

## CHAPTER 146

AN ACT concerning certain mortgage foreclosure consultant practices, amending P.L.2005, c.199 and supplementing Title 46 of the Revised Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.46:10B-53 Short title.

1. This act shall be known and may be cited as the "Foreclosure Rescue Fraud Prevention Act."

C.46:10B-54 Definitions relative to certain mortgage foreclosure consultant practices.

2. As used in this act:

"Business day" means any day other than a Saturday, Sunday, or a federal holiday.

"Conventional mortgage rate" means the highest mortgage rate published for the relevant loan product on the website of any generally accepted industry provider of such information, applicable to the week preceding the transaction.

"Distressed property" means residential real property consisting of from one to four dwelling units, at least one of which is occupied by the owner as a primary residence, and which is the subject of a mortgage foreclosure proceeding or whose owner is more than 90 days delinquent on any loan that is secured by the property.

"Distressed property purchaser" means a person who acquires an interest in a distressed property through a distressed property conditional conveyance or a distressed property conveyance, or a person who participates in a joint venture or joint enterprise involving a distressed property conditional conveyance or a distressed property conveyance. The term "distressed property purchaser" does not mean a federally insured financial institution or a person who acquires distressed property through a deed in lieu of foreclosure or a person acting in participation with any person who acquires distressed property through a deed in lieu of foreclosure, provided that person does not promise to convey an interest in fee back to the owner or does not give the owner an option to purchase the property at a later date.

"Distressed property conditional conveyance" means a transaction involving any participation by, or any distressed property service or other service or other assistance provided by, a foreclosure consultant in which an owner transfers an interest in fee, or a beneficial interest created through a trust document, in the distressed property; the acquirer of the property allows the owner to occupy the property; and the acquirer of the property or a person acting in participation with the acquirer of the property conveys or promises to convey an interest in fee back to the owner or gives the owner an option to purchase the property at a later date.

"Distressed property conveyance" means a transaction involving any participation by, or any distressed property service or other service or other assistance provided by, a foreclosure consultant in which an owner transfers an interest in fee in a distressed property.

"Distressed property relief" or "relief" means, in connection with a foreclosure consultant, any of the following:

- (1) saving the owner's property from foreclosure;
- (2) postponing the foreclosure sale;
- (3) obtaining a forbearance from the mortgagee;
- (4) securing the right to exercise the right to reinstatement;
- (5) obtaining an extension of the period within which the owner may reinstate his or her mortgage obligation;
- (6) obtaining a waiver of an acceleration clause;

- (7) obtaining a modification of a mortgage;
- (8) assisting the owner in obtaining a loan or advance of funds; or
- (9) avoiding the impairment of the owner's credit.

"Distressed property service" or "service" means, without limitation, in connection with a distressed property conditional conveyance or a distressed property conveyance, any of the following:

- (1) debt, budget, or financial counseling of any type;
- (2) receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a mortgage or other lien on a distressed property;
- (3) contacting creditors on behalf of an owner;
- (4) arranging or attempting to arrange for an extension of the period within which the owner may cure the owner's default and reinstate a debt obligation;
- (5) arranging or attempting to arrange for a delay or postponement of the time of sale of the distressed property;
- (6) advising with respect to the filing of any document or assisting in any manner in the preparation of any document for filing with any court; or
- (7) giving advice, explanation, or instruction to an owner that in any manner relates to the cure of a default or forfeiture or to the postponement or avoidance of a sale of the distressed property.

"Foreclosure consultant": (1) means any person, located out-of-State or within the State, who, directly or indirectly, for compensation from an owner, makes any solicitation, representation, or offer to perform, or who performs, any distressed property service that the person represents will in any manner do any of the following in relation to the owner's distressed property:

- (a) prevent or postpone the foreclosure sale of the property;
- (b) obtain any forbearance from any mortgagee;
- (c) assist the owner in exercising any right of reinstatement or right of redemption;
- (d) obtain any extension of the period within which the owner may reinstate the owner's rights with respect to the property;
- (e) obtain any waiver of an acceleration clause contained in any promissory note, contract, or mortgage evidencing or securing a debt in relation to the property;
- (f) assist the owner in obtaining a loan or advance of funds to pay off the promissory note, contract, or mortgage evidencing or securing a debt in relation to the property; or
- (g) avoid or ameliorate the impairment of the owner's credit resulting from default on the promissory note, contract, or mortgage, or the conduct of a foreclosure sale or offer to repair the owner's credit.

