

1                   A bill to be entitled  
2           An act relating to mortgage rescue fraud; providing a  
3           short title; providing legislative findings and  
4           declarations; providing intent and purposes; providing  
5           definitions; providing requirements for foreclosure  
6           consultant contracts; providing requirements for notices  
7           of cancellation; providing for rescission of foreclosure  
8           consultant contracts; providing requirements for  
9           foreclosure conveyance contracts; providing for contract  
10          terms; providing requirements for cancellation of  
11          foreclosure conveyance contracts; providing requirements  
12          for notices of cancellation; providing for  
13          unenforceability of waivers of provisions of the act;  
14          providing exceptions; specifying prohibited activities for  
15          foreclosure consultants and foreclosure purchasers;  
16          specifying required activities for foreclosure purchasers;  
17          providing a definition; specifying certain violations as  
18          unlawful practices; providing for remedies under the  
19          Florida Deceptive and Unfair Trade Practices Act;  
20          providing for judgments for damages, attorney fees and  
21          costs, and equitable relief; providing for awards of  
22          damages; providing limitations on certain actions;  
23          specifying the offense of criminal mortgage rescue fraud;  
24          providing criminal penalties; providing for limiting  
25          contract provisions requiring arbitration; providing for  
26          application; providing severability; providing an  
27          effective date.  
28

29 Be It Enacted by the Legislature of the State of Florida:

30

31 Section 1. Short title.--This act may be cited as the  
 32 "Mortgage Rescue Fraud Act."

33 Section 2. Legislative findings; declarations; intent and  
 34 purposes.--

35 (1) The Legislature finds and declares that homeowners who  
 36 are in default on their mortgages, in foreclosure, or at risk of  
 37 losing their homes due to nonpayment of taxes may be vulnerable  
 38 to fraud, deception, and unfair dealing by foreclosure  
 39 consultants or foreclosure purchasers. The rapid escalation of  
 40 home values throughout the state has resulted in a significant  
 41 increase in home equity, which constitutes the greatest  
 42 financial asset held by many homeowners of this state. The  
 43 recent increase in interest rates and property taxes throughout  
 44 the state has placed a financial burden on homeowners and  
 45 resulted in this state's having one of the highest foreclosure  
 46 rates in the country. During the time period between the default  
 47 on the mortgage and the scheduled foreclosure sale date,  
 48 homeowners in financial distress, especially poor, elderly, and  
 49 financially unsophisticated homeowners, are vulnerable to  
 50 aggressive foreclosure consultants and foreclosure purchasers  
 51 who induce homeowners to sell their homes for a fraction of  
 52 their fair market values, or in some cases even sign away their  
 53 homes, through the use of schemes that often involve oral and  
 54 written misrepresentations, deceit, intimidation, and other  
 55 unreasonable commercial practices.

56 (2) The Legislature declares that it is the express policy

57 of this state to preserve and guard the social and economic  
 58 value of homeownership.

59 (3) The intent and purposes of this section are to provide  
 60 the owner of a residence at risk of loss with information  
 61 necessary to make an informed and intelligent decision regarding  
 62 any transaction with a foreclosure consultant or foreclosure  
 63 purchaser; to require that the agreement be expressed in  
 64 writing; to safeguard homeowners against deceit and financial  
 65 hardship; to ensure, foster, and encourage fair dealing in  
 66 consultation and the sale and purchase of residences at risk of  
 67 loss; to prohibit representations that tend to mislead; to  
 68 prohibit or restrict unfair contract terms; to provide a  
 69 cooling-off period for homeowners who enter into covered  
 70 contracts; to afford homeowners a reasonable and meaningful  
 71 opportunity to rescind sales to foreclosure purchasers; and to  
 72 preserve and protect home equity for the homeowners of this  
 73 state.

