
SENATE BILL No. 390

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5.5.

Synopsis: Mortgage rescue protection fraud. Establishes notice requirements regarding foreclosures on real property. Provides that a homeowner may rescind: (1) contracts with foreclosure consultants; and (2) foreclosure reconveyance agreements. Requires a homeowner who rescinds a contract with a foreclosure consultant or a foreclosure reconveyance agreement to repay amounts paid to the homeowner. Prohibits foreclosure consultants and foreclosure purchasers from certain actions. Requires foreclosure purchasers to: (1) ensure that title to real property has been reconveyed to the homeowner in a timely manner if reconveyance is required; (2) make certain payments to the homeowner; and (3) make a detailed accounting of the basis for the amount of payment made to the homeowner if the real property is resold within a certain time. Allows: (1) the attorney general to seek an injunction; (2) a court to enter certain orders or judgments; and (3) a homeowner to bring an action for damages; for a violation of the mortgage rescue protection fraud laws. Allows a court to award treble damages for a willful or knowing violation of the mortgage rescue protection fraud laws. Requires the attorney general to maintain a list of nonprofit organizations that offer counseling or advice to homeowners on foreclosure or loan defaults. Makes a violation of the mortgage rescue protection fraud laws a Class A misdemeanor.

Effective: July 1, 2007.

Broden

January 16, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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SENATE BILL No. 390



A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-5.5 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2007]:

4 **ARTICLE 5.5. MORTGAGE RESCUE PROTECTION FRAUD**
5 **Chapter 1. Definitions**

6 **Sec. 1. The definitions in this chapter apply throughout this**
7 **article.**

8 **Sec. 2. "Foreclosure consultant" means a person who, directly**
9 **or indirectly, makes a solicitation, representation, or offer to a**
10 **homeowner subject to a foreclosure proceeding to perform, with**
11 **or without compensation, any service that the person represents**
12 **will:**

- 13 (1) **prevent, postpone, or reverse the effect of a foreclosure**
14 **sale;**
- 15 (2) **allow the homeowner to become a lessee or renter in the**
16 **homeowner's residence; or**
- 17 (3) **allow the homeowner to have an option to repurchase the**



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homeowner's residence.
Sec. 3. "Foreclosure purchaser" means a person who purchases real property in a foreclosure sale.

Sec. 4. "Foreclosure reconveyance" means a transaction involving:

(1) the transfer of interest in real property by a homeowner to a person during or incident to a proposed foreclosure proceeding, either by:

(A) transfer of interest from the homeowner to the person; or

(B) creation of a mortgage, trust, or other lien or encumbrance during the foreclosure process;

that allows the person to obtain legal or equitable title to all or part of the real property; and

(2) the subsequent conveyance, or promise of subsequent conveyance, of interest back to the homeowner by the person or the person's agent that allows the homeowner to possess the real property following the completion of the foreclosure proceeding.

Sec. 5. "Formal settlement" means a face-to-face meeting with a homeowner to complete final documents incident to the:

(1) sale or transfer of real property; or

(2) creation of a mortgage or equitable interest in real property;

conducted by a person who is not employed by or an affiliate of the foreclosure purchaser.

Sec. 6. "Homeowner" means a person who holds record title to residential real property as of the date on which an action to foreclose the mortgage or deed of trust on the residential real property is filed.

Chapter 2. Notice of Foreclosures

Sec. 1. (a) In addition to any other notice requirements regarding a foreclosure on real property, a person authorized to make a sale in an action to foreclose a mortgage or deed of trust shall give written notice in accordance with subsections (b) and (c) of the action to the record owner of the real property that is to be sold in the foreclosure.

(b) The written notice described under subsection (a) must be sent, not later than two (2) days after the action to foreclose is docketed, by:

(1) certified mail, postage prepaid, return receipt requested; and

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- (2) first class mail.
- (c) The notice under subsection (a) shall include the following:
 - (1) A statement that:
 - (A) an action to foreclose the mortgage or deed of trust may be or has been docketed; and
 - (B) a foreclosure sale of the real property will be held.
 - (2) The following statement printed in at least 14 point boldface type:

"NOTICE REQUIRED BY STATE LAW

Mortgage foreclosure is a complex process. People may approach you about "saving" your home. You should be careful about any such promises. There are government agencies and nonprofit organizations you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you, please call the Indiana attorney general's office."

Chapter 3. Rescission of Contracts With Foreclosure Consultants and Foreclosure Reconveyance Agreements

Sec. 1. In addition to any other right under law to cancel or rescind a contract, a homeowner may rescind a:

- (1) contract with a foreclosure consultant at any time; and
- (2) foreclosure reconveyance agreement at any time before midnight of the tenth business day after any conveyance or transfer of real property.

Sec. 2. A homeowner effectively rescinds a contract with a foreclosure consultant if the homeowner gives written notice of a rescission to the foreclosure consultant by one (1) of the following:

- (1) Mailing the rescission to the address specified in the contract.
- (2) Sending the rescission through any facsimile or electronic mail address identified in the contract or other material provided to the homeowner by the foreclosure consultant.

Sec. 3. (a) If a notice of rescission under this chapter is sent by mail, the rescission is effective when the notice is deposited in the U.S. mail, properly addressed, with postage prepaid.

(b) A homeowner is not required to give notice of rescission in the form required under the contract if the form under the contract is inconsistent with the requirements under this chapter.

Sec. 4. If a homeowner rescinds a contract with a foreclosure consultant or foreclosure reconveyance agreement, the homeowner shall, not later than sixty (60) days after the date of rescission, repay any amounts paid or advanced by:

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- 1 (1) the foreclosure consultant or the foreclosure consultant's
- 2 agent under the terms of the foreclosure consulting contract;
- 3 or
- 4 (2) a person under a foreclosure reconveyance agreement;
- 5 plus interest calculated at the rate of eight percent (8%) per year.

