



House of Representatives

General Assembly

File No. 468

January Session, 2007

House Bill No. 5222

House of Representatives, April 11, 2007

The Committee on Planning and Development reported through REP. FELTMAN of the 6th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING FORECLOSURE PROTECTION FOR HOMEOWNERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2007*) As used in this section
2 and sections 2 to 8, inclusive, of this act:

3 (1) "Foreclosure consultant" means a person who:

4 (A) Solicits or contacts a homeowner in writing, in person or
5 through any electronic or telecommunications medium and directly or
6 indirectly makes a representation or offer to perform any service that
7 the person represents shall: (i) Stop, enjoin, delay, void, set aside,
8 annul, stay or postpone a foreclosure sale; (ii) obtain forbearance from
9 any servicer, beneficiary or mortgagee; (iii) assist the homeowner to
10 exercise a right of reinstatement provided in the loan documents or to
11 refinance a loan that is in foreclosure and for which notice of
12 foreclosure proceedings has been published; (iv) obtain an extension of
13 the period within which the homeowner may reinstate the

14 homeowner's obligation or extend the deadline to object to a
15 ratification; (v) obtain a waiver of an acceleration clause contained in
16 any promissory note or contract secured by a mortgage on a residence
17 in foreclosure or contained in the mortgage; (vi) assist the homeowner
18 to obtain a loan or advance of funds; (vii) avoid or ameliorate the
19 impairment of the homeowner's credit resulting from the filing of an
20 order to docket or a petition to foreclose or the conduct of a foreclosure
21 sale; (viii) save the homeowner's residence from foreclosure; (ix)
22 purchase or obtain an option to purchase the homeowner's residence
23 not more than twenty days after an advertised or docketed foreclosure
24 sale; (x) arrange for the homeowner to become a lessee or renter
25 entitled to continue to reside in the homeowner's residence; (xi)
26 arrange for the homeowner to have an option to repurchase the
27 homeowner's residence; or (xii) engage in any documentation, grant,
28 conveyance, sale, lease, trust or gift by which the homeowner clogs the
29 homeowner's equity of redemption in the homeowner's residence; or

30 (B) Systematically contacts owners of property that court records or
31 newspaper advertisements show are in foreclosure or in danger of
32 foreclosure.

33 (2) "Foreclosure consulting contract" means a written, oral or
34 equitable agreement between a foreclosure consultant and a
35 homeowner for the provision of any foreclosure consulting service or
36 foreclosure reconveyance.

37 (3) "Foreclosure consulting service" means services that provide for:
38 (A) Receiving money for the purpose of distributing it to creditors in
39 payment or partial payment of any obligation secured by a lien on a
40 residence in foreclosure; (B) contacting creditors on behalf of a
41 homeowner; (C) arranging or attempting to arrange for an extension of
42 the period within which a homeowner may cure the homeowner's
43 default and reinstate the homeowner's obligation; (D) arranging or
44 attempting to arrange for any delay or postponement of the sale of a
45 residence in foreclosure; (E) arranging or facilitating the purchase of a
46 homeowner's equity of redemption or legal or equitable title not later

47 than twenty days after an advertised or docketed foreclosure sale; (F)
48 arranging or facilitating any transaction through which a homeowner
49 will become a lessee, optionee, life tenant, partial homeowner or
50 vested or contingent remainderman of the homeowner's residence; (G)
51 arranging or facilitating the sale of a homeowner's residence or the
52 transfer of legal title, in any form, to another party as an alternative to
53 foreclosure; (H) arranging for a homeowner to have an option to
54 repurchase the homeowner's residence after a sale or transfer; (I)
55 arranging for or facilitating a homeowner remaining in the
56 homeowner's residence as a tenant, renter or lessee; or (J) arranging or
57 facilitating any other grant, conveyance, sale, lease, trust or gift by
58 which a homeowner clogs the homeowner's equity of redemption in
59 the homeowner's residence.

60 (4) "Foreclosure purchaser" means a person who acquires title or
61 possession of a deed or other document to a residence in foreclosure as
62 a result of a foreclosure reconveyance.

63 (5) "Foreclosure reconveyance" means a transaction involving: (A)
64 The transfer of title to real property by a homeowner during or
65 incident to a proposed foreclosure proceeding, either by transfer of
66 interest from the homeowner to another party or by creation of a
67 mortgage, trust or other lien or encumbrance during the foreclosure
68 process that allows the acquirer to obtain legal or equitable title to all
69 or part of the property; and (B) the subsequent conveyance, or promise
70 of a subsequent conveyance, of an interest back to the homeowner by
71 the acquirer or a person acting in participation with the acquirer that
72 allows the homeowner to possess the real property following the
73 completion of the foreclosure proceeding, including an interest in a
74 contract for deed, purchase agreement, land installment sale, contract
75 for sale, option to purchase, lease, trust or other contractual
76 arrangement.

77 (6) "Foreclosure surplus acquisition" means a transaction involving
78 the transfer, sale or assignment of the surplus remaining and due the
79 homeowner based on the audit account during a foreclosure

80 proceeding.

81 (7) "Foreclosure surplus purchaser" means a person who acts as the
82 acquirer by assignment, purchase, grant or conveyance of the surplus
83 resulting from a foreclosure sale and includes a person who acts in
84 joint venture or joint enterprise with one or more acquirers.

85 (8) "Homeowner" means the record owner of a residence in
86 foreclosure.

87 (9) "Residence in foreclosure" means residential real property
88 consisting of not more than four single-family dwelling units, one of
89 which is occupied by the owner as the individual's principal place of
90 residence, and against which an order to docket or a petition to
91 foreclose has been filed.