74 Section 3. Definitions.--For purposes of this act:

75 (1) (a) "Foreclosure consultant" means any person who,  
 76 directly or indirectly, makes any solicitation, representation,  
 77 or offer to any owner to perform for compensation, or who  
 78 performs for compensation, any service that the person  
 79 represents will in any manner accomplish any of the following:

80 1. Stop or postpone the foreclosure sale or the loss of  
 81 the home due to nonpayment of taxes;

82 2. Obtain any forbearance from any beneficiary or  
 83 mortgagee or relief with respect to a tax sale of the property;

84           3. Assist the owner in exercising any right of  
 85 reinstatement or right of redemption;

86           4. Obtain any extension of the period within which the  
 87 owner may reinstate the owner's rights with respect to the  
 88 property;

89           5. Obtain any waiver of an acceleration clause contained  
 90 in any promissory note or contract secured by a mortgage on a  
 91 residence at risk of loss or contained in the mortgage;

92           6. Assist the owner during a foreclosure or loan default  
 93 or a tax certificate redemption period in obtaining a loan or  
 94 advance of funds;

95           7. Avoid or ameliorate the impairment of the owner's  
 96 credit resulting from the filing of a foreclosure or the conduct  
 97 of a foreclosure sale or tax sale; or

98           8. Save the owner's residence from foreclosure or loss  
 99 due to nonpayment of taxes.

100           (b) The term "foreclosure consultant" does not include:

101           1. A person licensed to practice law in this state when  
 102 the person renders service in the course of his or her practice  
 103 as an attorney-at-law.

104           2. A person licensed as a real estate broker or sales  
 105 associate under s. 475.181, Florida Statutes, when the person  
 106 engages in acts the performance of which requires licensure  
 107 under chapter 475, Florida Statutes, unless the person is  
 108 engaged in offering services designed to, or purportedly  
 109 designed to, enable the owner to retain possession of the  
 110 residence in foreclosure.

111           3. A person licensed as a residential mortgage broker  
112 under s. 494.0031, Florida Statutes, or mortgage lender under s.  
113 494.0061, Florida Statutes, when acting under the authority of  
114 that license.

115           4. A person or the person's authorized agent acting under  
116 the express authority or written approval of the United States  
117 Department of Housing and Urban Development.

118           5. A person who holds or is owed an obligation secured by  
119 a lien on any residence at risk of loss when the person performs  
120 services in connection with such obligation or lien if the  
121 obligation or lien did not arise as the result of or part of a  
122 conveyance of the proposed residence at risk of loss.

123           6. Banks, savings banks, savings and loan associations,  
124 and credit unions organized, chartered, or holding a certificate  
125 of authority to do business under the laws of this state or the  
126 United States.

127           7. Mortgagees approved by the United States Department of  
128 Housing and Urban Development, any subsidiary or affiliate of  
129 such persons or entities, and any agent or employee of such  
130 persons or entities while engaged in the business of such  
131 persons or entities.

132           8. An agency or organization meeting the qualifications  
133 of s. 501(c)(3) of the United States Internal Revenue Code and  
134 doing business for not less than 5 years that offers counseling  
135 or advice to an owner of a residence at risk of loss if such  
136 owner does not contract for services with a for-profit lender or  
137 foreclosure purchaser or any person who structures or plans such  
138 contractual transactions.

139           9. A judgment creditor of the owner, to the extent the  
140 judgment creditor's claim accrued prior to the recording of the  
141 lis pendens pursuant to s. 48.23, Florida Statutes, but  
142 excluding a person who purchased the claim after such recording.

143           10. A foreclosure purchaser.

144           (2) "Foreclosure conveyance" means a transaction in which  
145 an owner of a residence at risk of loss transfers an interest in  
146 fee in the property, the acquirer of the property allows the  
147 owner of the property to occupy the property, and the acquirer  
148 of the property or a person acting in participation with the  
149 acquirer of the property conveys or promises to convey an  
150 interest in fee back to the owner or gives the owner an option  
151 to purchase the property at a later date.

152           (3) "Foreclosure purchaser" means any person who acquires  
153 any interest in fee in a residence at risk of loss while  
154 allowing the owner to possess, occupy, or retain any present or  
155 future interest in fee in the property or any person who  
156 participates in a joint venture or joint enterprise involving a  
157 foreclosure conveyance.

158           (4) "Owner" means the record owner of the residential  
159 real property in foreclosure at the time a notice of lis pendens  
160 was recorded or a summons and complaint was served or, when  
161 applicable, at the time the loan on the residential real  
162 property is more than 90 days delinquent or the owner of the  
163 residential real property is subject to loss of ownership due to  
164 nonpayment of taxes.

165           (5) "Person" means any individual, partnership,  
 166 corporation, limited liability company, association, or other  
 167 group, however organized.

168           (6) "Resale" means a bona fide market sale of property  
 169 subject to a foreclosure conveyance by a foreclosure purchaser  
 170 to an unaffiliated third party.