(2) shall not include any of the following:

- (a) a housing counseling agency contracted by the United States Department of Housing and Urban Development to provide counseling;
- (b) a person who holds or is owed an obligation secured by a lien on any distressed property in situations in which the person performs services in connection with the obligation or lien, provided the obligation or lien did not arise as the result of, or as part of, a proposed distressed property conditional conveyance or a distressed property conveyance;
- (c) a person licensed to practice law in this State while acting under the authority of that license;
- (d) a nonprofit, charitable entity qualified pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. s.501(c)(3)), which is licensed pursuant to P.L.1979, c.16 (C.17:16G-1 et seq.);

- (e) a municipality which has a tax lien on distressed property;
- (f) an assignee or a purchaser of a municipal tax lien from a tax sale;
- (g) a sponsor which is certified by the Commissioner of Community Affairs to participate in the "New Jersey Housing Assistance and Recovery Program" established pursuant to sections 8 through 14 of P.L.2008, c.127 (C.55:14K-88 et seq.);
- (h) a bank, savings bank, savings and loan association, credit union, or other federally insured financial institution, or insurance company, or affiliate or subsidiary thereof, organized, chartered, licensed, or holding a certificate of authority to do business under the laws of this State or any other state or under the laws of the United States;
- (i) a person licensed as a real estate broker, broker-salesperson, or salesperson pursuant to R.S.45:15-1 et seq., while acting under the authority of that license;
- (j) a person licensed as a title insurance producer pursuant to the "New Jersey Insurance Producer Licensing Act of 2001," P.L.2001, c.210 (C.17:22A-26 et seq.) while acting under the authority of that license or conducting the business of title insurance pursuant to P.L.1975, c.106 (C.17:46B-1 et seq.);
- (k) a mediator licensed pursuant to the Judiciary's Foreclosure Mediation Program; or
- (l) a person licensed pursuant to the "New Jersey Residential Mortgage Lending Act," P.L.2009, c.53 (C.17:11C-51 et seq.), while acting under the authority of that license.

"Owner" means an owner of record of title to a distressed property.

"Owner's current verified monthly income" means the monthly average of the owner's most recent six months of wage receipts or pay stubs or if the owner has non-wage income by a verified statement of profit and loss or income from a certified public accountant who has reviewed the owner's income.

"Reasonable ability to pay" means that the owner's current verified monthly income is adequate to service a 30-year fixed rate loan at the conventional mortgage rate together with actual property taxes, homeowner's insurance, condominium or association fees, if applicable, and reasonable and necessary living expenses.

"Reasonable and necessary living expenses" means not less than the average utility costs over the last twelve months, or if that figure is unavailable \$200, and transportation, food, clothing, and other expenses equal to an amount not less than the Collection Financial Standards set forth by the Internal Revenue Service for transportation, food, clothing, and other items and out-of-pocket health care costs.

"Residual income" means an owner's net income available to meet living expenses after the payment of all ordinary and necessary debt, including payments under an option to purchase back the owner's property transferred in a distressed property conditional conveyance.

#### C.46:10B-55 Requirements for licensure of foreclosure consultant.

3. a. A foreclosure consultant shall not conduct any business in this State until the foreclosure consultant:

(1) (a) Obtains a license from the Commissioner of Banking and Insurance by filing an application form to be prescribed by the commissioner by regulation. As to licensure by a business entity, the application shall be accompanied by documentation establishing the business entity, including incorporation documents, if the entity is incorporated.

(b) The application shall be accompanied by a reasonable fee, as established by the commissioner by regulation.

(c) A person required to be licensed under this act shall file an amendment to their application within 20 days after any change in the information required to be included in the application.

(d) Licenses issued pursuant to this section shall expire biennially and may be renewed upon submission of a renewal application to the department;

(2) obtains a bond from a surety company authorized to do business in the State in a form and an amount to be prescribed by the commissioner by regulation, files the bond with the commissioner, and obtains written approval of the bond from the commissioner;

(3) submits to the commissioner the name, address, fingerprints and written consent for a criminal history record background check to be performed on any officer, director, partner or owner of a controlling interest, or any employee engaged in mortgage foreclosure consulting activities, of the foreclosure consultant. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. This information shall be collected for the purposes of facilitating determinations concerning licensure eligibility for the foreclosure consultant, based upon any findings related to an employee engaged in mortgage foreclosure consultant activities, officer, director, partner or owner. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event an employee engaged in mortgage foreclosure consultant activities, officer, director, partner or owner of the foreclosure consultant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed, whether the foreclosure consultant is a prospective new applicant, or subsequently, a current licensee; and

