

ASK THE ADVOCATE

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SAVING YOUR HOME

Are you facing the threat of losing your home? Experts say that millions of people are at risk of losing their homes because of predatory loans, job loss, divorce, medical reasons, and death. Be wary of individuals and companies offering to rescue you out of your difficult financial situation.

These companies advertise over the Internet and in local publications, plaster posters on telephone poles, and stick flyers in your front door. These foreclosure rescue consultants get your attention by promising that they can "Stop Foreclosure Now." Just how does the scheme work?

In some cases, the person tells you that he can make a deal with your lender to save your house if you pay a fee first. You may be told not to speak to your lender, lawyer or credit counselor, and to let the "consultant" negotiate the details. Once you pay the fee, the swindler takes off with your money.

In another case, the scam artist offers to "buy" your property by satisfying the amount that is overdue on your loan. He convinces you to move out and deed the property over to a third party. You are given the option of renting the property with the option to buy it back later. The rent payment on the home is often higher than you can afford. When you cannot make the rent payment you face eviction from your home. Or, if you express a desire to buy back the property, the scam artist fixes the price of the home higher than you can afford.

Your dilemma can even go further. In some cases, the initial mortgage has not been paid off and the deed was never turned over, as promised. Not only are you looking at an eviction from your home, but you still owe for the original loan amount. Some schemers will offer to complete paperwork for you, or ask you to sign a mass of papers, supposedly to acquire a new mortgage. You might even discover that they signed a quit-claim deed to your house.

In these cases, you face a real risk of your losing money, equity, home, or all three.

Recently, a consumer protection law was passed by the Florida Legislature to protect you against unscrupulous foreclosure rescue scam artists.

The new law, called the Foreclosure Rescue Fraud Prevention Act of 2008, Florida Statute Section 501.1377, took effect October 1, 2008. The law prohibits foreclosure rescue consultants from initiating services without first executing a written agreement with the homeowner; or collecting or securing payment before completing or performing all agreed upon services.

For homeowners who secure services from foreclosure-rescue consultants, the law provides that:

- The nature and specific details of a foreclosure-related rescue services agreement must be expressed in writing in 12-point upper case type;
- The homeowner must be given one business day to review the agreement prior to signing; the homeowner must be given 3-business day right to cancel without penalty, which may not be waived by either party;
- The date of the agreement must not be earlier than the date that the homeowner signs;
- The consultant must return any payments received from the homeowner within 10 days after receipt of a notice of cancellation; and
- The notice of cancellation must be printed immediately above the signature line in 12-point upper case type in a specified format.

If a homeowner conducts business with an equity purchaser, the new law provides that:

- The nature and entire understanding of the transaction be expressed in writing in 12-point upper case type completed and executed by the parties prior to encumbering or conveying an interest in the residence in foreclosure;
- The homeowner must receive a copy of the completed agreement within 3 hours after signing;
- The transaction agreement must state the specifications of any option or right to repurchase the property in foreclosure and must comply with applicable federal regulations;
- A homeowner may cancel without penalty with notification by 5:00 PM on the third business day after signing the agreement; any money paid by the equity purchaser to the homeowner or by the homeowner to the equity purchaser must be returned at cancellation;
- The right to cancel may not be waived by either party (at the time an agreement is signed, a notice of the homeowner's right to cancel is provided);

- A homeowner with a right to repurchase the property has a thirty day right to cure any default on three separate occasions (this right must be included in the written agreement);
- An equity purchaser fully assumes or discharges any liens (an equity purchaser must verify and demonstrate that a homeowner with a right to repurchase has the ability to make the required payments in order to exercise the repurchase option);
- A rebuttable presumption exists that the homeowner has a reasonable ability to make the required payments to repurchase the property, provided the homeowner's monthly expenses do not exceed sixty percent of the homeowner's monthly gross income;
- The price to repurchase must not be unreasonable (a rebuttable presumption arises between the equity purchaser and the homeowner if the repurchase price is greater than 17% per annum more than the total amount paid by the equity purchase, except under certain circumstances).
- There is a rebuttable presumption that any lease-option in the foreclosure-rescue transaction is a loan and mortgage, which means that the leasee cannot be displaced from the house without going through the judicial foreclosure process.

Any foreclosure rescue consultant who violates any provisions of the law commits an unfair and deceptive trade practice subject to fines up to \$15,000.00.

If you are having trouble paying your mortgage or who have received a foreclosure notice you should contact your lender immediately. They may be able to negotiate a new payment schedule. Legitimate help is available through the Homeownership Preservation Foundation (HPF), a nonprofit organization that operates the national 24/7 toll-free hotline (1-888-995-HOPE) with free, bilingual, personalized assistance to help at-risk homeowners avoid foreclosure. To learn more, visit www.ftc.gov/bcp/edu/pubs/consumer/credit/cre42.shtm