92 Sec. 2. (NEW) (*Effective October 1, 2007*) (a) Except as provided in
93 subsection (b) of this section, the provisions of this section and sections
94 3 to 8, inclusive, of this act shall not apply to: (1) An individual
95 admitted to practice law in the state, while performing any activity
96 related to the individual's regular practice of law; (2) a person who
97 holds or is owed an obligation secured by a lien on any residence in
98 foreclosure while the person performs services in connection with the
99 obligation or lien, if the obligation or lien did not arise as a result of a
100 foreclosure reconveyance; (3) a person doing business under any law
101 of this state or the United States regulating banks, trust companies,
102 savings and loan associations, credit unions or insurance companies,
103 while the person performs services as a part of the person's normal
104 business activities; (4) any subsidiary, affiliate or agent of such person,
105 while the subsidiary, affiliate or agent performs services as a part of
106 the subsidiary's, affiliate's or agent's normal business activities; (5) a
107 judgment creditor of the homeowner, if the judgment creditor's claim
108 accrued before the written notice of foreclosure sale is sent; (6) a title
109 insurer authorized to conduct business in the state, while performing
110 title insurance and settlement services; (7) a title insurance producer
111 licensed in the state, while performing services in accordance with
112 such person's license; (8) a person licensed as a mortgage broker or

113 mortgage lender under sections 36a-485 to 36a-498a, inclusive, of the
114 general statutes, while acting under the authority of such license; (9) a
115 person licensed as a real estate broker, associate real estate broker or
116 real estate salesperson under section 20-312 of the general statutes
117 while such person engages in any activity for which the person is
118 licensed as long as any conveyance or transfer of deed, title or
119 establishment of equitable interest is done through a settlement, as
120 defined in subdivision (5) of subsection (a) of section 6 of this act; or
121 (10) a nonprofit organization that solely offers counseling or advice to
122 homeowners in foreclosure or loan default, if the organization is not
123 directly or indirectly related to and does not contract for services with
124 for-profit lenders or foreclosure purchasers.

125 (b) The provisions of sections 2 to 8, inclusive, of this act shall not
126 apply to a person who is functioning in a position listed under
127 subsection (a) of this section or is engaging in activities or providing
128 services designed or intended to transfer title to a residence in
129 foreclosure directly or indirectly to that individual, or an agent or
130 affiliate of that individual.

131 Sec. 3. (NEW) (*Effective October 1, 2007*) (a) A foreclosure consulting
132 contract shall (1) be provided to the homeowner for review before
133 signing; (2) be printed in at least twelve-point type and written in the
134 same language that is used by the homeowner and was used in
135 discussions with the foreclosure consultant to describe the consultant's
136 services or to negotiate the contract; (3) fully disclose the exact nature
137 of the foreclosure consulting services to be provided, including any
138 foreclosure reconveyance that may be involved and the total amount
139 and terms of any compensation to be received by the foreclosure
140 consultant or anyone working in association with the consultant; (4) be
141 dated and personally signed by the homeowner and the foreclosure
142 consultant and be witnessed and acknowledged by a notary public
143 appointed and commissioned by the state; and (5) contain the
144 following notice, printed in at least fourteen-point boldface type,
145 completed with the name of the foreclosure consultant and located in
146 immediate proximity to the space reserved for the homeowner's

147 signature:

148 "NOTICE REQUIRED BY CONNECTICUT LAW

149 (Name) or anyone working for him or her CANNOT ask you to
150 sign or have you sign any lien, mortgage or deed as part of signing this
151 agreement unless the terms of the transfer are specified in this
152 document and you are given a separate explanation of the precise
153 nature of the transaction.

154 (Name) or anyone working for him or her CANNOT guarantee
155 you that they will be able to refinance your home or arrange for you to
156 keep your home. Continue making mortgage payments until a
157 refinancing, if applicable, is approved.

158 If a transfer of the deed or title to your property is involved in any
159 way, you may rescind the transfer any time not later than three days
160 after the date you sign the deed or other document of sale or transfer.
161 See the attached Notice of Rescission form for an explanation of this
162 right. As part of any rescission, you must repay, within sixty days, any
163 money spent on your behalf as a result of this agreement, along with
164 interest calculated at the rate of eight per cent per year.

165 THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD
166 RESULT IN THE LOSS OF YOUR HOME. CONTACT AN
167 ATTORNEY BEFORE SIGNING."

168 (b) The contract shall contain on the first page, in at least twelve-
169 point type size, the name and address of the foreclosure consultant to
170 which the notice of cancellation is to be mailed and the date the
171 homeowner signed the contract.

172 (c) The contract shall be accompanied by a completed form in
173 duplicate, captioned "NOTICE OF RESCISSION". Such notice shall be
174 on a separate sheet of paper attached to the contract and be detachable;
175 and shall contain the following statement printed in at least fifteen-
176 point type:

177 "NOTICE OF RESCISSION

178 (Date of contract)

179 You may cancel or rescind this contract, without any penalty, at any
180 time.

181 If you want to end this contract, mail or deliver a signed and dated
182 copy of this Notice of Rescission, or any other written notice indicating
183 your intent to rescind to (name of foreclosure consultant) at
184 (address of foreclosure consultant, including facsimile and electronic
185 mail).

186 As part of any rescission, you (the homeowner) must repay any
187 money spent on your behalf as a result of this agreement, within sixty
188 days, along with interest calculated at the rate of eight per cent per
189 year.

190 THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD
191 RESULT IN THE LOSS OF YOUR HOME. CONTACT AN
192 ATTORNEY BEFORE SIGNING.

193 NOTICE OF RESCISSION

194 TO: (name of foreclosure consultant)

195 (address of foreclosure consultant, including facsimile and
196 electronic mail)

197 I hereby rescind this contract.

198 (Date)

199 (Homeowner's signature)".

200 (d) The foreclosure consultant shall provide the homeowner with a
201 signed and dated copy of the contract and the attached Notice of
202 Rescission immediately upon execution of the contract.

203 (e) The time during which the homeowner may rescind the contract

204 shall not begin to run until the foreclosure consultant has complied
205 with the provisions of this section.

206 (f) Any provision in a foreclosure consulting contract that attempts
207 or purports to waive any of the rights specified in sections 2 to 8,
208 inclusive, of this act, consent to jurisdiction for litigation or choice of
209 law in a state other than this state, consent to venue in a county other
210 than the county in which the property is located or impose any costs or
211 filing fees greater than the fees required to file an action in a circuit
212 court, is void.

213 Sec. 4. (NEW) (*Effective October 1, 2007*) No foreclosure consultant
214 may: (1) Claim, demand, charge, collect or receive any compensation
215 until after the foreclosure consultant has fully performed each and
216 every service the foreclosure consultant contracted to perform or
217 represented that the foreclosure consultant would perform; (2) claim,
218 demand, charge, collect or receive any interest or any other
219 compensation for any loan that the foreclosure consultant makes to the
220 homeowner that exceeds eight per cent per year; (3) take any wage
221 assignment, any lien of any type on real or personal property or other
222 security to secure the payment of compensation; (4) receive any
223 consideration from any third party in connection with foreclosure
224 consulting services provided to a homeowner unless the consideration
225 is first fully disclosed, in writing, to the homeowner; (5) acquire any
226 interest, directly or indirectly, or by means of a subsidiary, affiliate or
227 corporation in which the foreclosure consultant or a member of the
228 foreclosure consultant's immediate family is a primary stockholder, in
229 a residence in foreclosure from a homeowner with whom the
230 foreclosure consultant has contracted; (6) take any power of attorney
231 from a homeowner for any purpose, except to inspect documents as
232 provided by law; or (7) induce or attempt to induce any homeowner to
233 enter into a foreclosure consulting contract that does not comply in all
234 respects with this subtitle.