(4) provides the name and street address of an agent in the State of New Jersey for service of process.

b. The commissioner may refuse to issue or renew, and may revoke, any license:

(1) for failure to comply with, or violation of, the provisions of this act or for any other good cause shown within the meaning and purpose of this act. A refusal or revocation shall not be made except upon reasonable notice to, and opportunity to be heard by, the applicant or licensee; or

(2) upon proof that the applicant or licensee has been convicted of any crime of moral turpitude or any crime relating adversely to the activity regulated by this act. For purposes of this subsection, a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction.

c. A person who is licensed as a foreclosure consultant pursuant to this act shall not be subject to the provisions of P.L.1979, c.16 (C.17:16G-1 et seq.) while acting under the authority of this act.

d. A person shall not present himself to the public as a licensed foreclosure consultant or use the designation "foreclosure consultant," "foreclosure consultant specialist," or similar designation without obtaining a license pursuant to this act.

#### C.46:10B-56 Foreclosure consultant contract.

4. a. A foreclosure consultant contract shall be written in plain language and shall fully disclose the exact nature of the foreclosure consultant's services to be performed, the

foreclosure consultant's representations, the distressed property relief to be secured, and the total amount and terms of compensation.

b. The following notice, printed in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, and completed with the name of the foreclosure consultant, shall be printed immediately above the statement required by subsection c. of this section:

"NOTICE REQUIRED BY NEW JERSEY LAW

.....(Name) or anyone working for him or her CANNOT:

- (1) Take any money from you or ask you for money until .....(Name) has completely finished doing everything he or she said would be done; or
- (2) Ask you to sign or have you sign any lien, mortgage, or deed unless all provisions of the "Foreclosure Rescue Fraud Prevention Act," P.L.2011, c.146 (C.46:10B-53 et al.), and any other applicable federal and State laws have been complied with.
- (3) Guarantee that they will be able to refinance a loan on your home or arrange for you to keep your home."

c. A foreclosure consultant contract shall be written in the same language as principally used by the foreclosure consultant to describe the consultant's services to be performed and the distressed property relief to be secured for the owner, shall be dated and signed by the owner, and shall contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, as follows:

"You, the owner, may cancel this transaction at any time until after the foreclosure consultant has fully performed every service the foreclosure consultant contracted to perform and has secured the distressed property relief for the owner. See the attached notice of cancellation form for an explanation of this right."

d. A foreclosure consultant contract shall contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

- (1) the name and address of the foreclosure consultant to which the notice of cancellation is to be mailed; and
- (2) the date the owner signed the contract.

e. A foreclosure consultant contract shall be accompanied by a completed form, captioned "NOTICE OF CANCELLATION" which shall be attached to the contract and easily detachable, and shall contain, in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....  
(Enter date of transaction)

You may cancel this transaction, without any penalty or obligation, at any time until after the foreclosure consultant has fully performed every service and has secured the relief for the owner.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice to:

.....(Name of foreclosure consultant) at  
.....(Address of foreclosure consultant's place of business)

I hereby cancel this transaction on .....(Date)  
.....(Owner's signature)."

f. The foreclosure consultant shall provide the owner with a copy of a foreclosure consultant contract and the attached notice of cancellation in duplicate immediately upon execution of the contract.

g. The foreclosure consultant shall record the contract with the county clerk in the county in which the distressed property is located, within 10 business days of its execution.

C.46:10B-57 Additional legal rights of owner.

5. a. In addition to any other legal right to rescind a foreclosure consultant contract, an owner has the right to cancel a foreclosure consultant contract at any time until after the foreclosure consultant has fully performed every service the foreclosure consultant contracted to perform and has secured the relief for the owner.

b. Cancellation occurs when the owner delivers by any means, written notice of cancellation to the foreclosure consultant at the address specified in the foreclosure consultant contract. A notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. A notice of cancellation sent by certified mail, return receipt requested, to the address specified in the foreclosure consultant contract, shall be conclusive proof of notice of cancellation.

c. A notice of cancellation given by the owner need not take the particular form as provided with the foreclosure consultant contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

C.46:10B-58 Violations relative to foreclosure consultants.

