

House Bill 49

By: Representative Mitchell of the 88th

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 4 of Article 7 of Chapter 14 of Title 44 of the Official Code of Georgia
2 Annotated, relating to foreclosures on personalty, so as to enact the "Foreclosure Rescue
3 Fraud Prevention Act"; to provide for definitions; to provide for foreclosure rescue
4 consultants and firms to be bonded; to provide for the application of certain state consumer
5 protection laws to foreclosure rescue transactions; to provide that unfair foreclosure rescue
6 transactions are unlawful and void; to provide for remedies; to provide for related matters;
7 to provide for an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Part 4 of Article 7 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated,
11 relating to foreclosures on personalty, is amended by adding a new subpart to read as
12 follows:

13 "Subpart 5

14 44-14-310.

15 This subpart shall be known and may be cited at the 'Foreclosure Rescue Fraud Prevention
16 Act.'

17 44-14-311.

18 As used in this subpart, the term:

19 (1) 'Bond' means a written instrument, issued or executed by a bonding, surety, or
20 insurance company licensed to do business in this state, guaranteeing that the person
21 bonded shall faithfully fulfill the terms of the contract provided to the commissioner for
22 the benefit of persons sustaining loss resulting from failure to fulfill the terms of the
23 contract.

- 24 (2) 'Commission' means the Georgia Real Estate Commission created in Code Section
25 43-40-2.
- 26 (3) 'Commissioner' means the real estate commissioner for the commission.
- 27 (4) 'Foreclosure' means the process by which a person with a security interest in
28 residential property may foreclose on that security interest.
- 29 (5) 'Foreclosure related rescue service' means any good or service related to or promising
30 assistance in connection with:
- 31 (A) Stopping, avoiding, or delaying foreclosure proceedings concerning residential real
32 property; or
- 33 (B) Curing or otherwise addressing a default or failure to timely pay with respect to a
34 residential mortgage loan obligation.
- 35 (6) 'Foreclosure rescue consultant' means a person, business, firm, partnership, or
36 corporation that directly or indirectly makes a solicitation, representation, or offer to a
37 homeowner to provide or perform, in return for payment of money or other valuable
38 consideration, foreclosure related rescue services. The term shall not apply to:
- 39 (A) A person acting under the express authority or written approval of the United
40 States Department of Housing and Urban Development or other department or agency
41 of the United States or this state to provide foreclosure related rescue services;
- 42 (B) A charitable, nonprofit agency or organization, as determined by the United States
43 Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code, which
44 offers counseling or advice to an owner of residential real property in foreclosure or
45 loan default if the agency or organization does not contract for foreclosure related
46 rescue services with a for profit lender or person facilitating or engaging in foreclosure
47 rescue transactions;
- 48 (C) A person who holds or is owed an obligation secured by a lien or other instrument
49 against residential real property in foreclosure if the person performs foreclosure related
50 rescue services in connection with this obligation or lien, and the obligation or lien was
51 not the result of or part of a proposed foreclosure reconveyance or foreclosure rescue
52 transaction;
- 53 (D) A financial institution and any parent or subsidiary of the financial institution or
54 of the parent or subsidiary as such terms are defined in Code Section 7-1-4;
- 55 (E) A licensed mortgage broker, mortgage lender, correspondent mortgage lender, or
56 real estate agent that provides mortgage counseling or advice regarding residential real
57 property in foreclosure, which counseling or advice is provided without payment of
58 money or other consideration other than a mortgage brokerage commission; or
- 59 (F) An attorney or a law firm providing legal services or consultation.

60 (7) 'Foreclosure rescue transaction' means a transaction that includes all of the following
 61 elements:

62 (A) Property subject to this subpart is conveyed by a homeowner to a grantee;

63 (B) The property is, or was at the time of the foreclosure rescue transaction, in default
 64 or foreclosure;

65 (C) The transaction is designed, intended, or promoted by the parties as a means to
 66 avoid or delay actual or anticipated foreclosure proceedings against the property while
 67 permitting the homeowner to maintain a legal or equitable interest in the property
 68 conveyed, including, without limitation, a lease interest, a right to possession, an option
 69 to acquire the property, or other interest in the property conveyed; and

70 (D) The grantee enters into the transaction for compensation or gain or for potential or
 71 contingent compensation or gain.