235 Sec. 5. (NEW) (*Effective October 1, 2007*) (a) If a foreclosure
236 reconveyance is included in a foreclosure consulting contract or

237 arranged after the execution of a foreclosure consulting contract, the
238 foreclosure purchaser shall provide the homeowner with a document
239 entitled "NOTICE OF TRANSFER OF DEED OR TITLE". Such
240 document shall be dated and personally signed by the homeowner and
241 the foreclosure purchaser and witnessed and acknowledged by a
242 notary public appointed and commissioned by the state.

243 (b) The document required under subsection (a) of this section shall:
244 (1) Contain the entire agreement of the parties; (2) be printed in
245 twelve-point type and written in the same language that is used by the
246 homeowner and was used in discussions to describe the foreclosure
247 consultant's or foreclosure purchaser's services or to negotiate the
248 transfer or sale of the property; (3) describe in detail the terms of any
249 foreclosure conveyance and shall include (A) the name, business
250 address, telephone number and facsimile number of the person to
251 whom the deed or title will be transferred; (B) the address of the
252 residence in foreclosure; (C) the total consideration to be given by the
253 foreclosure purchaser, the foreclosure consultant and any other party
254 as a result of the transfer; (D) the time at which title is to be transferred
255 to the foreclosure purchaser and the terms of any conveyance; (E) any
256 financial or legal obligations that the homeowner may remain subject
257 to, including a description of any mortgages, liens or other obligations
258 that will remain in place; (F) a description of any services of any nature
259 that the foreclosure purchaser will perform for the homeowner before
260 or after the sale or transfer; (G) a complete description of the terms of
261 any related agreement designed to allow the homeowner to remain in
262 the home, including the terms of any rental agreement, repurchase
263 agreement, contract for deed, land installment contract or option to
264 buy and any provisions for eviction or removal of the homeowner in
265 the case of late payment; and (H) the process for calculation of any
266 repurchase price or fee associated with any transfer of title or deed
267 back to the homeowner; and (4) contain the following statement
268 printed in at least fourteen-point boldface type and located in
269 immediate proximity to the space reserved for the homeowner's
270 signature:

271 "If you change your mind about transferring ownership of your
272 property, you, the homeowner, may rescind the transfer of the deed or
273 title to your property any time within the next three days. As part of
274 any rescission, you must repay, within sixty days, any money spent on
275 your behalf as a result of this agreement, along with interest calculated
276 at the rate of eight per cent per year.

277 THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD
278 RESULT IN THE LOSS OF YOUR HOME. CONTACT AN
279 ATTORNEY BEFORE SIGNING."

280 (c) (1) If a foreclosure reconveyance is included in a foreclosure
281 consulting contract or arranged after the execution of a foreclosure
282 consulting contract, the foreclosure purchaser shall provide the
283 homeowner with a document entitled "NOTICE OF RIGHT TO
284 CANCEL TRANSFER OF DEED OR TITLE".

285 (2) The document required under subdivision (1) of subsection (a) of
286 this section shall be a separate document and not printed on the back
287 of any other document and contain the following statement printed in
288 at least twelve-point type:

289 "NOTICE OF RIGHT TO CANCEL TRANSFER OF DEED OR TITLE

290 (Date)

291 You may cancel or rescind the transfer of ownership of your
292 property through the transfer of a deed or title not later than three
293 business days after the date you sign this document.

294 To rescind this transaction, mail or deliver a signed and dated copy
295 of this notice, or any other written notice expressing a similar intent to
296 (name of foreclosure consultant) at (address of foreclosure consultant,
297 including facsimile and electronic mail).

298 As part of any rescission, you (the homeowner) must repay any
299 money spent on your behalf as a result of this agreement, within sixty
300 days, along with interest calculated at the rate of eight per cent per

301 year.

302 THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD
303 RESULT IN THE LOSS OF YOUR HOME. CONTACT AN
304 ATTORNEY BEFORE SIGNING.

305 NOTICE OF RESCISSION

306 TO: (name of foreclosure consultant)

307 (address of foreclosure consultant, including facsimile and
308 electronic mail)

309 I hereby rescind the transfer of deed or title to my property. Please
310 return all executed documents to me.

311 (Date)

312 (Homeowner's signature)".

313 (d) The foreclosure purchaser shall provide the homeowner with a
314 copy of the Notice of Right to Cancel Transfer of Deed or Title
315 immediately on execution of any document that includes a foreclosure
316 reconveyance.

317 (e) The time during which the homeowner may rescind the contract
318 or transfer shall not begin to run until the foreclosure purchaser has
319 complied with the provisions of this section.

320 (f) Any provision in a foreclosure consulting contract or other
321 agreement concerning a foreclosure reconveyance that attempts or
322 purports to waive the homeowner's rights under this section, consent
323 to jurisdiction for litigation or choice of law in a state other than this
324 state, consent to venue in a county other than the county in which the
325 property is located or impose any costs or filing fees greater than the
326 fees required to file an action in a circuit court, is void.

327 (g) A foreclosure reconveyance may not be carried out using a
328 power of attorney from the homeowner.

329 (h) A notice of rescission is not required to be in the particular form
330 specified in this section or any form contained in any agreement with
331 the foreclosure consultant or foreclosure purchaser and is effective,
332 however expressed, if such notice indicates the intention of the
333 homeowner to rescind the reconveyance agreement.

334 (i) The right to rescind may not be conditioned on the repayment of
335 any funds.

336 (j) Not later than ten days after receipt of a notice of rescission given
337 in accordance with this section, the foreclosure purchaser shall return,
338 without condition, any original deed, title, contract and any other
339 document signed by the homeowner.

340 (k) During the rescission period, no deed or other document
341 affecting title to the residence of the homeowner may be recorded.

342 Sec. 6. (NEW) (*Effective October 1, 2007*) (a) As used in this section:

343 (1) "Primary housing expenses" means the total amount required to
344 pay regular principal, interest, rent, utilities, hazard insurance, real
345 estate taxes and association dues on a property.

346 (2) "Resale" means a bona fide market sale of property subject to a
347 foreclosure reconveyance by the foreclosure purchaser to an
348 unaffiliated third party.

349 (3) "Resale price" means the gross sale price of a property on resale.