171           (7) "Resale price" means the gross sale price of a  
 172 property for resale.

173           (8) "Residence at risk of loss" means:

174           (a) Residential real property consisting of one to six  
 175 family dwelling units, including condominiums, against which  
 176 there is an outstanding notice of pendency of foreclosure  
 177 recorded pursuant to s. 48.23, Florida Statutes, or against  
 178 which a summons and complaint has been served under chapter 702,  
 179 Florida Statutes, or whose owner is more than 90 days delinquent  
 180 on any loan that is secured by the property; or

181           (b) Residential real property consisting of one to six  
 182 family dwelling units, including condominiums, at risk of loss  
 183 of ownership due to nonpayment of taxes.

184           (9) "Service" means and includes, but is not limited to:

185           (a) Debt, budget, or financial counseling of any type;

186           (b) Receiving money for the purpose of distributing such  
 187 money to creditors in payment or partial payment of any  
 188 obligation secured by a lien on a residence at risk of loss;

189           (c) Contacting creditors on behalf of an owner of a  
 190 residence at risk of loss;

191           (d) Arranging or attempting to arrange for an extension  
 192 of the period within which the owner of a residence at risk of

193 loss may cure the owner's default and reinstate the mortgage or  
 194 redeem his or her obligation pursuant to s. 45.0315, Florida  
 195 Statutes;

196 (e) Arranging or attempting to arrange for any delay or  
 197 postponement of the time of sale of a residence at risk of loss;

198 (f) Advising the filing of any document or assisting in  
 199 any manner in the preparation of any document for filing with  
 200 any bankruptcy court; or

201 (g) Giving any advice, explanation, or instruction to an  
 202 owner of a residence at risk of loss that in any manner relates  
 203 to the cure of a default or forfeiture or to the postponement or  
 204 avoidance of sale of a residence at risk of loss.

205 Section 4. Foreclosure consultant contract requirements.--

206 (1) A foreclosure consultant contract must be in writing;  
 207 must fully disclose, clearly and conspicuously, the exact nature  
 208 of the foreclosure consultant's services and the total amount  
 209 and terms of compensation; and must include:

210 (a) An accurate description of the goods or services  
 211 offered and to be provided by the foreclosure consultant.

212 (b) An accurate description of how the foreclosure  
 213 consultant will assist persons in avoiding or delaying  
 214 foreclosure or curing or otherwise addressing a default.

215 (2) The following notice, in at least 14-point boldfaced  
 216 type if the contract is printed, or in capital letters if the  
 217 contract is typed, must be displayed immediately above the  
 218 statement required by subsection (3):

219

220 NOTICE REQUIRED BY FLORIDA LAW



221  
 222 ...(Name of foreclosure consultant)... or anyone  
 223 working for him or her CANNOT:  
 224 (1) Take any money from you or ask you for money  
 225 until ...(name of foreclosure consultant)... has  
 226 completely finished doing everything he or she said he  
 227 or she would do; or  
 228 (2) Ask you to sign or have you sign any lien,  
 229 mortgage, or deed.  
 230  
 231 (3) The foreclosure consultant contract must be written in  
 232 the same language as principally used by the foreclosure  
 233 consultant to describe his or her services or to negotiate the  
 234 contract, must be dated and signed by the owner of the residence  
 235 at risk of loss, and must contain, in immediate proximity to the  
 236 space reserved for the owner's signature, the following  
 237 conspicuous statement in a size equal to at least 14-point  
 238 boldfaced type if the contract is printed, or in capital letters  
 239 if the contract is typed:  
 240  
 241 You, the owner, may cancel this transaction at any  
 242 time until after the foreclosure consultant has fully  
 243 performed each and every service the foreclosure  
 244 consultant contracted to perform or represented he or  
 245 she would perform. See the attached notice of  
 246 cancellation form for an explanation of this right.  
 247

248       (4) The foreclosure consultant contract and notice of  
 249 cancellation must contain on the first page, in a type size no  
 250 smaller than that generally used in the body of the document,  
 251 each of the following:

252       (a) The name and address of the foreclosure consultant to  
 253 whom the notice of cancellation is to be mailed or otherwise  
 254 delivered. A post office box must be accompanied by a physical  
 255 address at which the notice could be delivered by a method other  
 256 than mail.

257       (b) The date the owner signed the contract.

