

By: Representatives Hines, Norquist, Buck
(5th), Johnson

To: Judiciary A

HOUSE BILL NO. 685

1 AN ACT TO CREATE THE MISSISSIPPI FORECLOSURE RESCUE BUSINESS
2 ACT; TO EXPRESS LEGISLATIVE FINDINGS AND INTENT; TO DEFINE CERTAIN
3 TERMS; TO PROHIBIT CERTAIN ACTS; TO REQUIRE WRITTEN AGREEMENTS
4 REGARDING FORECLOSURE-RELATED RESCUE SERVICES; TO REQUIRE WRITTEN
5 AGREEMENTS REGARDING FORECLOSURE-RELATED TRANSACTIONS; TO PROVIDE
6 A REBUTTABLE PRESUMPTION REGARDING FORECLOSURE-RELATED
7 TRANSACTIONS; TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS ACT; AND
8 FOR RELATED PURPOSES.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 **SECTION 1.** This act shall be known and may be cited as the
11 "Mississippi Foreclosure Rescue Business Act."

12 **SECTION 2.** The Legislature finds that homeowners who are in
13 default on their mortgages, in foreclosure, or at risk of losing
14 their homes due to nonpayment of taxes may be vulnerable to fraud,
15 deception, and unfair dealings with foreclosure-rescue consultants
16 or equity purchasers. The intent of this act is to provide a
17 homeowner with information necessary to make an informed decision
18 regarding the sale or transfer of his or her home to an equity
19 purchaser. It is the further intent of this act to require that
20 foreclosure-related rescue services agreements be expressed in
21 writing in order to safeguard homeowners against deceit and
22 financial hardship; to ensure, foster, and encourage fair dealing
23 in the sale and purchase of homes in foreclosure or default; to
24 prohibit representations that tend to mislead; to prohibit or
25 restrict unfair contract terms; to provide a cooling-off period
26 for homeowners who enter into contracts for services related to
27 saving their homes from foreclosure or preserving their rights to
28 possession of their homes; to afford homeowners a reasonable and
29 meaningful opportunity to rescind sales to equity purchasers; and



30 to preserve and protect home equity for the homeowners of this
31 state.

32 **SECTION 3.** The following words and phrases shall have the
33 meanings ascribed herein, unless the context clearly indicates
34 otherwise:

35 (a) "Equity purchaser" means a person who acquires a
36 legal, equitable, or beneficial ownership interest in any
37 residential real property as a result of a foreclosure-rescue
38 transaction. The term does not apply to a person who acquires the
39 legal, equitable, or beneficial interest in such property:

40 (i) By a certificate of title from a foreclosure
41 sale conducted under a sale of real property under an order or
42 judgment;

43 (ii) At a sale of property authorized by statute;

44 (iii) By order or judgment of any court;

45 (iv) From a spouse, parent, grandparent, child,
46 grandchild, or sibling of the person or the person's spouse; or

47 (v) As a deed in lieu of foreclosure, a workout
48 agreement, a bankruptcy plan, or any other agreement between a
49 foreclosing lender and a homeowner.

50 (b) "Foreclosure-rescue consultant" means a person who
51 directly or indirectly makes a solicitation, representation, or
52 offer to a homeowner to provide or perform, in return for payment
53 of money or other valuable consideration, foreclosure-related
54 rescue services. The term does not apply to:

55 (i) A person excluded under Section 75-24-7.

56 (ii) A person acting under the express authority
57 or written approval of the United States Department of Housing and
58 Urban Development or other department or agency of the United
59 States or this state to provide foreclosure-related rescue
60 services.

61 (iii) A charitable, not-for-profit agency or
62 organization, as determined by the United States Internal Revenue



63 Service under Section 501(c)(3) of the Internal Revenue Code which
64 offers counseling or advice to an owner of residential real
65 property in foreclosure or loan default if the agency or
66 organization does not contract for foreclosure-related rescue
67 services with a for-profit lender or person facilitating or
68 engaging in foreclosure-rescue transactions.

69 (iv) A person who holds or is owed an obligation
70 secured by a lien on any residential real property in foreclosure
71 if the person performs foreclosure-related rescue services in
72 connection with this obligation or lien and the obligation or lien
73 was not the result of or part of a proposed foreclosure
74 reconveyance or foreclosure-rescue transaction.

