

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1632

By: Pittman

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5
6 AS INTRODUCED

7 An Act relating to crimes and punishments; creating
8 the Mortgage Rescue Fraud Protection Act; stating
9 legislative findings and purpose; defining terms;
10 providing certain foreclosure notice requirements;
11 providing for rescission of certain contracts;
12 prohibiting certain acts; providing certain
13 limitations and requirements for foreclosure
14 reconveyances; providing remedies for violations;
15 providing for promulgation of rules; providing for
16 codification; and providing an effective date.

17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1550.10 of Title 21, unless
20 there is created a duplication in numbering, reads as follows:

21 This act shall be known and may be cited as the "Mortgage Rescue
22 Fraud Protection Act".

23 SECTION 2. NEW LAW A new section of law to be codified
24 in the Oklahoma Statutes as Section 1550.11 of Title 21, unless
25 there is created a duplication in numbering, reads as follows:

26 A. The Legislature finds that:

1 1. The increased use of nontraditional mortgages has led to an
2 increase in mortgage foreclosures. This has created new
3 opportunities for fraudulent schemes targeting vulnerable, usually
4 low-income, homeowners who face foreclosure;

5 2. Fraudulent mortgage rescue schemes most commonly involve
6 foreclosure consultants who do very little for a fee or foreclosure
7 reconveyance agreements which are designed to steal the equity that
8 homeowners have built up in their properties; and

9 3. Current state law is insufficient to protect homeowners from
10 fraudulent mortgage rescue schemes.

11 B. This law is enacted to protect the property and security of
12 homeowners who are subject to foreclosure proceedings.

13 SECTION 3. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1550.12 of Title 21, unless
15 there is created a duplication in numbering, reads as follows:

16 As used in the Mortgage Rescue Fraud Protection Act:

17 1. "Homeowner" means the person holding record title to
18 residential real property as of the date on which an action to
19 foreclose the mortgage or deed of trust is filed;

20 2. "Foreclosure consultant" means a person who directly or
21 indirectly makes any solicitation, representation, or offer to a
22 homeowner facing foreclosure to perform, with or without
23 compensation, or who performs, with or without compensation, any
24 service that the person represents will:

- 1 a. prevent, postpone, or reverse the effect of a
- 2 foreclosure sale,
- 3 b. allow the homeowner to become a lessee or renter
- 4 entitled to continue to reside in the homeowner's
- 5 residence, or
- 6 c. allow the homeowner to have an option to repurchase
- 7 the homeowner's residence;

8 3. "Foreclosure reconveyance" means a transaction involving:

- 9 a. the transfer of title to real property by a homeowner
- 10 during or incident to a proposed foreclosure
- 11 proceeding, either by transfer of interest from the
- 12 homeowner to another party or by creation of a
- 13 mortgage, trust, or other lien or encumbrance during
- 14 the foreclosure process that allows the acquirer to
- 15 obtain legal or equitable title to all or part of the
- 16 property, and
- 17 b. the subsequent conveyance, or promise of a subsequent
- 18 conveyance, of an interest back to the homeowner or a
- 19 person acting in participation with the acquirer that
- 20 allows the homeowner to possess the real property
- 21 following the completion of the foreclosure
- 22 proceeding, including an interest in a contract for
- 23 deed, purchase agreement, land installment sale,
- 24

1 contract for sale, option to purchase, lease, trust or
2 other contractual arrangement; and

3 4. "Formal settlement" means an in-person, face-to-face meeting
4 with the homeowner to complete final documents incident to the sale
5 or transfer of real property, or the creation of a mortgage or
6 equitable interest in real property, conducted by a settlement agent
7 who is not employed by or an affiliate of the foreclosure purchaser,
8 during which the homeowner must be presented with a completed copy
9 of the HUD-1 settlement form.

10 SECTION 4. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1550.13 of Title 21, unless
12 there is created a duplication in numbering, reads as follows:

13 A. In addition to any other required notice, the person
14 authorized to make a sale in an action to foreclose a mortgage or
15 deed of trust shall give written notice of the action to the record
16 owner of the property to be sold, sent no later than two (2) days
17 after the action to foreclose is docketed, both by certified mail,
18 postage prepaid, return receipt requested, and by first class-mail.

