

REAL PROPERTY, PROBATE and TRUST LAW SECTION
OF THE FLORIDA BAR

COMMITTEE and LIAISON REPORT
TO EXECUTIVE COUNCIL ON MAY 28, 2011
AT
THE EDEN ROC RENAISSANCE HOTEL
MIAMI BEACH, FLORIDA

Name of Committee/Liaison: Professionalism and Ethics Committee

Report or Description of Attached Materials:

Ethics Skit Scenario and Related Background Information

Report Submitted By: Lawrence J. Miller, Vice Chair, Professionalism and Ethics Committee

Riding the Wave

The Framework: After considerable reading on the latest national foreclosure statistics and the state of the real estate industry in Florida, attorney Ray Diator decides to refocus his “still to recover” Gator Heights transactional real estate practice, known as “Forever Dirt Lawyers.” Ray will refocus his practice on mortgage foreclosure and he believes that he will be able to generate far more revenue and at the same time lend a hand to those in need. Ray decides that he will start with retooling his website and then move into networking with other like minded professionals. His business plan includes working with third parties who can assist in guiding clients to Ray and his newly focused emphasis on mortgage foreclosure assistance. Ray reviews his plan with his retired law partner, “Gray” Shades. Gray, who no longer maintains his license in Florida, will assist Ray in the refocus efforts.

The Website: To facilitate their plan, Ray will retool his website and start by changing his office’s descriptive name on the website from “Forever Dirt Lawyers” to “The Foreclosure Justice Team.” Ray hires a consulting firm, signs a contract for them to assist him in the retooling efforts and reviews and approves their plan to change the website and the way in which Ray’s services are presented on the website. Specifically, Ray’s website is now to be aimed at those in dire foreclosure straits and is intended to appeal to those less fortunate who are in need of foreclosure defense, short sales, workouts, and the like. Ray’s website is not passed by or through the Florida Bar nor is the content prepared with knowledge of Florida Bar advertising Requirements. Those clients that are secured through the website will be “signed up” by Ray, but he wishes to use the services of Never Pay Your Mortgage Again, Inc., for certain matters connected to his representation. The clients will pay that company for such service.

Gray’s Efforts: While the website is being retooled, Gray has formed a new Florida corporation in which he and Ray are shareholders. The corporation, “Never Pay Your Mortgage Again, Inc.” is to advertise its services as a mortgage and foreclosure assistance company with expertise in workouts and foreclosures and with “access” to attorneys with experience and expertise in the subject area in and around greater Gator Heights. The new company will be using, among other methods, direct mail solicitation of customers (called clients) who are defendants in foreclosure actions. In that Gray is not active in the law, he does not know of the registration requirements for mortgage assistance companies. The Gray/Ray

plan is to then refer these company customers to Ray's refocused law firm, The Foreclosure Justice Team. The plan includes Gray's preparation of brochures and advertising materials that mention The Foreclosure Justice Team and Ray Diator. The intention is for the customer/client to hire the company, pay the company some form of consideration and for the company to refer the client/customer to Ray. Ray will then provide mortgage related assistance. Ray does not intend to sign engagements with these referrals.

The Client: Juana B. Guided, a mortgage foreclosure defendant in Gator Heights, receives a direct mail solicitation from Never Pay Your Mortgage Again, Inc. ("NPYMA"). She contacts the company as well as reads about their affiliation with the Foreclosure Justice Team. She also contacts Ray directly. In the end, Juana finds it is cheaper to hire the company than Ray. She engages NPYMA to assist her, pays the company for assistance and ends up being counseled in part by Ray and in part by Gray.

Script, Materials and Actors: The script will follow the above problem, with materials including a simplified problem outline, the Florida Bar advisory on the subject, several rules and the Supreme Court's latest proposed amendments to the advertising rules. The actors (the "Ethics Shmethics Players") are as of now, Peggy Rolando, Michael Gelfand, Robert Freedman, with Larry Miller as the narrator.

