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MORTGAGE RESCUE FRAUD PREVENTION ACT

SENATE BILL 2349

Senator Collins – Rep. Colvin

Effective Date: January 1, 2007

The Issue

Home foreclosures are on the rise in Illinois, due in part to the explosive growth of predatory mortgage lending. According to the National Training and Information Center, mortgage foreclosure filings in Cook County jumped from 8,006 to 17,248 between 1996 and 2002. After dropping slightly in 2003 and 2004, filings were projected to hit a record high of 17,600 in 2005.

The self-styled “mortgage rescue” industry has grown in direct proportion to the number of homes that are at risk of foreclosure. Although mortgage rescuers promise to save the homes of financially distressed homeowners, they too often add insult to injury, either by charging exorbitant fees for services never rendered or by stripping the equity from the property and leaving the homeowners with nothing.

The Mortgage Rescue Fraud Prevention Act targets the two most common types of mortgage rescue schemes:

- **Distressed property consultants** offer phantom help to homeowners in distress, typically promising to “buy them time” or “save the home” by negotiating with the homeowners’ creditors. In exchange for a fee that ranges from $1,000 to $2,500, the distressed property consultant does little or nothing, and essentially abandons the homeowner to a fate that might have been prevented with professional intervention.

- **Distressed property purchasers** lead homeowners to sign over the deed to their property by telling them they can stay in their home and pay rent until they get back on their feet financially. Many homeowners do not realize they are selling their home to the “rescuer,” and most receive no financial benefit from the transaction, even when their equity in the property is greater than what they owe. Commonly, the homeowners’ rental payments are much higher than their mortgage payments. Using a variety of devices, the “rescuer” ultimately strips the home of its equity, often by selling it to a third party, and the homeowner ends up facing eviction.

The Mortgage Rescue Fraud Prevention Act provides protections to homeowners such as:

Distressed Property Consultant Protections

- Distressed property consultants must provide homeowners with a written contract listing all services.
- The consultant contract must contain a right to cancel at any time.
- The consultant cannot receive any compensation until all services have been performed.

Distressed Property Purchaser Protections

- Distressed property purchasers must provide homeowners with a written contract that lists the terms of the sale and makes it clear that the home is actually being sold.
- The homeowner has the right to cancel the sales contract for five business days after it is signed.
- Prior to sale, the purchaser must make a determination that the homeowner has the ability to make rental payments *and* to buy the home back.
- The purchaser may purchase the distressed property for less than 82% fair market value, as long as the transaction results in the homeowner’s buying the home back as initially promised.
- <u>The purchaser must pay the homeowner 82% of the home’s fair market value</u> if the homeowner is ultimately unable to buy the home back.
- A homeowner who remains in the home under a rental agreement has the right to cancel the rental agreement at any time.
- The purchaser must record the purchase contract with the county recorder of deeds, so that any subsequent purchaser is put on notice.
- A violation of this Act is a violation of the Consumer Fraud Act. Distressed property purchasers in violation of the Act are subject to criminal penalties as well.