258       (5) The foreclosure consultant contract must be  
 259 accompanied by a completed form in duplicate, captioned "Notice  
 260 of Cancellation," which must be attached to the contract, must  
 261 be easily detachable, and must contain in at least 14-point  
 262 boldfaced type if the contract is printed, or in capital letters  
 263 if the contract is typed, the following statement written in the  
 264 same language as that used in the contract:

265  
 266                                   NOTICE OF CANCELLATION

267  
 268       ...(Enter date of transaction) (Date)...

269  
 270       You may cancel this transaction, without any penalty  
 271 or obligation, at any time until after the foreclosure  
 272 consultant has fully performed each and every service  
 273 the foreclosure consultant contracted to perform or  
 274 represented he or she would perform.

276 To cancel this transaction, mail or deliver a signed  
 277 and dated copy of this cancellation notice, or any  
 278 other written notice, to:

279  
 280 ...(Name of foreclosure consultant)...

281 ...(Address of foreclosure consultant's place of  
 282 business)...

283  
 284 I hereby cancel this transaction.

285 ...(Date)...

286 ...(Owner's signature)...

287  
 288 (6) The foreclosure consultant shall provide the owner  
 289 with a copy of the contract and the attached notice of  
 290 cancellation immediately upon execution of the contract.

291 (7) If the foreclosure consultant contract fails to  
 292 substantially comply with the provisions of this section, the  
 293 contract is void and unenforceable and any documents signed by  
 294 the owner pursuant to the contract are null and void.

295 Section 5. Rescission of foreclosure consultant  
 296 contracts.--

297 (1) In addition to any other right under law to rescind a  
 298 contract, an owner has the right to cancel a foreclosure  
 299 consultant contract at any time until after the foreclosure  
 300 consultant has fully performed each service the foreclosure  
 301 consultant contracted to perform or represented he or she would  
 302 perform.

303           (2) Cancellation occurs when the owner gives written  
304 notice of cancellation to the foreclosure consultant at the  
305 address specified in the foreclosure consultant contract.

306           (3) Notice of cancellation, if given by mail, is effective  
307 when deposited in the mail properly addressed with postage  
308 prepaid.

309           (4) Notice of cancellation given by the owner need not  
310 take the particular form as provided with the foreclosure  
311 consultant contract and, however expressed, is effective if the  
312 notice indicates the intention of the owner not to be bound by  
313 the contract.

314           Section 6. Foreclosure conveyance contract  
315 requirements.--A foreclosure purchaser shall enter into a  
316 foreclosure conveyance in the form of a written contract. Every  
317 contract must be written in letters of a size equal to at least  
318 14-point boldfaced type, or in capital letters if the contract  
319 is typed, in the same language principally used by the owner to  
320 negotiate the sale of the residence at risk of loss; must be  
321 fully completed, signed, and dated by the owner of the residence  
322 at risk of loss and the foreclosure purchaser; and must be  
323 witnessed and acknowledged by a notary public before the  
324 execution of any instrument of conveyance of the residence at  
325 risk of loss. If the contract fails to substantially comply with  
326 this section and section 7, the contract is void and  
327 unenforceable and any documents signed by the owner pursuant to  
328 the contract are null and void.

329           Section 7. Foreclosure conveyance contract terms.--Each  
330 contract required by section 6 must contain the entire agreement  
331 of the parties and must include:

332           (1) The name, business address, and telephone number of  
333 the foreclosure purchaser.

334           (2) The address of the residence at risk of loss.

335           (3) The total consideration to be given by the foreclosure  
336 purchaser or tax lien payor in connection with or incident to  
337 the sale.

338           (4) A complete description of the terms of payment or  
339 other consideration, including, but not limited to, any services  
340 of any nature that the foreclosure purchaser represents he or  
341 she will perform for the owner of the residence at risk of loss  
342 before or after the sale.

343           (5) The time at which possession is to be transferred to  
344 the foreclosure purchaser.

345           (6) A complete description of the terms of any related  
346 agreement designed to allow the owner of the residence at risk  
347 of loss to remain in the residence, such as a rental agreement,  
348 repurchase agreement, contract for deed, or lease with option to  
349 buy.

350           (7) A notice of cancellation as provided in subsection (2)  
351 of section 9.