**ETHICS ALERT:
PROVIDING LEGAL SERVICES TO DISTRESSED HOMEOWNERS**

The Florida Bar's Ethics Hotline has received numerous calls from lawyers who have been contacted by non-lawyers seeking to set up an arrangement in which the lawyers are involved in loan modifications, short sales, and other foreclosure-related rescue services on behalf of distressed homeowners. These non-lawyers include mortgage brokers, realtors, financial management advisors, foreclosure "consultants" and others who engage in foreclosure related rescue services or other similar services. Non-lawyers have proposed a variety of agreements, even offering to hire lawyers as "in-house counsel" to provide services to the non-lawyer's customers. The Foreclosure Rescue Act, Section 501.1377, Florida Statutes, went into effect October 1, 2008 and imposed restrictions on non-lawyer loan modifiers to protect distressed homeowners. The legislature later enacted new registration and licensing standards for private businesses offering loan modification services to homeowners, effective January 1, 2010, in Chapter 494, Florida Statutes. These statutes appear to be the impetus for these inquiries.

Lawyers should be wary of these proposals, as many violate the ethics rules and may subject the lawyer to discipline. Florida Bar members:

- Cannot pay a referral fee or give anything of value to a non-lawyer for referring distressed homeowners to the lawyer. [Rule 4-7.2(c)(14)]
- Cannot directly or indirectly divide fees with a non-lawyer. [Rule 4-5.4(a)]
- Cannot assist in the unauthorized practice of law by:
 - providing legal services for a distressed homeowner while employed as in-house counsel for a non-lawyer company;
 - forming a company with a non-lawyer to perform foreclosure related services if any of the services are the practice of law; or
 - assisting a non-lawyer individual or company in providing services that the individual or company is not authorized to provide or are otherwise illegal.

[Rule 4-5.5(a)]

- Cannot assist a non-lawyer in violating the provisions of the Foreclosure Rescue Act, Section 501.1377, Florida Statutes. [Rule 4-8.4(d)]
- Cannot directly contact distressed homeowners to offer representation (including by telephone or facsimile) and cannot allow someone else to directly contact distressed homeowners on the lawyer's behalf. [Rules 4-7.4(a) and 4-8.4(a)]

- Cannot accept referrals from non-lawyers acting in the guise of a “lawyer referral service” (legitimate lawyer referral services must comply with a rule which requires all advertisements and contact with prospective clients to be in compliance with the attorney advertising rules, in addition to other requirements) [Rule 4-7.10]
- Must have a direct relationship with distressed homeowners who hire the lawyer for representation. [Rules 4-1.1, 4-1.2 and 4-1.4]
- Cannot allow a non-lawyer to choose a lawyer for a distressed homeowner or direct a lawyer’s representation of a distressed homeowner. [Rules 4-1.1, 4-1.2, 4-1.4, and 4-5.5(a)]
- Cannot allow a non-lawyer who pays for a lawyer to represent another to direct the lawyer or affect the lawyer’s independent professional judgment in providing legal services to the client [Rules 4-1.8(f) and 4-5.4(d)]

Several ethics opinions, Opinions 92-3 and 95-1 in particular, discuss similar proposals and the ethics problems that arise when lawyers enter business arrangements with non-attorneys. These opinions can be accessed on the Florida Bar’s website by selecting “ethics opinions” then “list of Florida Ethics Opinions by number.”

State statutes and federal rules impose restrictions on providers of foreclosure rescue and/or loan modification services. Although The Florida Bar cannot provide legal advice, lawyers should be aware of and comply with the requirements of state and federal law. State statutes prohibit accepting advance fees and require registration of service providers. There are exceptions for lawyers, but only under specific circumstances. *See* Florida Statutes, Sections 501.1377 and 494.00115(1)(d). The Federal Trade Commission has adopted a rule on Mortgage Assistance Relief Services (MARS). The rule bans providers of mortgage foreclosure rescue and loan modification services from collecting fees *until* homeowners accept a written offer from their lender or servicer. There is an exception for lawyers who meet specific requirements **and** who place their fees into a trust account. This rule effectively bans nonrefundable fees in Florida in these cases, because nonrefundable fees cannot be placed into a trust account under the Rules Regulating The Florida Bar. *See* Rule 5-1.1(a)(1) and Florida Ethics Opinion 93-2.

This alert does not address every potential problem or concern. Lawyers should not assume that conduct is permissible merely because it is not listed above. If you are a Florida Bar member with specific questions about your own conduct related to this type of situation, you should contact The Florida Bar Ethics Hotline at (800) 235-8619.

This alert also does not address the issue of what conduct by non-lawyers is permissible. Questions regarding whether conduct of non-lawyers constitutes the unlicensed practice of law should be directed to The Florida Bar Unlicensed Practice of Law Department at (850) 561-5840.