350 (4) "Settlement" means an in-person, face-to-face meeting with the
351 homeowner to complete final documents incident to the sale or
352 transfer of real property, or the creation of a mortgage or equitable
353 interest in real property, conducted by a settlement agent who is not
354 employed by or an affiliate of the foreclosure purchaser, during which
355 the homeowner must be presented with a completed copy of the HUD
356 1 Settlement Form.

357 (b) No foreclosure purchaser may:

358 (1) Enter into, or attempt to enter into, a foreclosure reconveyance
359 with a homeowner unless: (A) The foreclosure purchaser verifies and
360 can demonstrate that the homeowner has or will have a reasonable
361 ability to pay for the subsequent reconveyance of the property back to
362 the homeowner on completion of the terms of a foreclosure
363 conveyance, or, if the foreclosure conveyance provides for a lease with
364 an option to repurchase the property, the homeowner has or will have
365 a reasonable ability to make the lease payments and repurchase the
366 property within the term of the option to repurchase; (B) the
367 foreclosure purchaser and the homeowner complete a formal
368 settlement before any transfer of an interest in the property is effected;
369 and (C) the foreclosure purchaser complies with the requirements of
370 the federal Home Ownership Equity Protection Act, 15 USC 1639, and
371 its implementing regulations for any foreclosure reconveyance in
372 which the homeowner obtains a vendee interest in a contract for deed;

373 (2) Fail to: (A) Ensure that title to the property has been reconveyed
374 to the homeowner in a timely manner if this subtitle or the terms of a
375 foreclosure reconveyance agreement require a reconveyance; or (B)
376 make payment to the homeowner not later than ninety days after any
377 resale of the property so that the homeowner receives cash payments
378 or consideration in an amount equal to at least eighty-two per cent of
379 the net proceeds from any resale of the property should a property
380 subject to a foreclosure reconveyance be sold not later than eighteen
381 months after entering into a foreclosure reconveyance agreement;

382 (3) Enter into repurchase or lease terms as part of the foreclosure
383 conveyance that are unfair or commercially unreasonable or engage in
384 any other unfair conduct;

385 (4) Represent, directly or indirectly, that the foreclosure purchaser
386 (A) is acting as an advisor or a consultant or in any other manner
387 represent that the foreclosure purchaser is acting on behalf of the
388 homeowner; (B) has certification or licensure that the foreclosure
389 purchaser does not have; (C) is assisting the homeowner to "save the
390 house" or use a substantially similar phrase; or (D) is assisting the

391 homeowner in preventing a foreclosure if the result of the transaction
392 is that the homeowner will not complete a redemption of the property;

393 (5) Make any other statements, directly or by implication, or engage
394 in any other conduct that is false, deceptive or misleading, or that has
395 the likelihood to cause confusion or misunderstanding, including
396 statements regarding the value of the residence in foreclosure, the
397 amount of proceeds the homeowner will receive after a foreclosure
398 sale, any contract term or the homeowner's rights or obligations
399 incident to or arising out of the foreclosure reconveyance; or

400 (6) Until the homeowner's right to rescind or cancel the transaction
401 has expired: (A) Record any document, including an instrument of
402 conveyance, signed by the homeowner; or (B) transfer or encumber or
403 purport to transfer or encumber any interest in the residence in
404 foreclosure to any third party.

405 (c) For purposes of subdivision (1) of subsection (b) of this section,
406 there is a rebuttable presumption that: (1) A homeowner has a
407 reasonable ability to pay for a subsequent reconveyance of the
408 property if the homeowner's payments for primary housing expenses
409 and regular principal and interest payments on other personal debt, on
410 a monthly basis, do not exceed sixty per cent of the homeowner's
411 monthly gross income; and (2) the foreclosure purchaser has not
412 verified reasonable payment ability if the foreclosure purchaser has
413 not obtained documents other than a statement by the homeowner of
414 assets, liabilities and income.

415 (d) (1) The foreclosure purchaser shall make a detailed accounting
416 of the basis for the amount of a payment made to the homeowner of a
417 property resold not more than eighteen months after entering into a
418 foreclosure reconveyance agreement, in accordance with subparagraph
419 (B) of subdivision (2) of subsection (b) of this section.

420 (2) The accounting shall be on a form prescribed by the Attorney
421 General, in consultation with the Banking Commissioner, and shall
422 include detailed documentation of expenses and other consideration

423 paid by the foreclosure purchaser and deducted from the resale price.

424 (e) A bona fide purchaser for value or bona fide lender for value
425 who enters into a transaction with a homeowner or a foreclosure
426 purchaser when a foreclosure consulting contract is in effect or during
427 the period when a foreclosure reconveyance may be rescinded,
428 without notice of those facts, receives good title to the property, free
429 and clear of the right of the parties to the foreclosure consulting
430 contract or the right of the homeowner to rescind the foreclosure
431 reconveyance.

432 (f) The provisions of this section shall not be construed to impose
433 any duty on a purchaser, title insurer or title insurance producer with
434 respect to the application of the proceeds of a sale of property by a
435 foreclosure purchaser.

436 Sec. 7. (NEW) (*Effective October 1, 2007*) (a) Each foreclosure surplus
437 acquisition shall be in the form of a written contract.

438 (b) Each foreclosure surplus acquisition contract shall (1) contain the
439 entire agreement of the parties; (2) be printed in at least twelve-point
440 type, in the same language that is used by the homeowner and was
441 used by the foreclosure surplus purchaser and the homeowner to
442 negotiate the sale of the residence in foreclosure; (3) be fully
443 completed, dated and personally signed by the homeowner and the
444 foreclosure surplus purchaser before the statement of account has been
445 referred to the auditor; and (4) include the following: (A) The name,
446 business address and telephone number of the foreclosure surplus
447 purchaser; (B) the address of the residence in foreclosure; (C) the total
448 consideration to be given by the foreclosure surplus purchaser in
449 connection with or incident to the transaction; (D) a complete
450 description of the terms of payment or other consideration, including
451 any services of any nature that the foreclosure surplus purchaser
452 represents the foreclosure surplus purchaser will perform for the
453 homeowner before or after the sale; and (E) the following notice, which
454 shall be printed in at least fourteen-point boldface type, completed
455 with the name of the foreclosure surplus purchaser located in

456 immediate proximity to the space reserved for the homeowner's
457 signature:

458 "NOTICE REQUIRED BY CONNECTICUT LAW

459 If you have any questions about this document, seek legal counsel
460 before signing. This is an important legal contract. Failure to read and
461 understand these documents may cause you to lose valuable rights.

462 The effect of these documents is that you may lose the equity in
463 your home. This agreement will not stop the foreclosure or get your
464 house back. If you believe the foreclosure sale was improper, you
465 should immediately seek legal advice to determine what objections to
466 ratification or to rescind the order of ratification may be filed.