72 A transaction shall not be deemed to be a foreclosure rescue transaction merely because
 73 it provides the homeowner up to three months beyond the transfer date to vacate the
 74 property, provided that it is clear from all of the circumstances that the homeowner has
 75 no expectation of remaining in the property beyond the date to vacate. The term
 76 'foreclosure rescue transaction' includes any contract, agreement, or arrangement, or any
 77 term thereof, between a grantee and a homeowner that is incident to a foreclosure rescue
 78 transaction. Parol evidence shall be admissible to show that a transaction is a foreclosure
 79 rescue transaction.

80 43-14-312.

81 (a) No person, business, firm, partnership, or corporation shall lawfully engage in this state
 82 in the business of acting as a foreclosure rescue consultant or providing foreclosure related
 83 rescue services without first applying for and obtaining a license from the commissioner.
 84 Any person, business, firm, partnership, or corporation commencing operation as a
 85 foreclosure rescue consultant or commencing a business offering foreclosure related rescue
 86 services shall, prior to obtaining a license, post a bond as required by this Code section.
 87 The provisions of this Code section requiring the posting of a bond shall not apply to any
 88 authorized agent of a person, firm, or corporation having posted the bond required by this
 89 Code section when such agent is acting for and on behalf of such principal who has
 90 obtained such a bond.

91 (b) No person, business, firm, partnership, or corporation shall act as a foreclosure rescue
 92 consultant or provide foreclosure related rescue services unless such person, business, firm,
 93 partnership, or corporation has then in force a bond in an amount of \$500,000.00.

94 (c) The commissioner shall be authorized to adopt rules and regulations for the
 95 implementation and enforcement of the provisions of this Code section. The commissioner

96 may assess an application or license fee for the purpose of covering costs incurred in the
 97 issuance of licenses required by this Code section.

98 43-14-313.

99 Unfair foreclosure rescue transactions shall be unlawful, void, and a violation of Part 2 of
 100 Article 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975.' A foreclosure
 101 rescue transaction shall be deemed unfair if it meets any of the following criteria:

102 (1) The grantee has violated the provisions of Code Section 43-14-312 by failing to
 103 obtain bonding;

104 (2) The grantee fails to pay the homeowner consideration amounting to at least 82
 105 percent of the fair market value of the property; and

106 (3) The grantee fails to verify that the homeowner has or is likely to have a reasonable
 107 ability to make any payments required under the foreclosure rescue transaction and to pay
 108 for the subsequent reconveyance back to the homeowner of the full title previously held
 109 by the homeowner based upon consideration of the homeowner's current and expected
 110 income, current obligations, employment status, and other financial resources, other than
 111 the homeowner's equity in the property that is the subject of the transaction, as verified
 112 by documentation of all sources of income and corroborated by independent verification.
 113 There shall be a rebuttable presumption that the grantee has not verified reasonable
 114 payment ability if the grantee has not obtained any documents other than a statement by
 115 the homeowner of assets, liabilities, and income. There shall be a rebuttable presumption
 116 that a homeowner has a reasonable ability to pay if the grantee demonstrates that, at the
 117 time the foreclosure rescue transaction is consummated, the homeowner's total monthly
 118 debts, including amounts owed under the transaction, do not exceed 50 percent of the
 119 homeowner's monthly gross income.

120 44-14-314.

121 A homeowner may bring an action for the recovery of damages and declaratory or
 122 equitable relief for a violation of this part or on the grounds that an agreement entered into
 123 with a foreclosure rescue consultant or a business, firm, partnership, or corporation
 124 providing foreclosure related rescue services was breached by such party or was entered
 125 into based on duress, fraud, or unfair consumer practices. Any contract entered into in
 126 violation of this subpart or based on duress, fraud, or unfair consumer practices shall be
 127 void as a matter of law. The court may award to a prevailing homeowner actual damages
 128 plus reasonable attorney's fees, costs, and expenses. The court may increase the award to
 129 an amount not to exceed three times the homeowner's actual damages if the court deems
 130 such award proper. Any action brought pursuant to this subpart shall be commenced within

131 four years after the date of the alleged violation; provided, however, that a court may grant
132 relief to void or otherwise reverse transfer of title from the homeowner only if the action
133 is filed prior to the lawful sale of the real property that is the subject of the action."

134 **SECTION 2.**

135 This Act shall become effective on July 1, 2013.

136 **SECTION 3.**

137 All laws and parts of laws in conflict with this Act are repealed.