This alert does not address whether a lawyer is subject to the registration and licensing provisions of Chapter 494. Lawyers with questions about whether they are subject to an exemption should contact the Office of Financial Regulation at (850) 410-9896. Information is also available on the Office of Financial Regulation website at www.flofr.com.

Updated April 2011

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Attorneys acting as "Foreclosure-Rescue Consultants"

In October 2008, the Legislature enacted Florida Statute 501.1377, most commonly referred to as the "Foreclosure Rescue Statute," to protect consumers by requiring that foreclosure rescue companies complete their services before charging the consumer a fee. Additionally, the statute provides specific language for the contract that each and every foreclosure rescue company is required to use.

Among other things, the contract protects the consumer by providing valuable information regarding the three-day right to cancel the contract and a recommendation that the homeowner contact his or her lender before signing any agreement with a foreclosure rescue company. The statute also provides for penalties of up to \$15,000 per violation.

Lawyers should be wary of businesses that ask them to participate in or facilitate foreclosure-related rescue transactions. In July 2008, the Attorney General granted Florida attorneys an exclusion from the definition of a foreclosure-rescue consultant "when such person provides legal representation to a client with respect to a foreclosure."

Because of numerous questions surrounding an attorney's "exclusion" from the definition of a foreclosure-rescue consultant, The Florida Bar issued an [Ethics Alert: Providing Legal Services to Distressed Homeowners](#)



detailing the ethical restrictions imposed upon attorneys as they relate to various proposals from non-lawyers.

Effective July 1, 2009, the statute was amended to clarify the attorney exclusion. Currently, the exclusion applies if the attorney is "licensed to practice law in this state" and if the attorney "provides foreclosure related rescue services as an ancillary matter to the attorney's representation of a homeowner as a client." Simply put, an

attorney is not exempt if the attorney represents a client homeowner solely for foreclosure-related rescue services; to be excluded from the statutory requirements, the attorney must be providing legal representation to the homeowner directly and any foreclosure-related rescue services provided by the attorney to the homeowner client must be secondary or in addition to the client's underlying legal matter. For questions regarding whether the attorney exemption applies, review The Florida Bar's Ethics Alert on "Providing Legal Services to Distressed Homeowners."

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Federal Trade Commission: Authority Enhanced

- Effective March 11, 2009, the [Federal Trade Commission](#) (FTC) obtained enhanced authority to obtain penalties and more expeditious rulemaking authority through the 2009 Omnibus Appropriations Act, as cited in testimony before Congress on March 24, 2009. [FTC Testifies on Efforts to Protect Consumers of Financial Services; Urges New Tools for Stronger Enforcement Authority](#) news release.
- The [FTC will enforce the Federal Reserve Board's new Truth in Lending Act and Home Ownership and Equity Protection Act rules](#) that prohibit a variety of unfair, deceptive, and abusive home mortgage advertising, lending, appraisal and servicing practices, which generally take effect in October 2009.
- Violation of such rules will be a violation of a trade regulation rule allowing the FTC to obtain civil penalties for violations.

The 2009 Omnibus Appropriations Act directed the FTC to begin rulemaking to prohibit unfair and deceptive acts and practices with respect to mortgage loans. H.R. 1105 was signed by President Obama on March 11, 2009.

The [FTC Issues Final Rule to Protect Struggling Homeowners from Mortgage Relief Scams](#)

[announced Nov. 19, 2010](#), by the Federal Trade Commission bans mortgage foreclosure rescue and loan modification services from collecting fees until homeowners have a written offer from their lender or servicer that they decide is acceptable. The rule is in

response to bogus operations that falsely claim that, for a fee, they will negotiate with the consumer's mortgage lender or servicer to obtain a loan modification, a short sale, or other relief from foreclosure. Many of these operations pretend to be affiliated with the government and government housing assistance programs. The new rule prohibits mortgage relief companies from making any false or misleading claims about their services, including claims about:

- The likelihood of consumers getting the results they seek;
- The company's affiliation with government or private entities;
- The consumer's payment and other mortgage obligations;
- The company's refund and cancellation policies;
- Whether the company has performed the services it promised;
- Whether the company will provide legal representation to consumers;
- The availability or cost of any alternative to for-profit mortgage assistance relief services;
- The amount of money a consumer will save by using their services; or
- The cost of the services.