467 You may rescind this contract for the sale of your house without any
468 penalty or obligation at any time not later than ten days after the
469 auditor states the account of the foreclosure sale. See the attached
470 Notice of Rescission form for an explanation of this right. As part of
471 the rescission, you must repay from the surplus proceeds any
472 consideration received, directly or indirectly, together with an amount
473 for interest calculated at the rate of eight per cent per year."

474 (c) (1) The contract shall be accompanied by a completed form in
475 duplicate, captioned "Notice of Rescission".

476 (2) The Notice of Rescission shall:

477 (A) Be on a separate sheet of paper attached to the contract;

478 (B) Be easily detachable; and

479 (C) Contain the following statement printed in at least fifteen-point
480 type:

481 "NOTICE OF RESCISSION

482 (Date of contract)

483 You may rescind this contract for the sale of your house at any time
484 not later than ten days after the auditor states the account of the
485 foreclosure sale.

486 To cancel this transaction, mail or deliver a signed and dated copy
487 of this Notice of Rescission to (name of purchaser) at (address of
488 purchaser, including facsimile and electronic mail) with a copy to the
489 court appointed auditor.

490 I hereby rescind this transaction.

491 (Date)

492 (Homeowner's signature)".

493 (d) The foreclosure surplus purchaser shall provide the homeowner
494 with a copy of the contract and the attached Notice of Rescission at the
495 time the contract is executed by all parties.

496 (e) The contract required pursuant to this section survives delivery
497 of any instrument of conveyance of the residence in foreclosure, is
498 binding in the audit and has no effect on persons other than the parties
499 to the contract.

500 (f) Any provision in a contract that attempts or purports to waive
501 any of the rights specified in sections 3 to 8, inclusive, of this act,
502 consent to jurisdiction or choice of law in a state other than this state,
503 consent to venue in a municipality other than the municipality in
504 which the property is located or impose any costs or filing fees greater
505 than the fees required to file an action in a circuit court, is void.

506 Sec. 8. (NEW) (*Effective October 1, 2007*) (a) In addition to any other
507 right of rescission, a homeowner has the right to rescind any contract
508 with a foreclosure surplus purchaser at any time not later than ten
509 days after the statement of audit account of the foreclosure sale.

510 (b) (1) Rescission occurs when the homeowner delivers, by any
511 means, written notice of rescission to the address specified in the

512 contract, with a copy to the auditor. As part of the rescission, the
513 homeowner shall repay any consideration received directly or
514 indirectly, together with interest calculated.

515 (2) On receipt of the notice of rescission, the auditor shall restate the
516 account. The repayment of consideration and interest by the
517 homeowner shall be incorporated by the auditor into the revised
518 statement of account filed with the court.

519 (3) Upon ratification of the amended audit, the attorney named in
520 the mortgage, mortgage assignee for purposes of foreclosure, trustee or
521 substitute trustee in making distribution of the surplus funds shall
522 comply with the revised court-approved audit.

523 (c) A notice of rescission given by a homeowner need not be in the
524 form provided with the contract and is effective, however expressed, if
525 it indicates the intention of the homeowner to rescind the contract.

526 (d) The right to rescind may not be conditioned on the repayment of
527 any funds.

528 (e) Not later than ten days after receipt of a notice of rescission
529 given in accordance with this section, the foreclosure surplus
530 purchaser shall return, without condition, the original contract and all
531 other documents signed by the homeowner.

532 Sec. 9. (NEW) (*Effective October 1, 2007*) (a) The Attorney General
533 may seek an injunction to prohibit a person who has engaged or is
534 engaging in a violation of the provisions of sections 2 to 8, inclusive, of
535 this act from engaging or continuing to engage in the violation.

536 (b) The court may enter any order or judgment necessary to:

537 (1) Prevent the use by a person of any prohibited practice;

538 (2) Restore to a person any money or real or personal property
539 acquired from the person by means of any prohibited practice; or

540 (3) Appoint a receiver in case of wilful violation of the provisions of

541 sections 2 to 8, inclusive, of this act.

542 (c) In any action brought by the Attorney General under this section,
543 the Attorney General may recover the costs of the action on behalf of
544 the state.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	New section
Sec. 2	<i>October 1, 2007</i>	New section
Sec. 3	<i>October 1, 2007</i>	New section
Sec. 4	<i>October 1, 2007</i>	New section
Sec. 5	<i>October 1, 2007</i>	New section
Sec. 6	<i>October 1, 2007</i>	New section
Sec. 7	<i>October 1, 2007</i>	New section
Sec. 8	<i>October 1, 2007</i>	New section
Sec. 9	<i>October 1, 2007</i>	New section

HSG *Joint Favorable C/R*

PD

PD *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Attorney General	GF - Cost / Cost Recovery	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

As the bill is permissive, the Office of the Attorney General (OAG) could bring civil actions without requiring additional staffing. Any expenses incurred pursuant to enforcement may be recovered by the OAG under the bill.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**HB 5222*****AN ACT CONCERNING FORECLOSURE PROTECTION FOR HOMEOWNERS.*****SUMMARY:**

This bill subjects anyone offering foreclosure consulting services to certain requirements and prohibitions and requires contracts or notices for foreclosure consulting, foreclosure reconveyance, and foreclosure purchasing to include certain disclosures and specifies their form. It excepts several entities.

Under the bill, the attorney general may seek an injunction to prohibit a person who has violated or is violating the bill's provisions from engaging or continuing to engage in the violation. The court may enter any order or judgment necessary to (1) prevent people from using prohibited practices; (2) restore any money or real or personal property to a person that a consultant acquired by any prohibited practice; or (3) appoint a receiver in case of willful violation of the bill's provisions.

The bill allows the attorney general to recover for the state the costs of an action taken under the bill.

EFFECTIVE DATE: October 1, 2007

FORECLOSURE CONSULTING***Foreclosure Consultant (§ 1)***

Under the bill, a "foreclosure consultant" is a person who systematically contacts owners of property that court records or newspaper advertisements show are in foreclosure or in danger of foreclosure or who represents in person or through any electronic or

telecommunications medium that he or she will:

1. stop, enjoin, delay, void, set aside, annul, stay, or postpone a foreclosure sale;
2. obtain forbearance from any servicer, beneficiary, or mortgagee;
3. assist the homeowner to exercise a right of reinstatement provided in the loan or refinance a loan in foreclosure and for which notice of foreclosure proceedings has been published;
4. obtain an extension for a homeowner to reinstate the loan or extend the deadline to object to a ratification;
5. obtain a waiver of an acceleration clause in any a mortgage on a residence in foreclosure;
6. assist the homeowner to obtain a loan or advance of funds;
7. avoid or ameliorate the impairment of the homeowner's credit resulting from the filing of an order to docket or a petition to foreclose or conduct a foreclosure sale;
8. save the homeowner's residence from foreclosure;
9. purchase or obtain an option to purchase the homeowner's residence not more than 20 days after an advertised or docketed foreclosure sale;
10. arrange for the homeowner to become a lessee or renter entitled to continue to reside in the homeowner's residence;
11. arrange for the homeowner to have an option to repurchase the homeowner's residence; or
12. engage in any documentation, grant, conveyance, sale, lease, trust, or gift that causes the homeowner to hinder his or her redemption of equity in the residence.