6. It is a violation of this act for a foreclosure consultant to:

a. claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed every distressed property service the foreclosure consultant contracted to perform and has secured the distressed property relief for the owner;

b. claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason, in excess of two monthly mortgage payments of principal and interest, or the most recent quarterly property tax installment on the distressed property, whichever is less;

c. take a wage assignment, a lien of any type on real or personal property, or other security to secure the payment of compensation. Any agreement to take such security is void and unenforceable;

d. receive any consideration from any third party in connection with distressed property services rendered to an owner;

e. acquire any interest, directly or indirectly, or by means of a subsidiary or affiliate in a distressed property from an owner with whom the foreclosure consultant has contracted;

f. accept any power of attorney from an owner for any purpose, except to inspect documents as provided by law; or

g. induce or attempt to induce an owner to enter a contract that does not comply in all respects with sections 4 and 5 of this act.

C.46:10B-59 Waiver void, unenforceable.

7. a. Any waiver by an owner of the provisions of section 4, 5, or 6 of this act is void and unenforceable as contrary to public policy.

b. Any attempt by a foreclosure consultant to induce an owner to waive the owner's rights is a violation of this act.

C.46:10B-60 Written contract required for conveyance of distressed property.

8. a. A distressed property purchaser who enters into a distressed property conditional conveyance or a distressed property conveyance shall do so in the form of a written contract. A distressed property conditional conveyance contract and a distressed property conveyance contract shall be written in at least 14-point boldface type, in the same language principally used by the owner to negotiate the sale of the distressed property, shall be fully completed, signed, and dated by the owner and the distressed property purchaser, and shall be witnessed and acknowledged by a notary public, before the owner executes a deed or any other instrument of conveyance of the distressed property.

b. A distressed property conditional conveyance contract and a distressed property conveyance contract shall contain the entire agreement of the parties, be fully assignable, and survive delivery of any deed or any other instrument of conveyance of the distressed property.

c. A distressed property conditional conveyance contract and a distressed property conveyance contract shall include the following terms, except that a distressed property conveyance contract shall not be required to contain the terms set forth in paragraph (5):

(1) the name, business address, and telephone number of the distressed property purchaser;

(2) the address of the distressed property;

(3) the total consideration to be given by the distressed property purchaser in connection with or incident to the transaction;

(4) a complete description of the terms of payment or other consideration including, but not limited to, any distressed property services of any nature that the distressed property purchaser represents will be performed for the owner before or after the transaction;

(5) a complete description of the terms of any related agreement designed to allow the owner to remain in the dwelling including, but not limited to, a lease agreement, repurchase agreement, contract for deed, or a lease agreement with an option to purchase;

(6) a notice of cancellation as provided in this section;

(7) the following notice in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, and completed with the name of the distressed property purchaser immediately above the statement required by this section:

**"NOTICE REQUIRED BY NEW JERSEY LAW**

Until your right to cancel this contract has ended, .....(Name) or anyone working for .....(Name) CANNOT ask you to sign or have you sign any deed or any other document. You are urged to have this contract reviewed by an attorney of your choice within 10 business days of signing it."; and

(8) if title to the distressed property will be transferred in the transaction, the following notice in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, and completed with the name of the distressed property purchaser immediately above the statement required by this section:

**"NOTICE REQUIRED BY NEW JERSEY LAW**

As part of this transaction, you are giving up title to your home."

C.46:10B-61 Additional right of rescission, cancellation of contract.

9. a. In addition to any other right of rescission provided by applicable State or federal laws, the owner has the right to cancel a distressed property conditional conveyance contract or a distressed property conveyance contract with a distressed property purchaser until midnight of the 10th business day following the day on which the owner signs the contract, or until the conclusion of a sheriff's sale pursuant to the provisions of the "Fair Foreclosure

Act,” P.L.1995, c.244 (C.2A:50-53 et seq.), whichever occurs first, during which the owner may have an attorney review the contract.

b. Cancellation of the contract occurs when the owner, or an attorney representing the owner, delivers, by any means, written notice of cancellation to the address specified in the contract. Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. Notice by certified mail, return receipt requested, to the address specified in the contract, shall be conclusive proof of notice of cancellation.

c. A notice of cancellation given by the owner, or an attorney representing the owner, need not take the particular form as provided with the contract, and however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

d. Within 10 business days following receipt of a notice of cancellation delivered in accordance with this section, the distressed property purchaser shall return to the owner, without condition, any original contract and any other documents signed by the owner.

e. The 10 business days during which the owner, or an attorney representing the owner, may cancel the contract shall not begin to run until all parties to the contract have executed the contract and the distressed property purchaser has complied with all the requirements of this section.