In addition, the rule bars mortgage relief companies from telling consumers to stop communicating with their lenders or servicers. Companies also must have reliable evidence to back up any claims they make about the benefits, performance, or effectiveness of the services they provide.

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Attorney exemption

Attorneys are generally exempt from the rule if they meet three conditions: they are engaged in the practice of law, they are licensed in the state where the consumer or the dwelling is located, and they are complying with state laws and regulations governing attorney conduct. To be exempt from the advance fee ban, attorneys must meet a fourth requirement – they must place any fees they collect in a client trust account and abide by state laws and regulations covering such accounts.

All provisions of the rule except the advance-fee ban will become

effective Dec. 29. The advance-fee ban provisions became effective Jan. 31, 2011.

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Additional information

Prepared statement of the Federal Trade Commission on "[Consumer Credit and Debt: The Role of the Federal Trade Commission in Protecting the Public](#)"



before the House Committee on Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection, U.S. House Of Representatives, Washington, D.C., March 24, 2009.

[Truth in Lending; Final Rule](#)



, 73 Fed. Reg. 44,522. July 30, 2008.

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[Revised: 03-18-2011]

The Florida Senate

2010 Florida Statutes (including Special Session A)

<u>TITLE XXXIII</u> REGULATION OF TRADE, COMMERCE, INVESTMENTS, AND SOLICITATIONS	<u>CHAPTER 494</u> LOAN ORIGINATORS AND MORTGAGE BROKERS	<u>VIEW ENTIRE CHAPTER</u>
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494.00115 Exemptions. —

(1) The following are exempt from regulation under this part and parts II and III of this chapter.

(a) Any person operating exclusively as a registered loan originator in accordance with the S.A.F.E.

Mortgage Licensing Act of 2008.

(b) A depository institution; subsidiaries that are owned and controlled by a depository institution and regulated by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, or the Federal Deposit Insurance Corporation; or institutions regulated by the Farm Credit Administration.

(c) The Federal National Mortgage Association; the Federal Home Loan Mortgage Corporation; any agency of the Federal Government; any state, county, or municipal government; or any quasi-governmental agency that acts in such capacity under the specific authority of the laws of any state or the United States.

(d) An attorney licensed in this state who negotiates the terms of a mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client.

(e) A person involved solely in the extension of credit relating to the purchase of a timeshare plan, as that term is defined in 11 U.S.C. s. 101(53D).

(2) The following persons are exempt from regulation under part III of this chapter:

(a) A person acting in a fiduciary capacity conferred by the authority of a court.

(b) A person who, as a seller of his or her own real property, receives one or more mortgages in a purchase money transaction.

(c) A person who acts solely under contract and as an agent for federal, state, or municipal agencies for the purpose of servicing mortgage loans.

(d) A person who makes only nonresidential mortgage loans and sells loans only to institutional investors.

(e) An individual making or acquiring a mortgage loan using his or her own funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.

(f) An individual selling a mortgage that was made or purchased with that individual's funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.

(3) It is not necessary to negate any of the exemptions provided in this section in any complaint, information, indictment, or other writ or proceeding brought under ss. 494.001-494.0077. The burden of establishing the right to an exemption is on the party claiming the benefit of the exemption.

History. — s. 4, ch. 2009-241.

The Florida Senate

2010 Florida Statutes (including Special Session A)

TITLE XXXIII REGULATION OF TRADE, COMMERCE, INVESTMENTS, AND SOLICITATIONS	CHAPTER 501 CONSUMER PROTECTION	VIEW ENTIRE CHAPTER
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501.1377 Violations involving homeowners during the course of residential foreclosure proceedings.—

(1) **LEGISLATIVE FINDINGS AND INTENT.**—The Legislature finds that homeowners who are in default on their mortgages, in foreclosure, or at risk of losing their homes due to nonpayment of taxes may be vulnerable to fraud, deception, and unfair dealings with foreclosure-rescue consultants or equity purchasers. The intent of this section is to provide a homeowner with information necessary to make an informed decision regarding the sale or transfer of his or her home to an equity purchaser. It is the further intent of this section to require that foreclosure-related rescue services agreements be expressed in writing in order to safeguard homeowners against deceit and financial hardship; to ensure, foster, and encourage fair dealing in the sale and purchase of homes in foreclosure or default; to prohibit representations that tend to mislead; to prohibit or restrict unfair contract terms; to provide a cooling-off period for homeowners who enter into contracts for services related to saving their homes from foreclosure or preserving their rights to possession of their homes; to afford homeowners a reasonable and meaningful opportunity to rescind sales to equity purchasers; and to preserve and protect home equity for the homeowners of this state.

