

111TH CONGRESS  
1ST SESSION

# S. 117

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

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IN THE SENATE OF THE UNITED STATES

JANUARY 6, 2009

Mr. KOHL (for himself, Ms. COLLINS, Mrs. LINCOLN, Mrs. BOXER, and Ms. MIKULSKI) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **COMMISSION.**—The term “Commission”  
9 means the Federal Trade Commission.

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

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

10           (B) does not include—

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

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

20           (iii) a housing counseling agency ap-  
21 proved by the Secretary;

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

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

5 (vi) an insurance company organized  
6 under the laws of any State.

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

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

17 (5) RESIDENTIAL MORTGAGE LOAN.—The term  
18 “residential mortgage loan” means any loan pri-  
19 marily for personal, family, or household use that is  
20 secured by a mortgage, deed of trust, or other equiv-  
21 alent consensual security interest on a dwelling (as  
22 defined in section 103(v) of the Truth in Lending  
23 Act (15 U.S.C. 1602(v)) or residential real estate  
24 upon which is constructed or intended to be con-  
25 structed a dwelling (as so defined).

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

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

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

8           (a) LIMITS ON FORECLOSURE CONSULTANTS.—A  
9           foreclosure consultant may not—

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

18           (2) hold any power of attorney from any home-  
19           owner, except to inspect documents, as provided by  
20           applicable law;

21           (3) receive any consideration from a third party  
22           in connection with services rendered to a homeowner  
23           by such third party with respect to the foreclosure  
24           of residential real property, unless such consider-  
25           ation is fully disclosed, in a clear and conspicuous

1 manner, to such homeowner in writing before such  
 2 services are rendered;

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

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

12 (b) CONTRACT REQUIREMENTS.—

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

18 (A) unless—

19 (i) a written contract for the purchase  
 20 of such service has been signed and dated  
 21 by the homeowner; and

22 (ii) such contract complies with the  
 23 requirements described in paragraph (2);  
 24 and

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

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

7 (A) The contract includes, in writing—

8 (i) a full and detailed description of  
9 the exact nature of the contract and the  
10 total amount and terms of compensation;

11 (ii) the name, physical address, phone  
12 number, email address, and facsimile num-  
13 ber, if any, of the foreclosure consultant to  
14 whom a notice of cancellation can be  
15 mailed or sent under subsection (d); and

16 (iii) a conspicuous statement in at  
17 least 12 point bold face type in immediate  
18 proximity to the space reserved for the  
19 homeowner's signature on the contract  
20 that reads as follows: "You may cancel this  
21 contract without penalty or obligation at  
22 any time before midnight of the 3rd busi-  
23 ness day after the date on which you sign  
24 the contract. See the attached notice of

1 cancellation form for an explanation of this  
2 right.”.

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

6 (C) The contract is accompanied by the  
7 form required by subsection (c)(2).

8 (c) RIGHT TO CANCEL CONTRACT.—

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

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

21 (A) has the heading “Notice of Cancellat-  
22 tion” in boldface type; and

23 (B) contains in boldface type the following  
24 statement:

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

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

10           “I hereby cancel this transaction on [insert  
11           date] [insert homeowner signature].”

12           (d) WAIVER OF RIGHTS AND PROTECTIONS PROHIB-  
13           ITED.—

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

17                       (A) shall be treated as void; and

18                       (B) may not be enforced by any Federal or  
19           State court or by any person.

20           (2) ATTEMPT TO OBTAIN A WAIVER.—Any at-  
21           tempt by any person to obtain a waiver from any  
22           homeowner of any protection provided by this sec-  
23           tion or any right of the homeowner under this sec-  
24           tion shall be treated as a violation of this section.



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

5 **SEC. 4. WARNINGS TO HOMEOWNERS OF FORECLOSURE**  
6 **RESCUE SCAMS.**

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

13           (b) **NOTICE REQUIREMENTS.**—Each notice provided  
14 under subsection (a) shall—

15                 (1) be in writing;

16                 (2) be included with a mailing of account infor-  
17 mation;

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

21                 (4) contain the following statement in English  
22 and Spanish: “Mortgage foreclosure is a complex  
23 process. Some people may approach you about sav-  
24 ing your home. You should be careful about any  
25 such promises. There are government and nonprofit

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

16 **SEC. 5. CIVIL LIABILITY.**

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

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

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

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

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

7 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-  
8 SION.—

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

17 (2) ACTIONS BY THE FEDERAL TRADE COMMIS-  
18 SION.—The Federal Trade Commission shall enforce  
19 the provisions of sections 3 and 4 in the same man-  
20 ner, by the same means, and with the same jurisdic-  
21 tion, powers, and duties as though all applicable  
22 terms and provisions of the Federal Trade Commis-  
23 sion Act (15 U.S.C. 41 et seq.) were incorporated  
24 into and made part of this title.

25 (b) STATE ACTION FOR VIOLATIONS.—

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

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

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

16                   (C) in the case of any successful action  
17 under subparagraph (A) or (B), shall be award-  
18 ed the costs of the action.

19           (2) RIGHTS OF FEDERAL TRADE COMMIS-  
20 SION.—

21                   (A) NOTICE TO COMMISSION.—The State  
22 shall serve prior written notice of any civil ac-  
23 tion under paragraph (1) upon the Commission  
24 and provide the Commission with a copy of its  
25 complaint, except in any case in which such

1 prior notice is not feasible, in which case the  
2 State shall serve such notice immediately upon  
3 instituting such action.

4 (B) INTERVENTION.—The Commission  
5 shall have the right—

6 (i) to intervene in any action referred  
7 to in subparagraph (A);

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

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

12 (iv) to file petitions for appeal in such  
13 actions.

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

24 (4) LIMITATION.—Whenever the Federal Trade  
25 Commission has instituted a civil action for a viola-

1       tion of section 3 or 4, no State may, during the  
2       pendency of such action, bring an action under this  
3       section against any defendant named in the com-  
4       plaint of the Commission for any violation of section  
5       3 or 4 that is alleged in that complaint.

6 **SEC. 7. PREEMPTION.**

7       Nothing in this title affects any provision of State  
8       or local law respecting any foreclosure consultant, residen-  
9       tial mortgage loan, or residential real property that pro-  
10      vides equal or greater protection to homeowners than what  
11      is provided under this title.

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