C.46:10B-62 Option of cancellation statement in contract.

10. a. A distressed property conditional conveyance contract and a distressed property conveyance contract with a distressed property purchaser shall contain in immediate proximity to the space reserved for the owner’s signature a conspicuous statement in a size equal to at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, as follows:

"You may cancel this contract for the conveyance of your house, without any penalty or obligation, at any time before .....(Date and time of day). See the attached notice of cancellation form for an explanation of this right."

The distressed property purchaser shall accurately enter the date and time of day on which the cancellation right ends.

b. A contract with a distressed property purchaser shall be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION" in a size equal to a 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, followed by a space in which the distressed property purchaser shall enter the date on which the owner executes any contract. This form shall be attached to the contract, shall be easily detachable, and shall contain in at least 14-point type, if the contract is printed, or in capital letters, if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....  
(Enter date contract signed)

You may cancel this contract for the conveyance of your home, without any penalty or obligation, at any time before ..... (enter date and time of day). To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice to ..... (Name of purchaser) at ..... (Street address of purchaser's place of business) NOT LATER THAN ..... (Enter date and time of day).

I hereby cancel this transaction on ..... (Date)  
..... (Owner's signature)."



c. The distressed property purchaser shall provide the owner with a copy of the contract and the attached notice of cancellation in duplicate at the time the contract is executed by all parties.

d. The distressed property purchaser shall record the contract and the attached notice of cancellation with the county clerk in the county in which the distressed property is located within 10 business days of the signing of the contract by both parties.

C.46:10B-63 Prohibited actions of distressed property purchaser.

11. a. A distressed property purchaser, in the course of a distressed property conditional conveyance, shall not:

(1) enter into, or attempt to enter into, a distressed property conditional conveyance unless the distressed property purchaser verifies and can demonstrate that the owner has a reasonable ability to pay for the subsequent conveyance of a fee interest back to the owner under the terms of any option to purchase and a reasonable ability to make monthly or any other required payments due prior to the subsequent conveyance;

(2) fail to make a payment to the owner at the time the title to the distressed property is conveyed from the owner to the distressed property purchaser, or, if the distressed property purchaser acquires a beneficial interest through a trust, at the time of the creation of the trust, so that the owner has received consideration in an amount of at least 82% of the property's fair market value, or, in the alternative, fail to make a payment to the owner, in situations in which the owner is unable to purchase the distressed property from the distressed property owner at the time of the expiration of the owner's option to purchase, so that the owner has received consideration in an amount of at least 82% of the property's fair market value;

(3) enter into an option to purchase or lease as part of a distressed property conditional conveyance containing terms that are unfair or commercially unreasonable, or engage in any other unfair conduct;

(4) represent, directly or indirectly, that the distressed property purchaser is acting as an advisor or a consultant, or in any other manner represent that the distressed property purchaser is acting on behalf of the homeowner;

(5) misrepresent the distressed property purchaser's status as to licensure or certification;

(6) do any of the following until after the time during which the owner may cancel the transaction:

(a) accept from the owner an execution of a deed or any other instrument of conveyance of any interest in the distressed property;

(b) induce the owner to execute a deed or any other instrument of conveyance of any interest in the distressed property; or

(c) record with the county recorder of deeds any document signed by the owner, including but not limited to a deed or any other instrument of conveyance;

(7) fail to convey title to the distressed property to the owner under an option to purchase provided for in the distressed property conveyance contract, in situations in which the terms of the conveyance contract have been fulfilled;

(8) enter into a distressed property conditional conveyance if any party to the transaction is represented by way of a power of attorney;

(9) fail to extinguish all liens encumbering the distressed property, immediately following the conveyance of the distressed property, or fail to assume all liability with respect to the lien in foreclosure and prior liens that will not be extinguished by the foreclosure, which assumption shall be accomplished without violations of the terms and conditions of the lien being assumed;

(10) cause the property to be conveyed or encumbered without the knowledge or permission of the owner, or in any way frustrate the ability of the owner to complete the conveyance back to the owner;