(2) **DEFINITIONS.**—As used in this section, the term:

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

1. By a certificate of title from a foreclosure sale conducted under chapter 45;
2. At a sale of property authorized by statute;
3. By order or judgment of any court;
4. From a spouse, parent, grandparent, child, grandchild, or sibling of the person or the person’s spouse;

or

5. As a deed in lieu of foreclosure, a workout agreement, a bankruptcy plan, or any other agreement between a foreclosing lender and a homeowner.

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

1. A person excluded under s. [501.212](#).
2. A person acting under the express authority or written approval of the United States Department of Housing and Urban Development or other department or agency of the United States or this state to provide foreclosure-related rescue services.
3. A charitable, not-for-profit agency or organization, as determined by the United States Internal Revenue Service under s. 501(c)(3) of the Internal Revenue Code, which offers counseling or advice to an owner of residential real property in foreclosure or loan default if the agency or organization does not contract for foreclosure-related rescue services with a for-profit lender or person facilitating or engaging in foreclosure-rescue transactions.
4. A person who holds or is owed an obligation secured by a lien on any residential real property in foreclosure if the person performs foreclosure-related rescue services in connection with this obligation or lien and the obligation or lien was not the result of or part of a proposed foreclosure reconveyance or foreclosure-rescue transaction.

5. A financial institution as defined in s. [655.005](#) and any parent or subsidiary of the financial institution or of the parent or subsidiary.

6. A licensed mortgage broker or mortgage lender that provides mortgage counseling or advice regarding residential real property in foreclosure, which counseling or advice is within the scope of services set forth in chapter 494 and is provided without payment of money or other consideration other than a loan origination fee.

7. An attorney licensed to practice law in this state who provides foreclosure rescue-related services as an ancillary matter to the attorney's representation of a homeowner as a client.

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

1. Stopping, avoiding, or delaying foreclosure proceedings concerning residential real property; or
2. Curing or otherwise addressing a default or failure to timely pay with respect to a residential mortgage loan obligation.

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

1. By which residential real property in foreclosure is conveyed to an equity purchaser and the homeowner maintains a legal or equitable interest in the residential real property conveyed, including, without limitation, a lease option interest, an option to acquire the property, an interest as beneficiary or trustee to a land trust, or other interest in the property conveyed; and
2. That is designed or intended by the parties to stop, avoid, or delay foreclosure proceedings against a homeowner's residential real property.

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

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

(g) "Residential real property in foreclosure" means residential real property against which there is an outstanding notice of the pendency of foreclosure proceedings recorded pursuant to s. 48.23.

(3) PROHIBITED ACTS.—In the course of offering or providing foreclosure-related rescue services, a foreclosure-rescue consultant may not:

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

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

(4) FORECLOSURE-RELATED RESCUE SERVICES; WRITTEN AGREEMENT.—

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

(b) The homeowner has the right to cancel the written agreement without any penalty or obligation if the homeowner cancels the agreement within 3 business days after signing the written agreement. The right to cancel may not be waived by the homeowner or limited in any manner by the foreclosure-rescue consultant. If the homeowner cancels the agreement, any payments that have been given to the foreclosure-rescue consultant must be returned to the homeowner within 10 business days after receipt of the notice of cancellation.

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

HOMEOWNER'S RIGHT OF CANCELLATION

YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED RESCUE SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 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 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.

(d) 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.

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

(5) FORECLOSURE-RESCUE TRANSACTIONS; WRITTEN AGREEMENT. —

(a)1. 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 the residential real property in foreclosure. The equity purchaser must give the homeowner a copy of the completed agreement within 3 hours after the homeowner signs the agreement. The agreement must contain the entire understanding of the parties and must include:

- a. The name, business address, and telephone number of the equity purchaser.
- b. The street address and full legal description of the property.
- c. Clear and conspicuous disclosure of any financial or legal obligations of the homeowner that will be assumed by the equity purchaser.
- d. The total consideration to be paid by the equity purchaser in connection with or incident to the acquisition of the property by the equity purchaser.
- e. The terms of payment or other consideration, including, but not limited to, any services that the equity purchaser represents will be performed for the homeowner before or after the sale.
- f. The date and time when possession of the property is to be transferred to the equity purchaser.