19 B. The notice shall state that an action to foreclose the
20 mortgage or deed of trust may be or has been docketed and that a
21 foreclosure sale of the property will be held. The notice shall
22 contain the following statement printed in at least 14-point
23 boldface type:

24 "NOTICE REQUIRED BY STATE LAW

1 Mortgage foreclosure is a complex process. Some people may approach
2 you about "saving" your home. You should be careful about any such
3 promises. There are government agencies and nonprofit organizations
4 you may contact for helpful information about the foreclosure
5 process. For the name and telephone number of an organization near
6 you, please call the Oklahoma Attorney General at 405-521-3921 or
7 918-581-2885."

8 SECTION 5. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1550.14 of Title 21, unless
10 there is created a duplication in numbering, reads as follows:

11 A. In addition to any other right under law to cancel or
12 rescind a contract, a homeowner has the right to rescind a
13 foreclosure consulting contract at any time, and rescind a
14 foreclosure reconveyance at any time before midnight of the tenth
15 business day after any conveyance or transfer.

16 B. Rescission occurs when the homeowner gives written notice of
17 rescission to the foreclosure consultant at the address specified in
18 the contract, or through any facsimile or electronic mail address
19 identified in the contract or other materials provided to the
20 homeowner by the foreclosure consultant.

21 C. Notice of rescission, if given by mail, is effective when
22 deposited in the United States mail, properly addressed, with
23 postage prepaid. Notice of rescission need not be in any form
24 provided with the contract and is effective, however expressed, if

1 it indicates the intention of the homeowner to rescind the
2 foreclosure consulting contract or foreclosure reconveyance.

3 D. As part of the rescission of a foreclosure consulting
4 contract or foreclosure reconveyance, the homeowner shall repay,
5 within sixty (60) days from the date of the rescission, any funds
6 paid or advanced by the foreclosure consultant or anyone working
7 with the foreclosure consultant under the terms of the foreclosure
8 consulting contract or foreclosure reconveyance, together with
9 interest calculated at the rate of eight percent (8%) per year.

10 SECTION 6. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1550.15 of Title 21, unless
12 there is created a duplication in numbering, reads as follows:

13 A foreclosure consultant shall not:

14 1. Demand or receive any compensation until after the
15 foreclosure consultant has fully performed each and every service
16 the foreclosure consultant contracted to perform or represented that
17 the foreclosure consultant would perform;

18 2. Demand or receive any fee, interest, or any other
19 compensation for any reason that exceeds eight percent (8%) per year
20 of the amount of any loan that the foreclosure consultant makes to
21 the homeowner;

22 3. Take any wage assignment, any lien of any type on real or
23 personal property, or other security to secure the payment of
24 compensation;

1 4. Receive any consideration from any third party in connection
2 with foreclosure consulting services provided to a homeowner unless
3 the consideration is first fully disclosed in writing to the
4 homeowner;

5 5. Acquire any interest, directly or indirectly, in a residence
6 in foreclosure from a homeowner with whom the foreclosure consultant
7 has contracted; or

8 6. Take any power of attorney from a homeowner for any purpose,
9 except to inspect documents as provided by law.

10 SECTION 7. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1550.16 of Title 21, unless
12 there is created a duplication in numbering, reads as follows:

13 A. A foreclosure purchaser shall not enter into, or attempt to
14 enter into, a foreclosure reconveyance with a homeowner unless:

15 1. The foreclosure purchaser verifies and can demonstrate that
16 the homeowner has or will have a reasonable ability to pay for the
17 subsequent reconveyance of the property back to the homeowner on
18 completion of the terms of a foreclosure reconveyance, or, if the
19 foreclosure conveyance provides for a lease with an option to
20 repurchase the property, the homeowner has or will have a reasonable
21 ability to make the lease payments and repurchase the property
22 within the terms of the option to repurchase; and

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1 2. The foreclosure purchaser and the homeowner complete a
2 formal settlement before any transfer of an interest in the property
3 is effected.