(11) fail to have all documents executed as part of a distressed property conditional conveyance also signed by a notary public licensed in the State who is unrelated in any way to the distressed property purchaser or any participant in the distressed property conveyance;

(12) fail to complete a distressed property conditional conveyance in the office of a title insurance producer licensed pursuant to the "New Jersey Insurance Producer Licensing Act of 2001," P.L.2001, c.210 (C.17:22A-26 et seq.), or in the office of an attorney licensed to practice law in this State;

(13) fail to provide to the owner, prior to the time of completion of a distressed property conditional conveyance, a disclosure statement in a form to be designed and prescribed by regulation by the Commissioner of Banking and Insurance, which statement shall require disclosure to the owner of all costs that the owner will incur in connection with the conveyance and any option for the owner to purchase the property, including a schedule of monthly and annual payments, closing costs, and any additional costs and fees related to the conveyance;

(14) claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason from an owner, for services or as consideration for offering or providing any option to purchase to the owner or for otherwise participating in the conveyance transaction, in excess of 3.5% of the purchase price;

(15) in situations in which the distressed property conditional conveyance involves a transfer of an interest in fee from an owner to a distressed property purchaser, fail to record the deed to the purchaser in the county clerk's office in which the property is located, or fail to include a statement on the recorded deed that the deed was obtained through a transaction governed by the "Foreclosure Rescue Fraud Prevention Act";

(16) fail to notify in writing all existing mortgage lien holders of the distressed property purchaser's intent to accept conveyance of an interest in the property from the owner;

(17) fail to fully comply with all terms and conditions contained in the mortgage lien documents, including but not limited to due-on-sale provisions;

(18) fail to satisfy all qualification requirements for assuming the repayment of mortgage; and

(19) enter into an option to purchase or lease as part of a distressed property conditional conveyance in which the agreement fails to provide for a length of time of at least three years within which the owner may exercise his right to purchase back the property.

b. For purposes of paragraph (1) of subsection a. of this section, an evaluation of "reasonable ability to pay" shall include the owner's debt to income ratio, the owner's residual income, the fair market value of the distressed property, and the owner's credit history. There shall be a rebuttable presumption that the distressed property purchaser has not verified reasonable payment ability if the distressed property purchaser has not obtained documents of assets, liabilities, and income, other than a statement by the owner.

c. For purposes of paragraph (2) of subsection a. of this section: (1) an appraisal at the time that the distressed property is conveyed by a person licensed or certified by an agency of this State or the federal government shall create a rebuttable presumption that the appraisal is an accurate determination of the fair market value of the property; and (2) "consideration" means any payment or thing of value provided to the owner, including reasonable costs paid to independent third parties necessary to complete the distressed property conveyance or payment of money to satisfy a debt or legal obligation of the owner.

"Consideration" shall not include amounts imputed as a down payment or fee to the distressed property purchaser, or a person acting in participation with the distressed property purchaser.

d. If an owner fails to make a required payment or otherwise defaults under a distressed property conditional conveyance contract which contains an owner's option to purchase or a promise to convey an interest in fee back to the owner, the distressed property purchaser shall only enforce the forfeiture of the owner's interest under the contract as follows:

(1) for purposes of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.), the distressed property conditional conveyance contract shall be deemed to be a residential mortgage, the distressed property purchaser shall be deemed to be a lender, and the owner shall be deemed to be a debtor; and

(2) the distressed property purchaser may bring an action to enforce the forfeiture of the owner's interest in the property and for recovery of possession of the property by use of the procedures for foreclosure and judicial sale of residential real property available to lenders pursuant to the provisions of the "Fair Foreclosure Act."

e. With respect to the amount of any fee or other consideration provided by an owner to a distressed property purchaser at the time of the execution of an option to purchase, as part of any distressed property conditional conveyance, and as consideration for that agreement:

(1) the entire fee or other consideration shall be provided by the owner at the time of the execution of the option to purchase or lease agreement;

(2) the distressed property purchaser may declare some or all of the fee or other consideration to be non-refundable, regardless of whether the owner exercises his right to purchase back the property from the distressed property purchaser pursuant to the option to purchase or lease agreement, or declare that some or all of the fee or other consideration shall be applied as credit toward the purchase of the property, if the owner does exercise his right to purchase back the property, so long as this declaration is agreed to by the owner and expressly stated in the agreement; and

(3) the fee or other consideration provided to the distressed property purchaser shall not constitute an equitable ownership interest in the property.