352           (8) The following notice in at least 14-point boldfaced  
353 type if the contract is printed, or in capital letters if the  
354 contract is typed, and completed with the name of the  
355 foreclosure purchaser, immediately above the statement required  
356 by subsection (1) of section 9:

357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384

NOTICE REQUIRED BY FLORIDA LAW

Until your right to cancel this contract has ended,  
... (name of foreclosure purchaser) ... or anyone  
working for ... (name of foreclosure purchaser) ...  
CANNOT ask you to sign or have you sign any deed or  
other document. You are urged to have this contract  
reviewed by an attorney of your choice within 5  
business days after signing it.

(9) If title to the residence at risk of loss will be  
transferred in the conveyance transaction, the following notice  
in at least 14-point boldfaced type if the contract is printed,  
or in capital letters if the contract is typed, and completed  
with the name of the foreclosure purchaser, immediately above  
the statement required by this section:

NOTICE REQUIRED BY FLORIDA LAW

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

The contract required by this section survives delivery of any  
instrument of conveyance of the residence in foreclosure and has  
no effect on persons other than the parties to the contract.

Section 8. Cancellation of foreclosure conveyance  
contracts.--

385       (1) In addition to any other right of rescission, the  
 386 owner of a residence at risk of loss has the right to cancel any  
 387 contract with a foreclosure purchaser until midnight of the 5th  
 388 business day following the day on which the owner of the  
 389 residence at risk of loss signs a contract that complies with  
 390 this act or until 8:00 a.m. on the last day of the period during  
 391 which the owner of the residence at risk of loss has a right of  
 392 redemption under s. 45.0315, Florida Statutes, or s. 197.472,  
 393 Florida Statutes, whichever occurs first.

394       (2) Cancellation occurs when the owner of the residence at  
 395 risk of loss delivers, by any means, written notice of  
 396 cancellation to the address specified in the foreclosure  
 397 conveyance contract.

398       (3) A notice of cancellation given by the owner of the  
 399 residence at risk of loss need not take the particular form as  
 400 provided with the foreclosure conveyance contract.

401       (4) Within 10 days following receipt of a notice of  
 402 cancellation given in accordance with this section, the  
 403 foreclosure purchaser shall return without condition any  
 404 original contract and any other documents signed by the owner of  
 405 the residence at risk of loss.

406       Section 9. Notice of cancellation of foreclosure  
 407 conveyance contract.--

408       (1) The contract must contain, in immediate proximity to  
 409 the space reserved for the signature of the owner of the  
 410 residence at risk of loss, a conspicuous statement in a size  
 411 equal to at least 14-point boldfaced type if the contract is

412 printed, or in capital letters if the contract is typed, as  
 413 follows:

415 You may cancel this contract for the sale of your  
 416 house without any penalty or obligation at any time  
 417 before ...(date and time).... See the attached notice  
 418 of cancellation form for an explanation of this right.

419  
 420 The foreclosure purchaser shall accurately enter the date and  
 421 time of day on which the cancellation right ends.

422 (2) The contract must be accompanied by a completed form  
 423 in duplicate, captioned "Notice of Cancellation" in a size equal  
 424 to a 14-point boldfaced type if the contract is printed, or in  
 425 capital letters if the contract is typed, followed by a space in  
 426 which the foreclosure purchaser shall enter the date on which  
 427 the owner of the residence at risk of loss executes any  
 428 contract. This form must be attached to the contract, must be  
 429 easily detachable, and must contain in type of at least 14-point  
 430 boldfaced type if the contract is printed, or in capital letters  
 431 if the contract is typed, the following statement written in the  
 432 same language as that used in the contract:

433  
 434 NOTICE OF CANCELLATION

435  
 436 ...(Date contract signed)...

437  
 438 You may cancel this contract for the sale of your  
 439 house, without any penalty or obligation, at any time



440 before ... (date and time).... To cancel this  
 441 transaction, mail or deliver a signed and dated copy  
 442 of this cancellation notice to ... (name of foreclosure  
 443 purchaser)... at ... (street address of foreclosure  
 444 purchaser's place of business)... NOT LATER THAN  
 445 ... (date and time)....

446  
 447 I hereby cancel this transaction.  
 448 ... (Date)...  
 449 ... (Owner's signature)...

450  
 451 (3) The foreclosure purchaser shall provide the owner of  
 452 the residence at risk of loss with a copy of the contract and  
 453 the attached notice of cancellation at the time the contract is  
 454 executed by all parties.

