

111TH CONGRESS
1ST SESSION

H. R. 1231

To protect the property and security of homeowners who are subject to foreclosure proceedings, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 2009

Ms. MOORE of Wisconsin (for herself and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To protect the property and security of homeowners who are subject to foreclosure proceedings, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Foreclosure Rescue
5 Fraud Act of 2009”.

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act, the following definitions
8 shall apply:

1 (1) COMMISSION.—The term “Commission”
2 means the Federal Trade Commission.

3 (2) FORECLOSURE CONSULTANT.—The term
4 “foreclosure consultant”—

5 (A) means a person who makes any solici-
6 tation, representation, or offer to a homeowner
7 facing foreclosure on residential real property to
8 perform, for gain, or who performs, for gain,
9 any service that such person represents will pre-
10 vent, postpone, or reverse the effect of such
11 foreclosure; and

12 (B) does not include—

13 (i) an attorney licensed to practice law
14 in the State in which the property is lo-
15 cated who has established an attorney-cli-
16 ent relationship with the homeowner;

17 (ii) a person licensed as a real estate
18 broker or salesperson in the State where
19 the property is located, and such person
20 engages in acts permitted under the licen-
21 sure laws of such State;

22 (iii) a housing counseling agency ap-
23 proved by the Secretary;

1 (iv) a depository institution (as de-
2 fined in section 3 of the Federal Deposit
3 Insurance Act (12 U.S.C. 1813));

4 (v) a Federal credit union or a State
5 credit union (as defined in section 101 of
6 the Federal Credit Union Act (12 U.S.C.
7 1752)); or

8 (vi) an insurance company organized
9 under the laws of any State.

10 (3) HOMEOWNER.—The term “homeowner”,
11 with respect to residential real property for which an
12 action to foreclose on the mortgage or deed of trust
13 on such real property is filed, means the person
14 holding record title to such property as of the date
15 on which such action is filed.

16 (4) LOAN SERVICER.—The term “loan servicer”
17 has the same meaning as the term “servicer” in sec-
18 tion 6(i)(2) of the Real Estate Settlement Proce-
19 dures Act of 1974 (12 U.S.C. 2605(i)(2)).

20 (5) RESIDENTIAL MORTGAGE LOAN.—The term
21 “residential mortgage loan” means any loan pri-
22 marily for personal, family, or household use that is
23 secured by a mortgage, deed of trust, or other equiv-
24 alent consensual security interest on a dwelling (as
25 defined in section 103(v) of the Truth in Lending

1 Act (15 U.S.C. 1602(v)) or residential real estate
2 upon which is constructed or intended to be con-
3 structed a dwelling (as so defined).

4 (6) RESIDENTIAL REAL PROPERTY.—The term
5 “residential real property” has the meaning given
6 the term “dwelling” in section 103 of the Consumer
7 Credit Protection Act (15 U.S.C. 1602).

8 (7) SECRETARY.—The term “Secretary” means
9 the Secretary of Housing and Urban Development.

10 **SEC. 3. MORTGAGE RESCUE FRAUD PROTECTION.**

11 (a) LIMITS ON FORECLOSURE CONSULTANTS.—A
12 foreclosure consultant may not—

13 (1) claim, demand, charge, collect, or receive
14 any compensation from a homeowner for services
15 performed by such foreclosure consultant with re-
16 spect to residential real property until such fore-
17 closure consultant has fully performed each service
18 that such foreclosure consultant contracted to per-
19 form or represented would be performed with respect
20 to such residential real property;

21 (2) hold any power of attorney from any home-
22 owner, except to inspect documents, as provided by
23 applicable law;

24 (3) receive any consideration from a third party
25 in connection with services rendered to a homeowner

1 by such third party with respect to the foreclosure
2 of residential real property, unless such consider-
3 ation is fully disclosed, in a clear and conspicuous
4 manner, to such homeowner in writing before such
5 services are rendered;

6 (4) accept any wage assignment, any lien of any
7 type on real or personal property, or other security
8 to secure the payment of compensation with respect
9 to services provided by such foreclosure consultant
10 in connection with the foreclosure of residential real
11 property; or

12 (5) acquire any interest, directly or indirectly,
13 in the residence of a homeowner with whom the fore-
14 closure consultant has contracted.

15 (b) CONTRACT REQUIREMENTS.—

16 (1) WRITTEN CONTRACT REQUIRED.—Notwith-
17 standing any other provision of law, a foreclosure
18 consultant may not provide to a homeowner a service
19 related to the foreclosure of residential real prop-
20 erty—

21 (A) unless—

22 (i) a written contract for the purchase
23 of such service has been signed and dated
24 by the homeowner; and

1 (ii) such contract complies with the
2 requirements described in paragraph (2);
3 and

4 (B) before the end of the 3-business-day
5 period beginning on the date on which the con-
6 tract is signed.