f. With respect to any money provided by the owner to the distressed property purchaser pursuant to any distressed property conditional conveyance, remitted as a monthly credit towards the purchase of the property in excess of any monthly rental obligation established pursuant to any agreement designed to allow the owner to remain in the property, including, but not limited to, a lease agreement between the parties:

(1) the distressed property purchaser may declare some or all of the money to be non-refundable, if the owner does not exercise his right to purchase back the property from the distressed property purchaser pursuant to the option to purchase or lease agreement, so long as this declaration is agreed to by the owner and expressly stated in the agreement;

(2) the money provided to the distressed property purchaser shall not constitute an equitable ownership interest in the property; and

(3) the money shall continue to be the property of the owner and shall be held in trust by the distressed property purchaser for use as a credit towards the purchase of the property, subject to any agreement pursuant to paragraph (1) of this subsection.

g. If the owner exercises his right to purchase back the property from the distressed property purchaser pursuant to the option to purchase agreement: (1) any amount still owed toward the purchase price or other consideration on the property, as set forth in the agreement, following the application of any fee, money, or other consideration agreed to be applied towards the purchase by the distressed property purchaser as credit towards the

purchase, shall be the sole responsibility of the owner; and (2) a new deed for the property shall be executed by the distressed property purchaser and filed with the office of the county clerk in the county in which the property resides.

C.46:10B-64 Requirements for distressed property purchaser.

12. A distressed property purchaser, in the course of a distressed property conveyance, shall not fail to:

- a. make a payment to the owner at the time the title to the distressed property is conveyed from the owner to the distressed property purchaser, so that the owner has received consideration, as defined by paragraph (2) of subsection c. of section 11 of this act, in an amount of at least 82% of the property's fair market value;
- b. have all documents executed as part of a distressed property conveyance also signed by a notary public licensed in the State who is unrelated in any way to the distressed property purchaser or any participant in the distressed property conveyance;
- c. complete a distressed property conveyance in the office of a title insurance producer licensed pursuant to the "New Jersey Insurance Producer Licensing Act of 2001," P.L.2001, c.210 (C.17:22A-26 et seq.), or in the office of an attorney licensed to practice law in the State;
- d. provide to the owner, prior to the time of completion of a distressed property conveyance, a disclosure statement in a form to be designed and prescribed by regulation by the Commissioner of Banking and Insurance, which statement shall require disclosure to the owner of all costs and fees that the owner will incur in connection with the conveyance;
- e. notify in writing all existing mortgage lien holders of the distressed property purchaser's intent to accept conveyance of an interest in the property from the owner;
- f. fully comply with all terms and conditions contained in the mortgage lien documents, including but not limited to due-on-sale provisions; and
- g. satisfy all qualification requirements for assuming the repayment of the mortgage.

C.46:10B-65 Waiver void, unenforceable.

13. Any waiver of the provisions of section 8, 9, 10, 11, or 12 of this act is void and unenforceable as contrary to public policy.

C.46:10B-66 Powers of commissioner relative to compliance.

14. a. The Commissioner of Banking and Insurance may investigate or examine any foreclosure consultant, or other person as the commissioner deems necessary to determine compliance with this act. For these purposes, the commissioner may examine the books, accounts, records and other documents or matters of any foreclosure consultant or other person. Each foreclosure consultant shall be subject to an examination by the commissioner, not more than once in any 12-month period, unless the commissioner has reason to believe that the foreclosure consultant is not complying with the provisions of this act, or is not transacting business in accordance with law, in which case the commissioner may conduct an examination at any time. The commissioner shall have the power to compel by subpoena the production of all relevant books, accounts, records and other documents and materials relative to an examination or investigation.

b. The commissioner or the commissioner's designee shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, accounts, records and other evidence before him in any matter over which he has jurisdiction pursuant to this act, and to administer oaths and affirmations to any person.

c. If any person shall refuse to obey a subpoena, or to give testimony or to produce evidence as required thereby, the commissioner may apply ex parte to any court having jurisdiction over that person for an order compelling the appearance of the witness before the commissioner to give testimony or to produce evidence as required thereby, or both.

d. A foreclosure consultant shall have its financial records audited annually by a certified public accountant, which audit shall be filed with the commissioner. The commissioner shall conduct at least one examination of the financial records of every foreclosure consultant licensed in the State every two years.

C.46:10B-67 Violations, penalties; degree of crime.