455 (4) The 5 business days during which the owner of the  
 456 residence at risk of loss may cancel the contract shall not  
 457 begin to run until all parties to the contract have executed the  
 458 contract and the foreclosure purchaser has complied with this  
 459 section.

460 Section 10. Waiver.--Any waiver of the provisions this act  
 461 by an owner of a residence at risk of loss is void and  
 462 unenforceable as contrary to public policy, except that such an  
 463 owner may waive the 5-business-day right to cancel provided in  
 464 section 8 if the property is subject to a foreclosure sale  
 465 within the 5-business-day period, and the owner agrees to waive  
 466 his or her right to cancel in a handwritten statement signed by  
 467 all parties holding title to the residence at risk of loss.

468       Section 11. Prohibited activities.--469       (1) A foreclosure consultant may not:470       (a) Claim, demand, charge, collect, or receive any  
471 compensation until after the foreclosure consultant has fully  
472 performed every service the foreclosure consultant contracted to  
473 perform or represented he or she would perform;474       (b) Claim, demand, charge, collect, or receive for any  
475 reason any fee, interest, or other compensation that exceeds two  
476 monthly mortgage payments of principal and interest or the most  
477 recent tax installment on the residence at risk of loss,  
478 whichever is less;479       (c) Take any wage assignment, a lien of any type on real  
480 or personal property, or any other security to secure the  
481 payment of compensation. Any such security is void and  
482 unenforceable;483       (d) Receive any consideration from any third party in  
484 connection with services rendered to an owner of a residence at  
485 risk of loss unless the consideration is first fully disclosed  
486 to the owner;487       (e) Acquire any interest, directly or indirectly or by  
488 means of a subsidiary or affiliate, in a residence at risk of  
489 loss from an owner of the residence with whom the foreclosure  
490 consultant has contracted;491       (f) Take any power of attorney from an owner for any  
492 purpose, except to inspect documents as provided by law; or493       (g) Induce or attempt to induce any owner to enter into a  
494 contract that does not comply in all respects with this act.

495       (2) A foreclosure purchaser, in the course of a conveyance  
496 of a residence at risk of loss, may not:

497       (a) Enter into, or attempt to enter into, a foreclosure  
498 conveyance with an owner of a residence at risk of loss unless:

499       1. The foreclosure purchaser verifies and can demonstrate  
500 that the owner of the residence at risk of loss has a reasonable  
501 ability to pay for the subsequent conveyance of an interest back  
502 to the owner and to make monthly or any other payments due prior  
503 to that time. In the case of a lease with an option to purchase,  
504 payment ability also includes the reasonable ability to purchase  
505 the property within the term of the option to purchase. There is  
506 a rebuttable presumption that the foreclosure purchaser has not  
507 verified reasonable payment ability if the foreclosure purchaser  
508 has not obtained documents other than a statement by the owner  
509 of assets, liabilities, and income.

510       2. The foreclosure purchaser and the owner of the  
511 residence at risk of loss complete a closing for any foreclosure  
512 conveyance in which the foreclosure purchaser obtains a deed or  
513 mortgage from an owner. For purposes of this section, "closing"  
514 means an in-person meeting to complete final documents incident  
515 to the sale of the real property or creation of a mortgage on  
516 the real property conducted by a person who is not employed by  
517 or an affiliate of the foreclosure purchaser.

518       3. The foreclosure purchaser obtains the written consent  
519 of the owner of the residence at risk of loss to a grant by the  
520 foreclosure purchaser of any interest in the property during  
521 such times as the owner maintains any interest in the property.

522           4. The foreclosure purchaser complies with the  
523 requirements for disclosure, loan terms, and conduct in the  
524 federal Home Ownership Equity Protection Act, 15 U.S.C. s. 1639,  
525 or its implementing regulation, 12 C.F.R. ss. 226.31, 226.32,  
526 and 226.34, for any foreclosure conveyance in which the owner of  
527 a residence at risk of loss obtains a vendee interest in a  
528 contract for deed, regardless of whether the terms of the  
529 contract for deed meet the annual percentage rate or points and  
530 fees requirements for a covered loan in 12 C.F.R. s. 226.32(a)  
531 and (b);

532           (b) Fail to:

533           1. Ensure that title to the subject dwelling has been  
534 conveyed to the owner of the residence at risk of loss;