Foreclosure Consulting Service (§ 1)

The bill defines “foreclosure consulting service” to include an entity that receives funds to distribute to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure. Specifically, such services are ones that:

1. receive money to distribute to creditors in full or partial payment of any obligation secured by a lien on a residence in foreclosure;
2. contact creditors on a homeowner’s behalf;
3. arrange or attempt to arrange for an extension of the time a homeowner has to cure his or her default and reinstate the homeowner’s loan;
4. arrange or attempt to arrange to delay or postpone the sale of a residence in foreclosure;
5. arrange or facilitate to buy a homeowner’s equity of redemption or legal or equitable title no later than 20 days after an advertised or docketed foreclosure sale;
6. arrange or facilitate any transaction through which a homeowner will become a lessee, optionee, life tenant, partial homeowner, or vested or “contingent remainderman” of the residence;
7. arrange or facilitate the sale of homeowner’s residence or the transfer of legal title, in any form, to another party as an alternative to foreclosure;
8. arrange for a homeowner to have an option to repurchase the homeowner’s residence after a sale or transfer;
9. arrange for or facilitate a homeowner remaining in his or her residence as a tenant, renter or lessee; or
10. arrange or facilitate any other grant, conveyance, sale, lease, trust or gift by which a homeowner hinders his ability to

redeem the equity in the residence.

Prohibited Actions (§ 4)

The bill prohibits a foreclosure consultant from:

1. claiming, demanding, charging, collecting, or receiving any compensation until after the foreclosure consultant has fully performed each and every service he or she contracted to perform or represented that he or she would perform;
2. claiming, demanding, charging, collecting, or receiving any interest or any other compensation for any loan that the foreclosure consultant makes to the homeowner that exceeds 8% annually;
3. taking any wage assignment, any lien of any type on real or personal property, or other security to secure compensation payment;
4. receiving any consideration from any third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed, in writing, to the homeowner;
5. acquiring any interest in a residence in foreclosure from a homeowner with whom the consultant has contracted, directly or indirectly, or by means of a subsidiary, affiliate, or corporation in which the foreclosure consultant or a member of the foreclosure consultant's immediate family is a primary stockholder;
6. taking any power of attorney from a homeowner for any purpose, except to inspect documents as provided by law; or
7. inducing or attempting to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with these provisions.

Entities Exempted from Bill's Provisions (§ 2)

The bill specifies that its contract and notice provisions do not apply to:

1. practicing lawyers in the state who are performing any activity related to their regular practice;
2. a person who holds or is owed an obligation secured by a lien on any residence in foreclosure while performing services connected to the obligation or lien, if it did not arise as a result of a foreclosure reconveyance;
3. a person doing business under any state or federal banking law while performing services as a part of the person's normal business activities or any subsidiary, affiliate, or agent of such a person, while the subsidiary, affiliate, or agent performs services as a part of the subsidiary's, affiliate's, or agent's normal business activities;
4. a homeowner's judgment creditor, if the claim accrued before the written notice of foreclosure sale is sent;
5. a title insurer authorized to conduct business in the state, while performing title insurance and settlement services;
6. a title insurance producer licensed in the state, while performing services in accordance with his or her license;
7. a licensed mortgage broker or mortgage lender while acting under the authority of his or her license;
8. a licensed real estate broker, associate real estate broker or real estate salesperson while engaging in any activity for which the person is licensed as long as any conveyance or transfer of deed, title, or establishment of equitable interest is done through a settlement, as defined by the bill;
9. a nonprofit organization that solely offers counseling or advice

to homeowners in foreclosure or loan default, if the organization is not directly or indirectly related to and does not contract for services with for-profit lenders or foreclosure purchasers.

The requirements also do not apply when a person is engaging in activities or providing services designed or intended to transfer title to a residence in foreclosure directly or indirectly to him or herself, or his or her agent or affiliate.

FORECLOSURE CONSULTING CONTRACTS AND NOTICES (§ 3)

The bill requires a foreclosure consulting contract, which it defines as a contract between a foreclosure consultant and a homeowner for foreclosure consulting services, to be given to homeowners for review before signing. It must contain specific language that fully discloses the exact nature of the foreclosure consulting services to be provided, including any foreclosure reconveyance (see below) that may be involved and the total amount and terms of any compensation to be received by the foreclosure consultant or anyone working in association with the consultant. It must:

1. be printed in at least 12-point type and written in the same language that the homeowner used and that the homeowner and foreclosure consultant used to describe the consultant's services or to negotiate the contract and
2. be dated and personally signed by the homeowner and the foreclosure consultant and be witnessed and acknowledged by a notary public.

The contract must also contain a specifically worded notice, printed in at least 14-point boldface type, completed with the name of the foreclosure consultant and located in immediate proximity to the space reserved for the homeowner's signature. The notice must state that:

1. The consultant and his or her employees cannot (a) ask the homeowner to sign or have signed any lien, mortgage, or deed

as part of signing the agreement unless the transfer terms are specified in the document and the consultant gives the homeowner a separate explanation of the precise nature of the transaction and (b) guarantee that homeowner will be able to refinance the home or arrange for the homeowner to keep it.

2. It must advise the homeowner to continue making mortgage payments until refinancing, if applicable, is approved.
3. It must say, "THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY BEFORE SIGNING."

If the title is included, the contract must contain on the first page, in at least 12-point type, the name and address of the foreclosure consultant to which the notice of cancellation may be mailed and the date the homeowner signed the contract.

Notice of Rescission

If a property deed or title transfer is involved in any way, the contract must inform the homeowner that he or she may rescind the transfer any time no later than three days after signing the deed or other document of sale or transfer. It must inform the homeowner (1) to see the attached Notice of Rescission form, which explains this right and (2) as part of any rescission, that he or she must repay, within 60 days, any money spent on his or her behalf as a result of the agreement, along with interest calculated at the rate 8% per year.