4 B. A foreclosure purchaser shall:

5 1. Ensure that title to the property has been reconveyed to the
6 homeowner in a timely manner if the terms of a foreclosure
7 reconveyance require a reconveyance; or

8 2. Make payment to the homeowner within ninety (90) days of any
9 resale of the property so that the homeowner receives cash payments
10 or consideration in an amount equal to at least eighty-two percent
11 (82%) of the net proceeds from any resale of the property should a
12 property subject to a foreclosure reconveyance be sold within
13 eighteen (18) months after entering into a foreclosure reconveyance
14 agreement.

15 C. A foreclosure purchaser shall not:

16 1. Enter into repurchase or lease terms as part of the
17 foreclosure conveyance that are unfair or commercially unreasonable,
18 or engage in any other unfair conduct;

19 2. Represent, directly or indirectly, that:

20 a. the foreclosure purchaser is acting as an advisor or a
21 consultant, or in any other manner represent that the
22 foreclosure purchaser is acting on behalf of the
23 homeowner,
24

1 b. the foreclosure purchaser is assisting the homeowner
2 to "save the house" or use a substantially similar
3 phrase, or

4 c. the foreclosure purchaser is assisting the homeowner
5 in preventing a foreclosure if the result of the
6 transaction is that the homeowner will not complete a
7 redemption of the property; or

8 3. Until the homeowner's right to rescind or cancel the
9 transaction has expired:

10 a. record any document, including an instrument of
11 conveyance, signed by the homeowner, or

12 b. transfer or encumber, or purport to transfer or
13 encumber, any interest in the residence in foreclosure
14 to any third party.

15 D. For purposes of this section, there is a rebuttable
16 presumption that:

17 1. A homeowner has a reasonable ability to pay for a subsequent
18 reconveyance of the property if the homeowner's payments for primary
19 housing expenses and regular principal and interest payments on
20 other personal debt, on a monthly basis, do not exceed sixty percent
21 (60%) of the homeowner's monthly gross income; and

22 2. The foreclosure purchaser has not verified reasonable
23 payment ability if the foreclosure purchaser has not obtained
24

1 documents other than a statement by the homeowner of assets,
2 liabilities, and income.

3 E. The foreclosure purchaser shall make a detailed accounting
4 of the basis for the amount of a payment made to the homeowner of a
5 property resold within eighteen (18) months after entering into a
6 foreclosure reconveyance agreement on a form prescribed by the
7 Oklahoma Attorney General.

8 SECTION 8. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1550.17 of Title 21, unless
10 there is created a duplication in numbering, reads as follows:

11 A. The Oklahoma Attorney General may seek an injunction to
12 prohibit a person who has engaged or is engaging in a violation of
13 the Mortgage Rescue Fraud Protection Act from engaging, or
14 continuing to engage, in the violation. The court may enter any
15 order or judgment necessary to:

- 16 1. Prevent the use by a person of any prohibited practice;
- 17 2. Restore to a person any money or real or personal property
18 acquired from the person by means of any prohibited practice; or
- 19 3. Appoint a receiver in case of willful violation of this act.

20 B. In any action brought under this section, the Attorney
21 General is entitled to recover the costs of the action.

22 C. In addition to any action by the Attorney General under this
23 section and any other action authorized by law, a homeowner may
24 bring an action for damages incurred as the result of a practice

1 prohibited by this act. A homeowner who brings an action under this
2 section and who is awarded damages may also seek, and the court may
3 award, reasonable attorney fees. If the court finds that the
4 defendant willfully or knowingly violated this section, the court
5 may award damages equal to three (3) times the amount of actual
6 damages.

7 D. A person who violates any provision of the Mortgage Rescue
8 Fraud Protection Act is guilty of a misdemeanor and, upon
9 conviction, is subject to imprisonment not exceeding three (3) years
10 or a fine not exceeding Ten Thousand Dollars (\$10,000.00) or both
11 imprisonment and fine.

12 E. The Attorney General shall maintain a list of nonprofit
13 organizations that offer counseling or advice to homeowners in
14 foreclosure or loan default and are not directly or indirectly
15 related to and do not contract for services with for-profit lenders
16 or foreclosure purchasers. The Attorney General shall provide names
17 and telephone numbers of organizations on the list to homeowners who
18 contact the Attorney General.

19 F. The Attorney General shall promulgate such regulations as
20 are necessary to implement and administer compliance.

21 SECTION 9. This act shall become effective November 1, 2009.

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23 52-1-6199 SDR 01/12/09

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