7 (2) TERMS AND CONDITIONS OF CONTRACT.—
8 The requirements described in this paragraph, with
9 respect to a contract, are as follows:

10 (A) The contract includes, in writing—

11 (i) a full and detailed description of
12 the exact nature of the contract and the
13 total amount and terms of compensation;

14 (ii) the name, physical address, phone
15 number, e-mail address, and facsimile
16 number, if any, of the foreclosure consult-
17 ant to whom a notice of cancellation can be
18 mailed or sent under subsection (d); and

19 (iii) a conspicuous statement in at
20 least 12-point boldface type in immediate
21 proximity to the space reserved for the
22 homeowner's signature on the contract
23 that reads as follows: "You may cancel this
24 contract without penalty or obligation at
25 any time before midnight of the 3rd busi-

1 ness day after the date on which you sign
2 the contract. See the attached notice of
3 cancellation form for an explanation of this
4 right.”.

5 (B) The contract is written in the principal
6 language used to solicit or market the services
7 to the homeowner.

8 (C) The contract is accompanied by the
9 form required by subsection (c)(2).

10 (c) RIGHT TO CANCEL CONTRACT.—

11 (1) IN GENERAL.—With respect to a contract
12 between a homeowner and a foreclosure consultant
13 regarding the foreclosure on the residential real
14 property of such homeowner, such homeowner may
15 cancel such contract without penalty or obligation by
16 mailing a notice of cancellation not later than mid-
17 night of the 3rd business day after the date on
18 which such contract is executed or would become en-
19 forceable against the parties to such contract.

20 (2) CANCELLATION FORM AND OTHER INFOR-
21 MATION.—Each contract described in paragraph (1)
22 shall be accompanied by a form, in duplicate, that—

23 (A) has the heading “Notice of Cancell-
24 tion” in boldface type; and

1 (B) contains in boldface type the following
2 statement:

3 “You may cancel this contract, without any
4 penalty or obligation, at any time before midnight of
5 the 3rd day after the date on which the contract is
6 signed by you.

7 “To cancel this contract, mail or deliver a
8 signed and dated copy of this cancellation notice or
9 any other equivalent written notice to [insert name
10 of foreclosure consultant] at [insert address of fore-
11 closure consultant] before midnight on [insert date].

12 “I hereby cancel this transaction on [insert
13 date] [insert homeowner signature].”

14 (d) WAIVER OF RIGHTS AND PROTECTIONS PROHIB-
15 ITED.—

16 (1) IN GENERAL.—A waiver by a homeowner of
17 any protection provided by this section or any right
18 of a homeowner under this section—

19 (A) shall be treated as void; and

20 (B) may not be enforced by any Federal or
21 State court or by any person.

22 (2) ATTEMPT TO OBTAIN A WAIVER.—Any at-
23 tempt by any person to obtain a waiver from any
24 homeowner of any protection provided by this sec-

1 tion or any right of the homeowner under this sec-
2 tion shall be treated as a violation of this section.

3 (3) **CONTRACTS NOT IN COMPLIANCE.**—Any
4 contract that does not comply with the applicable
5 provisions of this Act shall be void and may not be
6 enforceable by any party.

7 **SEC. 4. WARNINGS TO HOMEOWNERS OF FORECLOSURE**
8 **RESCUE SCAMS.**

9 (a) **IN GENERAL.**—If a loan servicer finds that a
10 homeowner has failed to make 2 consecutive payments on
11 a residential mortgage loan and such loan is at risk of
12 being foreclosed upon, the loan servicer shall notify such
13 homeowner of the dangers of fraudulent activities associ-
14 ated with foreclosure.

15 (b) **NOTICE REQUIREMENTS.**—Each notice provided
16 under subsection (a) shall—

17 (1) be in writing;

18 (2) be included with a mailing of account infor-
19 mation;

20 (3) have the heading “Notice Required by Fed-
21 eral Law” in a 14-point boldface type in English
22 and Spanish at the top of such notice; and

23 (4) contain the following statement in English
24 and Spanish: “Mortgage foreclosure is a complex
25 process. Some people may approach you about sav-

1 ing your home. You should be careful about any
2 such promises. There are government and nonprofit
3 agencies you may contact for helpful information
4 about the foreclosure process. Contact your lender
5 immediately at [____], call the Department of
6 Housing and Urban Development Housing Coun-
7 seling Line at (800) 569-4287 to find a housing
8 counseling agency certified by the Department to as-
9 sist you in avoiding foreclosure, or visit the Depart-
10 ment's Tips for Avoiding Foreclosure website at
11 <http://www.hud.gov/foreclosure> for additional assist-
12 ance." (the blank space to be filled in by the loan
13 servicer and successor telephone numbers and Uni-
14 form Resource Locators (URLs) for the Department
15 of Housing and Urban Development Housing Coun-
16 seling Line and Tips for Avoiding Foreclosure
17 website, respectively.).

