of at least 82% of the fair  
6 market value of the property;

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

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

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

20 (6) do any of the following until after the time during  
21 which the owner of a distressed property may cancel the  
22 transaction:

23 (A) accept from the owner of the distressed  
24 property an execution of any instrument of conveyance  
25 of any interest in the distressed property;

26 (B) induce the owner of the distressed property to  
27 execute an instrument of conveyance of any interest in  
28 the distressed property; or

29 (C) record with the county recorder of deeds any  
30 document signed by the owner of the distressed  
31 property, including but not limited to any instrument  
32 of conveyance;

33 (7) fail to reconvey title to the distressed property  
34 when the terms of the conveyance contract have been

1 fulfilled;

2 (8) induce the owner of the distressed property to  
3 execute a quit claim deed when entering into a distressed  
4 property conveyance;

5 (9) enter into a distressed property conveyance where  
6 any party to the transaction is represented by power of  
7 attorney;

8 (10) fail to extinguish all liens encumbering the  
9 distressed property, immediately following the conveyance  
10 of the distressed property, or fail to assume all liability  
11 with respect to the lien in foreclosure and prior liens  
12 that will not be extinguished by such foreclosure, which  
13 assumption shall be accomplished without violations of the  
14 terms and conditions of the lien being assumed. Nothing  
15 herein shall preclude a lender from enforcing any provision  
16 in a contract that is not otherwise prohibited by law;

17 (11) fail to complete a distressed property conveyance  
18 before a notary in the offices of a title company licensed  
19 by the Department of Financial and Professional  
20 Regulation; or

21 (12) cause the property to be conveyed or encumbered  
22 without the knowledge or permission of the distressed  
23 property owner, or in any way frustrate the ability of the  
24 distressed property owner to complete conveyance.

25 (c) There is a rebuttable presumption that an appraisal by  
26 a person licensed or certified by an agency of this State or  
27 the federal government is an accurate determination of the fair  
28 market value of the property.

29 (d) "Consideration" in item (2) of subsection (b) means any  
30 payment or thing of value provided to the owner of the  
31 distressed property, including reasonable costs paid to  
32 independent third parties necessary to complete the distressed  
33 property conveyance or payment of money to satisfy a debt or  
34 legal obligation of the owner of the distressed property.

1           "Consideration" shall not include amounts imputed as a  
2           downpayment or fee to the distressed property purchaser, or a  
3           person acting in participation with the distressed property  
4           purchaser.

5           (e) An evaluation of "reasonable ability to pay" under  
6           subsection (b)(1) of this Section 50 shall include debt to  
7           income ratio, fair market value of the distressed property, and  
8           the distressed property owner's payment history. There is a  
9           rebuttable presumption that the distressed property purchaser  
10          has not verified reasonable payment ability if the distressed  
11          property purchaser has not obtained documents of assets,  
12          liabilities, and income, other than a statement by the owner of  
13          the distressed property.

14           Section 55. Civil remedies.

15          (a) A violation of any of the provisions of this Act  
16          constitutes an unlawful practice under the Consumer Fraud and  
17          Deceptive Business Practices Act. All remedies, penalties, and  
18          authority granted to the Attorney General or State's Attorney  
19          by the Consumer Fraud and Deceptive Business Practices Act  
20          shall be available to him or her for the enforcement of this  
21          Act.

22          (b) A consumer who suffers loss by reason of any violation  
23          of any provision of this Act may bring a civil action in  
24          accordance with the Consumer Fraud and Deceptive Business  
25          Practices Act to enforce that provision. All remedies and  
26          rights granted to a consumer by the Consumer Fraud and  
27          Deceptive Business Practices Act shall be available to the  
28          consumer bringing such an action. The remedies and rights  
29          provided for in this Act are not exclusive, but cumulative, and  
30          all other applicable claims, including, but not limited to,  
31          those brought under the doctrine of equitable mortgage, are  
32          specifically preserved.

1           Section 60. Criminal mortgage rescue fraud. A person  
2           commits the offense of criminal mortgage rescue fraud when he  
3           or she intentionally violates any provision enumerated in  
4           Section 50 of this Act.

5           Section 65. Criminal penalties. A person who commits the  
6           offense of criminal mortgage rescue fraud is guilty of a Class  
7           2 felony.

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

10           (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

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



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

4 Section 999. Effective date. This Act takes effect January  
5 1, 2007."