535           2. Make a payment to the owner of the residence at risk of  
536 loss such that the owner has received consideration in an amount  
537 of at least 82 percent of the fair market value of the property  
538 within 150 days after the eviction or voluntary relinquishment  
539 of possession of the dwelling by the owner. The foreclosure  
540 purchaser shall make a detailed accounting of the basis for the  
541 payment amount, or a detailed accounting of the reasons for  
542 failure to make a payment, including providing written  
543 documentation of expenses, within such 150-day period. The  
544 accounting with documentation attached shall be provided to the  
545 owner of the residence at risk of loss when payment is made. For  
546 purposes of this subparagraph, the following apply:

547           a. There is a rebuttable presumption that an appraisal by  
548 a person licensed or certified by an agency of the Federal

549 Government or this state to appraise real estate constitutes the  
 550 fair market value of the property.

551 b. The time for determining the fair market value shall be  
 552 determined in the foreclosure conveyance contract at the time of  
 553 the execution of the foreclosure conveyance contract or at  
 554 resale. If the contract states that the fair market value shall  
 555 be determined at the time of resale, the fair market value shall  
 556 be the resale price if the property is sold within 120 days  
 557 after the eviction or voluntary relinquishment of the property  
 558 by the owner. If the contract states that the fair market value  
 559 shall be determined at the time of resale and the resale is not  
 560 completed within 120 days after the eviction or voluntary  
 561 relinquishment of the property by the owner, the fair market  
 562 value shall be determined by an appraisal conducted during such  
 563 120-day period, and payment, if required, shall be made to the  
 564 owner of the residence at risk of loss. However:

565 (I) The fair market value shall be recalculated as the  
 566 resale price on resale, and an additional payment amount, if  
 567 appropriate based on the resale price, shall be made to the  
 568 owner of the residence at risk of loss within 15 days after  
 569 resale; and

570 (II) A detailed accounting of the basis for the payment  
 571 amount, or a detailed accounting of the reasons for failure to  
 572 make additional payment, shall be made within 15 days after  
 573 resale, including providing written documentation of expenses.

574 c. The accounting shall be a separate document showing the  
 575 fair market value of the property at the time indicated in the  
 576 foreclosure conveyance contract; showing 82 percent of the fair

HB 835

2008

577 market value; specifying individually all consideration actually  
578 paid; showing amounts and to whom paid; and providing the total  
579 amount to be paid to the owner of the residence at risk of loss,  
580 where appropriate.

581 d.(I) For purposes of this subparagraph, the term  
582 "consideration" means any payment or thing of value provided to  
583 the owner of the residence at risk of loss, including unpaid  
584 rent or contract for deed payments owed by the owner of the  
585 residence at risk of loss prior to the date of eviction or  
586 voluntary relinquishment of the property, reasonable costs paid  
587 to third parties necessary to complete the foreclosure  
588 conveyance transaction, payment of money to satisfy a debt or  
589 legal obligation of the owner of the residence at risk of loss,  
590 or the reasonable cost of repairs for damage to the dwelling  
591 caused by the owner of the residence at risk of loss.

592 (II) The term "consideration" does not include amounts  
593 imputed as a down payment or fee to the foreclosure purchaser,  
594 or a person acting in participation with the foreclosure  
595 purchaser, incident to a contract for deed, lease, or option to  
596 purchase entered into as part of the foreclosure conveyance,  
597 except for reasonable costs paid to third parties necessary to  
598 complete the foreclosure conveyance; or

599 3. Enter into repurchase or lease terms as part of the  
600 subsequent conveyance that are unfair or commercially  
601 unreasonable, or engage in any other unfair or unconscionable  
602 conduct;

603 (c) Represent, directly or indirectly, that:

604 1. The foreclosure purchaser is acting as an advisor or a  
 605 consultant or in any other manner represent that the foreclosure  
 606 purchaser is acting on behalf of the owner of the residence at  
 607 risk of loss;

608 2. The foreclosure purchaser possesses certification,  
 609 registration, or licensure that the foreclosure purchaser does  
 610 not possess;

611 3. The foreclosure purchaser is not a member of a licensed  
 612 profession, if that is untrue; or

613 4. The foreclosure purchaser is assisting the owner of the  
 614 residence at risk of loss in "saving the house," or a  
 615 substantially similar phrase, if the result of the transaction  
 616 will be that the owner of the residence at risk of loss does not  
 617 complete a redemption of the property;