75 (v) A financial institution which means a state or
76 federal savings or thrift association, bank, savings bank, trust
77 company, international bank agency, international banking
78 organization, international branch, international representative
79 office, international administrative office, or credit union, or
80 an agreement corporation operating pursuant to Section 25 of the
81 Federal Reserve Act, 12 USCS 601 et seq. or Edge Act corporation
82 organized pursuant to Section 25(a) of the Federal Reserve Act, 12
83 USCS 611 et seq.

84 (vi) A licensed mortgage broker or mortgage lender
85 that provides mortgage counseling or advice regarding residential
86 real property in foreclosure, which counseling or advice is within
87 the scope of services set forth in Chapter 494 and is provided
88 without payment of money or other consideration other than a loan
89 origination fee.

90 (vii) An attorney licensed to practice law in this
91 state who provides foreclosure-related rescue services as an
92 ancillary matter to the attorney's representation of a homeowner
93 as a client.



94 (c) "Foreclosure-related rescue services" means any
95 good or service related to, or promising assistance in connection
96 with:

97 (i) Stopping, avoiding, or delaying foreclosure
98 proceedings concerning residential real property; or

99 (ii) Curing or otherwise addressing a default or
100 failure to timely pay with respect to a residential mortgage loan
101 obligation.

102 (d) "Foreclosure-rescue transaction" means a
103 transaction:

104 (i) By which residential real property in
105 foreclosure is conveyed to an equity purchaser and the homeowner
106 maintains a legal or equitable interest in the residential real
107 property conveyed, including, without limitation, a lease option
108 interest, an option to acquire the property, an interest as
109 beneficiary or trustee to a land trust, or other interest in the
110 property conveyed; and

111 (ii) That is designed or intended by the parties
112 to stop, avoid, or delay foreclosure proceedings against a
113 homeowner's residential real property.

114 (e) "Homeowner" means the record title owner of
115 residential real property.

116 (f) "Residential real property" means real property
117 consisting of one-family to four-family dwelling units.

118 (g) "Residential real property in foreclosure" means
119 residential real property against which there is an outstanding
120 notice of the pendency of foreclosure proceedings recorded
121 pursuant to Section 11-47-1 et seq.

122 **SECTION 4.** In the course of offering or providing
123 foreclosure-related rescue services, a foreclosure-rescue
124 consultant may not:



125 (a) Engage in or initiate foreclosure-related rescue
126 services without first executing a written agreement with the
127 homeowner for foreclosure-related rescue services; or

128 (b) Solicit, charge, receive, or attempt to collect or
129 secure payment, directly or indirectly, for foreclosure-related
130 rescue services before completing or performing all services
131 contained in the agreement for foreclosure-related rescue
132 services.

133 **SECTION 5.** (1) The written agreement for
134 foreclosure-related rescue services must be printed in at least
135 12-point uppercase type and signed by both parties. The agreement
136 must include the name and address of the person providing
137 foreclosure-related rescue services, the exact nature and specific
138 detail of each service to be provided, the total amount and terms
139 of charges to be paid by the homeowner for the services, and the
140 date of the agreement. The date of the agreement may not be
141 earlier than the date the homeowner signed the agreement. The
142 foreclosure-rescue consultant must give the homeowner a copy of
143 the agreement to review not less than one (1) business day before
144 the homeowner is to sign the agreement.

145 (2) The homeowner has the right to cancel the written
146 agreement without any penalty or obligation if the homeowner
147 cancels the agreement within three (3) business days after signing
148 the written agreement. The right to cancel may not be waived by
149 the homeowner or limited in any manner by the foreclosure-rescue
150 consultant. If the homeowner cancels the agreement, any payments
151 that have been given to the foreclosure-rescue consultant must be
152 returned to the homeowner within ten (10) business days after
153 receipt of the notice of cancellation.

154 (3) An agreement for foreclosure-related rescue services
155 must contain, immediately above the signature line, a statement in
156 at least 12-point uppercase type that substantially complies with
157 the following:



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HOMEOWNER'S RIGHT OF CANCELLATION

YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED RESCUE SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN THREE (3) BUSINESS DAYS FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY YOU. THE FORECLOSURE-RESCUE CONSULTANT IS PROHIBITED BY LAW FROM ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT FROM YOU UNTIL ALL PROMISED SERVICES ARE COMPLETE. IF FOR ANY REASON YOU HAVE PAID THE CONSULTANT BEFORE CANCELLATION, YOUR PAYMENT MUST BE RETURNED TO YOU NO LATER THAN TEN (10) BUSINESS DAYS AFTER THE CONSULTANT RECEIVES YOUR CANCELLATION NOTICE.

TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED (POSTMARKED) OR DELIVERED TO _____ (NAME) AT _____ (ADDRESS) NO LATER THAN MIDNIGHT OF _____ (DATE).

IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR LENDER OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR LENDER OR MORTGAGE SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR A RESTRUCTURING WITH YOU FREE OF CHARGE.

(4) The inclusion of the statement does not prohibit the foreclosure-rescue consultant from giving the homeowner more time in which to cancel the agreement than is set forth in the statement, provided all other requirements of this subsection are met.

(5) The foreclosure-rescue consultant must give the homeowner a copy of the signed agreement within three (3) hours after the homeowner signs the agreement.

SECTION 6. (1) (a) A foreclosure-rescue transaction must include a written agreement prepared in at least 12-point uppercase type that is completed, signed, and dated by the homeowner and the equity purchaser before executing any instrument from the homeowner to the equity purchaser quitclaiming, assigning, transferring, conveying, or encumbering an interest in



191 the residential real property in foreclosure. The equity
192 purchaser must give the homeowner a copy of the completed
193 agreement within three (3) hours after the homeowner signs the
194 agreement. The agreement must contain the entire understanding of
195 the parties and must include:

196 (i) The name, business address, and telephone
197 number of the equity purchaser.

198 (ii) The street address and full legal description
199 of the property.

200 (iii) Clear and conspicuous disclosure of any
201 financial or legal obligations of the homeowner that will be
202 assumed by the equity purchaser.

203 (iv) The total consideration to be paid by the
204 equity purchaser in connection with or incident to the acquisition
205 of the property by the equity purchaser.

206 (v) The terms of payment or other consideration,
207 including, but not limited to, any services that the equity
208 purchaser represents will be performed for the homeowner before or
209 after the sale.

210 (vi) The date and time when possession of the
211 property is to be transferred to the equity purchaser.

212 (b) A foreclosure-rescue transaction agreement must
213 contain, above the signature line, a statement in at least
214 12-point uppercase type that substantially complies with the
215 following:

216 I UNDERSTAND THAT UNDER THIS AGREEMENT I AM SELLING MY HOME TO THE
217 OTHER UNDERSIGNED PARTY.

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



223 (d) A foreclosure-rescue transaction agreement must
224 comply with all applicable provisions of 15 USCS 1600 et seq. and
225 related regulations.

226 (2) The homeowner may cancel the foreclosure-rescue
227 transaction agreement without penalty if the homeowner notifies
228 the equity purchaser of such cancellation no later than 5:00 p.m.
229 on the third business day after signing the written agreement.
230 Any monies paid by the equity purchaser to the homeowner or by the
231 homeowner to the equity purchaser must be returned at
232 cancellation. The right to cancel does not limit or otherwise
233 affect the homeowner's right to cancel the transaction under any
234 other law. The right to cancel may not be waived by the homeowner
235 or limited in any way by the equity purchaser. The equity
236 purchaser must give the homeowner, at the time the written
237 agreement is signed, a notice of the homeowner's right to cancel
238 the foreclosure-rescue transaction as set forth in this
239 subsection. The notice, which must be set forth on a separate
240 cover sheet to the written agreement that contains no other
241 written or pictorial material, must be in at least 12-point
242 uppercase type, double-spaced, and read as follows:

243 **NOTICE TO THE HOMEOWNER/SELLER**

244 PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. IT CONTAINS
245 VALUABLE INFORMATION REGARDING CANCELLATION RIGHTS.

246 BY THIS CONTRACT, YOU ARE AGREEING TO SELL YOUR HOME. YOU
247 MAY CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. OF THE
248 THIRD BUSINESS DAY FOLLOWING RECEIPT OF THIS NOTICE.

249 THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY
250 YOU OR BY THE PURCHASER.

251 ANY MONEY PAID DIRECTLY TO YOU BY THE PURCHASER MUST BE
252 RETURNED TO THE PURCHASER AT CANCELLATION. ANY MONEY PAID BY YOU
253 TO THE PURCHASER MUST BE RETURNED TO YOU AT CANCELLATION.