15. a. Any person who violates any provision of this act shall, in addition to any other penalty provided by law, be liable to a penalty of not more than \$10,000 for the first offense, and not more than \$20,000 for the second and each subsequent offense, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

b. A person who violates any provision of this act is guilty of a crime of the third degree. A person who violates any provision of this act in connection with a pattern of foreclosure rescue fraud or a conspiracy or endeavor to engage in a pattern of foreclosure rescue fraud is guilty of a crime of the second degree.

c. Any distressed property conditional conveyance involving the transfer of an interest in fee or a beneficial interest created through a trust document, in a distressed property, and involving the acquirer of the property allowing the owner to occupy the property, which is made in violation of any provision of this act, is voidable and the transfer may be rescinded by the owner within two years of the date of the transfer, provided that the right, title or interest in the property of a bona fide purchaser or mortgagee for value shall not be affected thereby. Nothing herein shall limit the right of an owner to recover damages from a distressed property purchaser.

d. An owner may bring an action in Superior Court against a foreclosure consultant or a distressed property purchaser for any violation of this act, for treble damages, attorney's fees, costs of suit and appropriate equitable relief. In an action under this subsection, the owner may:

(1) cause a notice of lis pendens to be filed in the office of the county clerk in the county in which the property is located, pursuant to N.J.S.2A:15-6 et seq.; and

(2) introduce or provide as evidence in the action, any contemporaneous oral agreements or representations made to the owner by any party to a foreclosure consultant contract, distressed property conditional conveyance contract, or distressed property conveyance contract signed by the owner.

e. The remedies and rights provided for in this act are not exclusive, but cumulative, and all other remedies or rights provided by State or federal law, including, but not limited to, those brought under the doctrine of equitable mortgage or pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.) are specifically preserved. Nothing in this act shall be construed to limit the application of the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.).

f. If the Commissioner of Banking and Insurance determines that there has been any substantial violation of this act by a professional licensed under a licensing board in this State, the commissioner shall provide a written notice describing the violation to the licensing board having jurisdiction over the profession, for such action as the board deems appropriate.

C.46:10B-68 Enforcement, regulations.

16. The Commissioner of Banking and Insurance shall enforce the provisions of this act, and may promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the purposes of the act.

17. Section 2 of P.L.2005, c.199 (C.17:1C-34) is amended to read as follows:

C.17:1C-34 Definitions relative to funding mechanism for Division of Banking.

2. For the purposes of this act:

"Assessment" means the assessment imposed pursuant to section 3 of this act for the special functions of the division as provided in that section.

"Commissioner" means the Commissioner of Banking and Insurance.

"Department" means the Department of Banking and Insurance.

"Depository institution" means any entity holding a state charter for a bank, savings bank, savings and loan association or credit union, irrespective of whether the entity accepts deposits.

"Division" means the Division of Banking in the Department of Banking and Insurance.

"Other financial entity" means a person who is licensed or registered pursuant to: the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.); the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.), other than a financial entity with respect to the payment of required fees to the Nationwide Mortgage Licensing System and Registry as set forth by that nationwide system and registry; "The Check Cashers Regulatory Act of 1993," P.L.1993, c.383 (C.17:15A-30 et seq.); the "New Jersey Money Transmitters Act," P.L.1998, c.14 (C.17:15C-1 et seq.); the "Insurance Premium Finance Company Act," P.L.1968, c.221 (C.17:16D-1 et seq.); the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.); the "Door-to-Door Retail Installment Sales Act of 1968," P.L.1968, c.223 (C.17:16C-61.1 et seq.); the "Home Repair Financing Act," P.L.1960, c.41 (C.17:16C-62 et seq.); the "Door-to-Door Home Repair Sales Act of 1968," P.L.1968, c.224 (C.17:16C-95 et seq.); P.L.1979, c.16 (C.17:16G-1 et seq.); the "Foreclosure Rescue Fraud Prevention Act," P.L.2011, c.146 (C.46:10B-53 et al.); or the "pawnbroking law," R.S.45:22-1 et seq.

"Nationwide Mortgage Licensing System and Registry" means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successors, and utilized in this State pursuant to the provisions of the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.).

"Regulated entity" means a depository institution, other financial entity or person chartered, licensed or registered by the Division of Banking or who should be chartered, licensed or registered.

18. This act shall take effect on the 180th day following enactment, but the Commissioner of Banking and Insurance may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

Approved December 20, 2011.