Specifically, the contract must be accompanied by a completed form in duplicate, captioned "NOTICE OF RESCISSION." The notice must be on a separate sheet of paper attached to the contract and be detachable, and must contain a specific notice of rescission statement printed in at least 15-point type.

Voiding Certain Contract Provisions

The bill makes void any foreclosure consulting contract provision that attempts or purports to (1) waive any of the rights specified under

the bill, (2) consent to jurisdiction for litigation or choice of law in another state, (3) consent to venue in a county other than the county in which the property is located, or (4) impose any costs or filing fees greater than the fees required to file an action in a circuit court.

FORECLOSURE RECONVEYANCE NOTICES (§ 5)

Foreclosure Reconveyance

The bill defines a “foreclosure reconveyance” as a transaction involving:

1. real property title transfer by a homeowner during or connected with a proposed foreclosure proceeding, either by transfer of interest from the homeowner to another party or by creation of a mortgage, trust, or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain legal or equitable title to all or part of the property and
2. a subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the homeowner by the acquirer or a person acting in participation with the acquirer that allows the homeowner to possess the real property following the foreclosure proceeding completion, including an interest in a contract for deed, purchase agreement, land installment sale, contract for sale, option to purchase, lease, trust, or other contractual arrangement.

The bill prohibits a foreclosure reconveyance from being carried out using a power of attorney from the homeowner.

Notice Required for a Foreclosure Reconveyance in a Foreclosure Consulting Contract or After Its Execution

If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of a foreclosure consulting contract, the foreclosure purchaser must provide the homeowner with a document entitled “Notice of Transfer of Deed or Title.” The document must be dated and personally signed by the homeowner and the foreclosure purchaser and witnessed and acknowledged by a

notary public.

The notice must:

1. contain the entire agreement;
2. be printed in 12-point type and written in the same language that the homeowner used and he or she and the consultant used in discussions to describe the foreclosure consultant's or purchaser's services or to negotiate the transfer or sale of the property; and
3. describe in detail any foreclosure conveyance terms and must include (a) the name, business address, telephone number and fax number of the person to whom the deed or title will be transferred; (b) the address of the residence in foreclosure; (c) the total consideration the foreclosure purchaser, the foreclosure consultant, and any other party give due to the transfer; (d) the time of the title transfer to the foreclosure purchaser and the terms of any conveyance; (e) any financial or legal obligations that the homeowner may remain subject to, including a description of any mortgages, liens, or other obligations that will remain in place; (f) a description of any services of any nature that the foreclosure purchaser will perform for the homeowner before or after the sale or transfer; (g) a complete description of any related agreement designed to allow the homeowner to remain in the home, including the terms of any rental agreement, repurchase agreement, contract for deed, land installment contract, or option to buy and any provisions for eviction or removal of the homeowner in the case of late payment; and (h) the calculation process of any repurchase price or fee associated with any transfer of title or deed back to the homeowner.

The notice must contain other specific wording about the importance of the legal contract and advising the homeowner to consult with an attorney before signing. The notice must be a separate

document and cannot be printed on the back of another document. It must contain the date and specify the notice of rescission as described above. The foreclosure purchaser must provide the homeowner with a copy of the notice immediately on execution of any document.

The notice about a homeowner's right to cancel a deed or title transfer must contain a specifically worded statement, printed in at least 14-point boldface type, and located in immediate proximity to the space reserved for the homeowner's signature. The statement is as follows: "If you change your mind about transferring ownership of your property, you, the homeowner, may rescind the transfer of the deed or title to your property any time within the next three days. As part of any rescission, you must repay, within 60 days, any money spent on your behalf as a result of this agreement, along with interest calculated at the rate of eight per cent per year."

The bill provides that the time during which the homeowner may rescind the contract or transfer does not begin until the foreclosure purchaser has complied with the bill's requirements. The bill voids any foreclosure consulting contract provision as described above.

Notice of Rescission

The contract must also have a foreclosure reconveyance notice of rescission. The bill specifies for this type of transaction that a rescission notice is not required to be in the particular form for the reconveyance provisions or any form contained in any agreement with the foreclosure consultant or foreclosure purchaser and is effective, however expressed, if it indicates the homeowner's intention is to rescind the reconveyance agreement. The right to rescind may not be conditioned on the repayment of any funds. The bill requires the foreclosure purchaser to return, without condition, any original deed, title, contract and any other document the homeowner signed, no later than 10 days after receiving the rescission notice as the bill requires. The bill prohibits the recording of a deed or other document affecting a homeowner's title to the residence during the rescission period.

FORECLOSURE PURCHASERS (§ 6)

The bill defines a “foreclosure purchaser” as a person who acquires title or possession of a deed or other document to a residence in foreclosure as a result of a foreclosure reconveyance.

Prohibited Actions

The bill prohibits a foreclosure purchaser from:

1. entering into, or attempting to enter into, a foreclosure reconveyance with a homeowner unless: (a) the foreclosure purchaser verifies and can demonstrate that the homeowner has or will have a reasonable ability to pay for the subsequent reconveyance of the property back to the homeowner on completion of the terms of a foreclosure conveyance, or, if the foreclosure conveyance provides for a lease with an option to repurchase the property, the homeowner has or will have a reasonable ability to make the lease payments and repurchase the property within the term of the option to repurchase; (b) the foreclosure purchaser and the homeowner complete a formal settlement before any transfer of an interest in the property is effected; and (c) the foreclosure purchaser complies with the requirements of the federal Home Ownership Equity Protection Act (the act amends the Truth in Lending Act, establishing disclosure requirements and prohibiting equity stripping and other abusive practices in connection with high-cost mortgages (15 USC § 1639)), and its implementing regulations for any foreclosure reconveyance in which the homeowner obtains a vendee interest in a contract for deed;
2. failing to (a) ensure that title to the property has been reconveyed to the homeowner in a timely manner if the law or the terms of a foreclosure reconveyance agreement require a reconveyance or (b) make payment to the homeowner no later than 90 days after any resale of the property so that the homeowner receives cash payments or consideration in an amount equal to at least 82% of the net proceeds from any resale of the property should the property be sold within 18 months

after entering the agreement - under the bill, "resale" means a bona fide market sale of property subject to a foreclosure reconveyance by the foreclosure purchaser to an unaffiliated third party;

3. entering into repurchase or lease terms as part of the foreclosure conveyance that are unfair or commercially unreasonable or engage in any other unfair conduct;
4. representing, directly or indirectly, that the foreclosure purchaser (a) is acting as an advisor or a consultant or in any other manner representing that the foreclosure purchaser is acting on behalf of the homeowner, (b) has certification or licensure that the foreclosure purchaser does not have, (c) is assisting the homeowner to "save the house" or use a substantially similar phrase, or (d) is assisting the homeowner in preventing a foreclosure if the result of the transaction is that the homeowner will not complete a redemption of the property;
5. making any other statements, directly or by implication, or engaging in any conduct that is false, deceptive or misleading, or is likely to cause confusion or misunderstanding, including statements regarding the value of the residence in foreclosure, the amount of proceeds the homeowner will receive after a foreclosure sale, any contract term or the homeowner's rights, or obligations incident to or arising out of the foreclosure reconveyance; or
6. (a) recording any document, including an instrument of conveyance, signed by the homeowner or (b) transferring or encumbering or purporting to transfer or encumber any interest in the residence in foreclosure to any third party, until the homeowner's right to rescind or cancel the transaction has expired.