254 TO CANCEL, SIGN THIS FORM AND RETURN IT TO THE PURCHASER BY
255 5:00 P.M. ON _____ (DATE) AT _____ (ADDRESS).



256 IT IS BEST TO MAIL IT BY CERTIFIED MAIL OR OVERNIGHT DELIVERY,
257 RETURN RECEIPT REQUESTED, AND TO KEEP A PHOTOCOPY OF THE SIGNED
258 FORM AND YOUR POST OFFICE RECEIPT.

259 I (we) hereby cancel this transaction.

260 _____ Seller's Signature

261 _____ Printed Name of Seller

262 _____ Seller's Signature

263 _____ Printed Name of Seller

264 _____ Date

265 (3) In any foreclosure-rescue transaction in which the
266 homeowner is provided the right to repurchase the residential real
267 property, the homeowner has a thirty-day right to cure any default
268 of the terms of the contract with the equity purchaser, and this
269 right to cure may be exercised on up to three (3) separate
270 occasions. The homeowner's right to cure must be included in any
271 written agreement required by this subsection.

272 (4) In any foreclosure-rescue transaction, before or at the
273 time of conveyance, the equity purchaser must fully assume or
274 discharge any lien in foreclosure as well as any prior liens that
275 will not be extinguished by the foreclosure.

276 (5) If the homeowner has the right to repurchase the
277 residential real property, the equity purchaser must verify and be
278 able to demonstrate that the homeowner has or will have a
279 reasonable ability to make the required payments to exercise the
280 option to repurchase under the written agreement. For purposes of
281 this subsection, there is a rebuttable presumption that the
282 homeowner has a reasonable ability to make the payments required
283 to repurchase the property if the homeowner's monthly payments for
284 primary housing expenses and regular monthly principal and
285 interest payments on other personal debt do not exceed sixty
286 percent (60%) of the homeowner's monthly gross income.

287 (6) If the homeowner has the right to repurchase the
288 residential real property, the price the homeowner pays may not be



289 unconscionable, unfair, or commercially unreasonable. A
290 rebuttable presumption, solely between the equity purchaser and
291 the homeowner, arises that the foreclosure-rescue transaction was
292 unconscionable if the homeowner's repurchase price is greater than
293 seventeen percent (17%) per annum more than the total amount paid
294 by the equity purchaser to acquire, improve, maintain, and hold
295 the property. Unless the repurchase agreement or a memorandum of
296 the repurchase agreement is recorded in accordance with state law,
297 the presumption arising under this subsection shall not apply
298 against creditors or subsequent purchasers for a valuable
299 consideration and without notice.

300 **SECTION 7.** (1) Any foreclosure-rescue transaction involving
301 a lease option or other repurchase agreement creates a rebuttable
302 presumption, solely between the equity purchaser and the
303 homeowner, that the transaction is a loan transaction and the
304 conveyance from the homeowner to the equity purchaser is a
305 mortgage. Unless the lease option or other repurchase agreement,
306 or a memorandum of the lease option or other repurchase agreement,
307 is recorded in accordance with state law, the presumption created
308 under this subsection shall not apply against creditors or
309 subsequent purchasers for a valuable consideration and without
310 notice.

311 (2) For the purpose of this section a mortgage is all
312 conveyances, obligations conditioned or defeasible, bills of sale
313 or other instruments of writing conveying or selling property,
314 either real or personal, for the purpose or with the intention of
315 securing the payment of money, whether such instrument be from the
316 debtor to the creditor or from the debtor to some third person in
317 trust for the creditor, shall be deemed and held mortgages, and
318 shall be subject to the same rules of foreclosure and to the same
319 regulations, restraints and forms as are prescribed in relation to
320 mortgages.



321 (3) Provided, however, that no such conveyance shall be
322 deemed or held to be a mortgage, as against a bona fide purchaser
323 or mortgagee, for value without notice, holding under the grantee.

324 **SECTION 8.** A person who violates any provision of this
325 section commits an unfair and deceptive trade practice as defined
326 in Section 75-24-1 et seq. Violators are subject to the penalties
327 and remedies provided in Section 75-24-1 et seq. including, but
328 not limited to, a monetary penalty not to exceed Fifteen Thousand
329 Dollars (\$15,000.00) per violation.

330 **SECTION 9.** The provisions of this act shall be codified in
331 Chapter 24 of Title 75, Mississippi Code of 1972.

332 **SECTION 10.** This act shall take effect and be in force from
333 and after July 1, 2010.