618 (d) Engage in any other conduct or make any other  
 619 statements, directly or by implication, that are false,  
 620 deceptive, or misleading or that are likely to cause confusion  
 621 or misunderstanding, including, but not limited to, statements  
 622 regarding the value of the residence at risk of loss, the amount  
 623 of proceeds the owner of the residence at risk of loss will  
 624 receive after a foreclosure sale, any contract term, or the  
 625 rights or obligations of the owner of the residence at risk of  
 626 loss incident to or arising out of the foreclosure conveyance;  
 627 or

628 (e) Do any of the following until the period during which  
 629 the owner of the residence at risk of loss may cancel the  
 630 transaction has fully expired:

631       1. Accept from the owner of the residence at risk of loss  
 632 an execution of, or induce the owner of the residence at risk of  
 633 loss to execute, any instrument of conveyance of any interest in  
 634 the residence at risk of loss;

635       2. Record in the public records maintained by the clerk of  
 636 the court in the county or counties in which the real property  
 637 is located any document, including, but not limited to, any  
 638 instrument of conveyance, signed by the owner of the residence  
 639 at risk of loss;

640       3. Transfer or encumber, or purport to transfer or  
 641 encumber, any interest in the residence at risk of loss to any  
 642 third party. A grant of any interest or encumbrance is not  
 643 defeated or affected as against a bona fide purchaser or  
 644 encumbrance for value and without notice of a violation of this  
 645 act. Knowledge on the part of any such person or entity that the  
 646 property was residential real property in foreclosure does not  
 647 constitute a notice of a violation of this act. This section  
 648 does not abrogate any duty of inquiry that exists as to rights  
 649 or interests of persons in possession of the residential real  
 650 property in foreclosure; or

651       4. Pay any consideration to the owner of the residence at  
 652 risk of loss.

653       Section 12. Civil remedies.--

654       (1) A violation of this act constitutes an unlawful  
 655 practice under the Florida Deceptive and Unfair Trade Practices  
 656 Act, and all remedies under that act are available for an action  
 657 under that act. An owner of a residence at risk of loss may  
 658 bring an action against a foreclosure consultant or foreclosure



HB 835

2008

659 purchaser for any violation of this act. Judgment must be  
660 entered for actual damages, reasonable attorney fees and costs,  
661 and appropriate equitable relief, including, but not limited to,  
662 the rescission of any deed, mortgage, or other instrument signed  
663 by the owner or foreclosure purchaser. The rights and remedies  
664 provided in this act are cumulative with, and not a limitation  
665 of, any other rights and remedies provided by law. Any action  
666 brought pursuant to this section must be commenced within 4  
667 years from the date of the alleged violation.

668 (2) In addition to any other damages available to an owner  
669 of a residence at risk of loss:

670 (a) For a violation of paragraph (1) (a), paragraph (1) (b),  
671 or paragraph (1) (d) of section 11, the court may award damages  
672 up to one and one-half times the compensation charged by the  
673 foreclosure consultant if the court finds that the foreclosure  
674 consultant's conduct was in bad faith.

675 (b) For a violation of the provisions of subsection (2) of  
676 section 11, the court may award damages no less than one and  
677 one-half times the actual damages.

678 (3) Notwithstanding any other provision of this section,  
679 no action may be brought on the basis of a violation of this act  
680 except by an owner against whom the violation was committed or  
681 by the attorney general.

682 Section 13. Criminal mortgage rescue fraud; penalties.--A  
683 person commits the offense of criminal mortgage rescue fraud  
684 when he or she intentionally violates any provision of section  
685 11. A person who engages in any activity that constitutes  
686 criminal mortgage rescue fraud commits a felony of the third

HB 835

2008

687 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
688 775.084, Florida Statutes.

689 Section 14. Liability.--

690 (1) Any provision in a contract that attempts or purports  
691 to require arbitration of any dispute arising under this act is  
692 void at the option of the owner.

693 (2) This section applies to any foreclosure consultant  
694 contract or foreclosure conveyance contract entered into on or  
695 after October 1, 2008.

696 Section 15. Severability.--If any provision of this act or  
697 its application to any person or circumstance is held invalid,  
698 the invalidity does not affect other provisions or applications  
699 of the act which can be given effect without the invalid  
700 provision or application, and to this end the provisions of this  
701 act are declared severable.

702 Section 16. This act shall take effect October 1, 2008.