18 **SEC. 5. CIVIL LIABILITY.**

19 (a) IN GENERAL.—Any foreclosure consultant who
20 fails to comply with any provision of section 3 or 4 with
21 respect to any other person shall be liable to such person
22 in an amount equal to the greater of—

23 (1) the amount of any actual damage sustained
24 by such person as a result of such failure; or

1 (2) any amount paid by the person to the fore-
2 closure consultant.

3 (b) ATTORNEYS' FEES.—In the case of any success-
4 ful action to enforce any liability under subsection (a), the
5 foreclosure consultant shall also be liable to the person in
6 an amount equal to the costs of the action, together with
7 reasonable attorneys' fees.

8 **SEC. 6. ADMINISTRATIVE ENFORCEMENT.**

9 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
10 SION.—

11 (1) UNFAIR OR DECEPTIVE ACT OR PRAC-
12 TICE.—A violation of a prohibition described in sec-
13 tion 3 or a failure to comply with any provision of
14 section 3 or 4 shall be treated as a violation of a
15 rule defining an unfair or deceptive act or practice
16 promulgated under section 18(a)(1)(B) of the Fed-
17 eral Trade Commission Act (15 U.S.C.
18 57a(a)(1)(B)).

19 (2) ACTIONS BY THE FEDERAL TRADE COMMIS-
20 SION.—The Federal Trade Commission shall enforce
21 the provisions of sections 3 and 4 in the same man-
22 ner, by the same means, and with the same jurisdic-
23 tion, powers, and duties as though all applicable
24 terms and provisions of the Federal Trade Commis-

1 sion Act (15 U.S.C. 41 et seq.) were incorporated
2 into and made part of this Act.

3 (b) STATE ACTION FOR VIOLATIONS.—

4 (1) AUTHORITY OF STATES.—In addition to
5 such other remedies as are provided under State
6 law, whenever the chief law enforcement officer of a
7 State, or an official or agency designated by a State,
8 has reason to believe that any person has violated or
9 is violating the provisions of section 3 or 4, the
10 State—

11 (A) may bring an action to enjoin such vio-
12 lation in any appropriate United States district
13 court or any other court of competent jurisdic-
14 tion;

15 (B) may bring an action on behalf of its
16 residents to recover damages for which the per-
17 son is liable to such residents under section 5
18 as a result of the violation; and

19 (C) in the case of any successful action
20 under subparagraph (A) or (B), shall be award-
21 ed the costs of the action.

22 (2) RIGHTS OF FEDERAL TRADE COMMIS-
23 SION.—

24 (A) NOTICE TO COMMISSION.—The State
25 shall serve prior written notice of any civil ac-

1 tion under paragraph (1) upon the Commission
2 and provide the Commission with a copy of its
3 complaint, except in any case in which such
4 prior notice is not feasible, in which case the
5 State shall serve such notice immediately upon
6 instituting such action.

7 (B) INTERVENTION.—The Commission
8 shall have the right—

9 (i) to intervene in any action referred
10 to in subparagraph (A);

11 (ii) upon so intervening, to be heard
12 on all matters arising in the action;

13 (iii) to remove the action to the appro-
14 priate United States district court; and

15 (iv) to file petitions for appeal in such
16 actions.

17 (3) INVESTIGATORY POWERS.—For purposes of
18 bringing any action under this subsection, nothing in
19 this subsection shall prevent the chief law enforce-
20 ment officer, or an official or agency designated by
21 a State, from exercising the powers conferred on the
22 chief law enforcement officer or such official by the
23 laws of such State to conduct investigations or to
24 administer oaths or affirmations, or to compel the

1 attendance of witnesses or the production of docu-
2 mentary and other evidence.

3 (4) LIMITATION.—Whenever the Federal Trade
4 Commission has instituted a civil action for a viola-
5 tion of section 3 or 4, no State may, during the
6 pendency of such action, bring an action under this
7 section against any defendant named in the com-
8 plaint of the Commission for any violation of section
9 3 or 4 that is alleged in that complaint.

10 **SEC. 7. PREEMPTION.**

11 No provision of this Act shall be construed as affect-
12 ing any provision of State or local law respecting any fore-
13 closure consultant, residential mortgage loan, or residen-
14 tial real property that provides equal or greater protection
15 to homeowners than what is provided under this Act.

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