The bill establishes a rebuttable presumption about foreclosure reconveyances that:

1. a homeowner has a reasonable ability to pay for a subsequent reconveyance if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed 60% of the homeowner's monthly gross income - "primary housing expenses" means the total amount required to pay regular principal, interest, rent, utilities, hazard insurance, real estate taxes, and association dues on a property, and
2. the foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the homeowner of assets, liabilities, and income.

Detailed Accounting Required

The foreclosure purchaser must make a detailed accounting of the basis for the payment made to the homeowner of property resold within 18 months after entering into a foreclosure reconveyance agreement, in accordance with the bill's requirement that homeowners receive at least 82% of the net proceeds of the sale. This accounting must be on a form prescribed by the attorney general, in consultation with the banking commissioner, and must include detailed documentation of expenses and other consideration that the foreclosure purchaser paid and deducted from the resale price.

Bona Fide Purchaser or Lender for Value

The bill permits a bona fide purchaser or bona fide lender to receive good title to a property, without the parties to foreclosure or the homeowner being able to rescind the reconveyance, if he or she enters into a transaction with a homeowner or a foreclosure purchaser without notice of the fact that the contract could have been rescinded.

Not the Duty of a Purchaser, Title Insurer, or Title Insurance Producer

The bill specifies that these provisions do not impose any duty on a purchaser, title insurer, or title insurance producer with respect to the

application of property sale proceeds by a foreclosure purchaser.

Definitions

Under the bill's foreclosure purchasers section, the following definitions apply.

1. "resale price" means the gross sale price of a property on resale; and
2. "settlement" means an in-person, face-to-face meeting with the homeowner to complete final documents incident to the sale or transfer of real property, or the creation of a mortgage or equitable interest in real property, conducted by a settlement agent who is not employed by or an affiliate of the foreclosure purchaser, during which the homeowner must be presented with a completed copy of the federal Department of Housing and Urban Development (HUD) HUD 1 Settlement Form (which HUD furnishes to give the homeowner a statement of actual settlement costs).

FORECLOSURE SURPLUS ACQUISITION (§ 7)

Under the bill, "foreclosure surplus acquisition" means a transaction involving the transfer, sale, or assignment of the surplus remaining and due the homeowner based on the audit account during a foreclosure proceeding.

The bill requires each foreclosure surplus acquisition to be a written contract. The contract must:

1. contain the entire agreement of the parties;
2. be printed in 12-point type and written in the same language that the homeowner used and he or she and the consultant used in discussions to describe the foreclosure consultant's or purchaser's services or to negotiate the transfer or sale of the property;
3. be fully completed, dated, and personally signed by the

homeowner and the foreclosure surplus purchaser before the statement of account has been referred to the auditor; and

4. include the following: (a) the name, business address, and telephone number of the foreclosure surplus purchaser; (b) the address of the residence in foreclosure; (c) the total consideration to be given by the foreclosure surplus purchaser in connection with or incident to the transaction; (d) a complete description of the terms of payment or other consideration, including any services of any nature that the foreclosure surplus purchaser represents he or she will perform for the homeowner before or after the sale.

Notices

The contract must contain a specific notice, printed in at least 14-point boldface type, which is completed with the name of the foreclosure surplus purchaser, and located in immediate proximity to the space reserved for the homeowner's signature. Under the bill, the notice must advise the homeowner that if he or she has any questions about the document, to seek legal counsel before signing; states it is an important legal contract; and that failure to read and understand the documents may cause the homeowner to lose valuable rights.

The notice must state that the effect of the documents is that the homeowner may lose the equity in his or her home. It states that the agreement will not stop the foreclosure or get the homeowner's house back. It advises that if the homeowner believes the foreclosure sale was improper, to seek legal advice immediately to determine what objections to ratification or to rescind the order of ratification may be filed.

The notice wording must further advise the homeowner that he or she may rescind the contract without any penalty or obligation at any time within 10 days after the auditor states the foreclosure sale account. It requires the contract to also contain a "Notice of Rescission," similar to those above, that explains the right and that, as

part of the rescission, the homeowner must repay from the surplus proceeds any consideration received, directly or indirectly, together with an amount for interest calculated at an 8% annual rate.

Rescission of Contract with a Foreclosure Surplus Purchaser

The bill defines a “foreclosure surplus purchaser” as a person who acts as the acquirer by assignment, purchase, grant, or conveyance the surplus resulting from a foreclosure sale and includes a person who acts in joint venture or joint enterprise with one or more acquirers.

Under the bill, in addition to any other rescission right, a homeowner has the right to rescind any contract with a foreclosure surplus purchaser at any time no later than 10 days after the audit account statement of the foreclosure sale. Rescission occurs when the homeowner delivers, by any means, a written rescission notice to the address specified in the contract, with a copy to the auditor. As part of the rescission, the homeowner must repay any consideration received directly or indirectly, together with interest.

The auditor must restate the account when he or she receives the rescission notice. The auditor must incorporate the homeowner’s repayment of any consideration and interest into the revised account statement filed with the court. The attorney named in the mortgage, mortgage assignee for the foreclosure, trustee, or substitute trustee who distributes the surplus funds, must comply with the revised court-approved audit, when the amended audit is ratified.

The bill specifies that (1) a notice of rescission that a homeowner gives does not have to be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to rescind the contract and (2) the right to rescind cannot be conditioned on the repayment of any funds.

Under the bill, the foreclosure surplus purchaser must return, without condition, the original contract and all other documents signed by the homeowner no later than 10 days after receiving rescission notice as the bill allows.

COMMITTEE ACTION

Select Committee on Housing

Joint Favorable Change of Reference

Yea 10 Nay 0 (03/06/2007)

Planning and Development Committee

Joint Favorable

Yea 19 Nay 0 (03/21/2007)