2. A foreclosure-rescue transaction agreement must contain, above the signature line, a statement in at least 12-point uppercase type that substantially complies with the following:

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

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

4. A foreclosure-rescue transaction agreement must comply with all applicable provisions of 15 U.S.C. ss. 1601 et seq. and related regulations.

(b) The homeowner may cancel the foreclosure-rescue transaction agreement without penalty if the homeowner notifies the equity purchaser of such cancellation no later than 5 p.m. on the 3rd business day after signing the written agreement. Any moneys 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 does not limit or otherwise affect the homeowner's right to cancel the transaction under any other law. The right to cancel may not be waived by the homeowner or limited in any way by the equity purchaser. The equity purchaser must give the homeowner, at the time the written agreement is signed, a notice of the homeowner's right to cancel the foreclosure-rescue transaction as set forth in this subsection. The notice, which must be set forth on a separate cover sheet to the written agreement that contains no other written or pictorial material, must be in at least 12-point uppercase type, double-spaced, and read as follows:

NOTICE TO THE HOMEOWNER/SELLER

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

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

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

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

TO CANCEL, SIGN THIS FORM AND RETURN IT TO THE PURCHASER BY 5:00 P.M. ON (DATE) AT (ADDRESS). IT IS BEST TO MAIL IT BY CERTIFIED MAIL OR OVERNIGHT DELIVERY, RETURN RECEIPT REQUESTED, AND TO KEEP A PHOTOCOPY OF THE SIGNED FORM AND YOUR POST OFFICE RECEIPT.

I (we) hereby cancel this transaction.

Seller's Signature
Printed Name of Seller
Seller's Signature
Printed Name of Seller
Date

(c) In any foreclosure-rescue transaction in which the homeowner is provided the right to repurchase the residential real property, the homeowner has a 30-day right to cure any default of the terms of the contract with the equity purchaser, and this right to cure may be exercised on up to three separate occasions. The homeowner's right to cure must be included in any written agreement required by this subsection.

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

(e) If the homeowner has the right to repurchase the residential real property, the equity purchaser must verify and be able to demonstrate that the homeowner has or will have a reasonable ability to make the

required payments to exercise the option to repurchase under the written agreement. For purposes of this subsection, there is a rebuttable presumption that the homeowner has a reasonable ability to make the payments required to repurchase the property if the homeowner's monthly payments for primary housing expenses and regular monthly principal and interest payments on other personal debt do not exceed 60 percent of the homeowner's monthly gross income.

(f) If the homeowner has the right to repurchase the residential real property, the price the homeowner pays may not be unconscionable, unfair, or commercially unreasonable. A rebuttable presumption, solely between the equity purchaser and the homeowner, arises that the foreclosure-rescue transaction was unconscionable if the homeowner's repurchase price is greater than 17 percent per annum more than the total amount paid by the equity purchaser to acquire, improve, maintain, and hold the property. Unless the repurchase agreement or a memorandum of the repurchase agreement is recorded in accordance with s. 695.01, the presumption arising under this subsection shall not apply against creditors or subsequent purchasers for a valuable consideration and without notice.

(6) **REBUTTABLE PRESUMPTION.**—Any foreclosure-rescue transaction involving a lease option or other repurchase agreement creates a rebuttable presumption, solely between the equity purchaser and the homeowner, that the transaction is a loan transaction and the conveyance from the homeowner to the equity purchaser is a mortgage under s. 697.01. Unless the lease option or other repurchase agreement, or a memorandum of the lease option or other repurchase agreement, is recorded in accordance with s. 695.01, the presumption created under this subsection shall not apply against creditors or subsequent purchasers for a valuable consideration and without notice.

(7) **VIOLATIONS.**—A person who violates any provision of this section commits an unfair and deceptive trade practice as defined in part II of this chapter. Violators are subject to the penalties and remedies provided in part II of this chapter, including a monetary penalty not to exceed \$15,000 per violation.

History.—s. 1, ch. 2008-79; ss. 62, 63, ch. 2009-241; s. 112, ch. 2010-5.