6 **Chapter 4. Limitations on Foreclosure Consultants and**
 7 **Foreclosure Reconveyances**

8 **Sec. 1. For purposes of this chapter, there is a rebuttable**
 9 **presumption that:**

- 10 (1) a homeowner has a reasonable ability to pay for a
- 11 subsequent reconveyance of real property if the homeowner's
- 12 payments for primary housing expenses and regular principal
- 13 and interest payments on other personal debt, on a monthly
- 14 basis, do not exceed sixty percent (60%) of the homeowner's
- 15 monthly gross income; and
- 16 (2) the foreclosure purchaser has not verified reasonable
- 17 payment ability if the foreclosure purchaser has not obtained
- 18 documents other than a statement by the homeowner of
- 19 assets, liability, and income.

20 **Sec. 2. A foreclosure consultant may not:**

- 21 (1) demand or receive compensation until after the
- 22 foreclosure consultant has fully performed all services the
- 23 foreclosure consultant contracted to perform or represented
- 24 that the foreclosure consultant would perform;
- 25 (2) demand or receive a fee, interest, or any other
- 26 compensation that exceeds eight percent (8%) per year of the
- 27 amount of any loan that the foreclosure consultant makes to
- 28 the homeowner;
- 29 (3) take a wage assignment, a lien of any type on real or
- 30 personal property, or any other security to secure the
- 31 payment of compensation;
- 32 (4) receive consideration from a third party in connection
- 33 with foreclosure consulting services provided to a homeowner
- 34 unless the consideration is first fully disclosed in writing to the
- 35 homeowner;
- 36 (5) acquire any interest, directly or indirectly, in residential
- 37 real property in foreclosure from a homeowner with whom
- 38 the foreclosure consultant has contracted; or
- 39 (6) except to inspect documents as provided by law, take any
- 40 power of attorney from a homeowner for any purpose.

41 **Sec. 3. A foreclosure purchaser may not enter into or attempt to**
 42 **enter into a foreclosure reconveyance agreement with a**

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homeowner unless the:

- (1) foreclosure purchaser verifies and demonstrates that the homeowner has or will have a reasonable ability to:**
 - (A) pay for the subsequent reconveyance of the property back to the homeowner on completion of the terms of the foreclosure conveyance; or**
 - (B) if the foreclosure conveyance provides for a lease with an option to repurchase the real property, make the lease payment and repurchase the real property within the period of the option to repurchase; and**
- (2) foreclosure purchaser and the homeowner complete a formal settlement before any transfer of interest in the effected property.**

Sec. 4. A foreclosure purchaser shall:

- (1) ensure that title to real property has been reconveyed to the homeowner in a timely manner if the terms of a foreclosure reconveyance agreement require a reconveyance; or**
- (2) make payment to the homeowner not later than ninety (90) days after any resale of real property to the homeowner in an amount equal to at least eighty-two percent (82%) of the net proceeds from any resale of the property if the real property subject to a foreclosure reconveyance is sold within eighteen (18) months after entering into a foreclosure reconveyance agreement.**

Sec. 5. A foreclosure purchaser may not:

- (1) enter into repurchase or lease terms as part of the foreclosure reconveyance that are unfair or commercially unreasonable or engage in any other unfair conduct;**
- (2) represent, directly or indirectly, that the:**
 - (A) foreclosure purchaser is acting:**
 - (i) as an adviser or a consultant; or**
 - (ii) in any other manner on behalf of the homeowner;**
 - (B) foreclosure purchaser is assisting the homeowner to save the residence; or**
 - (C) foreclosure purchaser 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; or**
- (3) until the homeowner's right to rescind or cancel the foreclosure reconveyance agreement has expired:**
 - (A) record any document, including an instrument or**

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conveyance, signed by the homeowner; or
(B) transfer or encumber or purport to transfer or encumber any interest in the residential real property in foreclosure to a third party.

Sec. 6. A foreclosure purchaser shall make a detailed accounting of the basis for the amount of payment made to a homeowner of real property resold within eighteen (18) months after entering into a foreclosure reconveyance agreement on a form prescribed by the attorney general.

Chapter 5. Enforcement

Sec. 1. The attorney general may seek an injunction to prohibit a person from engaging in an act in violation of this article.

Sec. 2. A court may enter an order or judgment necessary to:
(1) prevent any prohibited practice in violation of this article;
(2) restore to a person any money or real or personal property acquired from the person by means of a violation of this article; or
(3) appoint a receiver in a case of a willful violation of this article.

Sec. 3. The attorney general may recover costs of an action under this chapter.

Sec. 4. (a) A homeowner may bring an action against a person for damages incurred as a result of a violation of this article.

(b) A homeowner who:
(1) brings an action under this section; and
(2) is awarded damages;

may seek reasonable attorney's fees.

Sec. 5. (a) A court may award attorney's fees under section 4(b) of this chapter.

(b) If the court finds that a person willfully or knowingly violated this article, the court may award damages equal to three (3) times the amount of actual damages.

Sec. 6. A person who knowingly or intentionally violates this article commits a Class A misdemeanor.

Sec. 7. (a) The attorney general shall maintain a list of nonprofit organizations that:

(1) offer counseling or advice to homeowners in foreclosure or loan defaults; and
(2) do not contract for services with for-profit lenders or foreclosure purchasers.

(b) The attorney general shall provide names and telephone numbers of the organizations described in subsection (a) to a

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1 **homeowner upon request.**
2 **Sec. 8. The attorney general may adopt rules under IC 4-22-2**
3 **necessary to implement this article.**

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