

House Bill 204

By: Representatives Mitchell of the 88th, Jordan of the 77th, Marin of the 96th, Abrams of the 84th, Hugley of the 133rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To create the "Protecting Georgia Homeowners Act of 2011"; to amend Article 7 of Chapter
2 14 of Title 44 of the Official Code of Georgia Annotated, relating to foreclosure, so as to
3 provide for legislative findings and intent; to provide for homeowner relief from unfair
4 practices related to foreclosure and foreclosure rescue schemes; to provide for monetary
5 penalties; to provide for related matters; to provide for an effective date and applicability; to
6 repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 The General Assembly finds that homeowners who are in default on their mortgages, in
10 foreclosure, or at risk of losing their homes due to nonpayment of taxes may be vulnerable
11 to fraud, deception, and unfair dealings with foreclosure-rescue consultants or equity
12 purchasers. The intent of this Act is to provide a homeowner with information necessary to
13 make an informed decision regarding the sale or transfer of his or her home to an equity
14 purchaser. It is the further intent of this Act to require that foreclosure related rescue services
15 agreements be expressed in writing in order to safeguard homeowners against deceit and
16 financial hardship; to ensure, foster, and encourage fair dealing in the sale and purchase of
17 homes in foreclosure or default; to prohibit representations that tend to mislead; to prohibit
18 or restrict unfair contract terms; to afford homeowners a reasonable and meaningful
19 opportunity to rescind sales to equity purchasers; and to preserve and protect home equity
20 for the homeowners of this state.

21 **SECTION 2.**

22 This act shall be known and may be sited as the "Protecting Georgia Homeowners Act of
23 2011."

24 **SECTION 3.**

25 Article 7 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to
26 foreclosure, is amended by adding a new part to read as follows:

27 "Part 5

28 44-14-310.

29 (a) As used in this part, the term:

30 (1) 'Equity purchaser' means any person who acquires a legal, equitable, or beneficial
31 ownership interest in any residential real property as a result of a foreclosure-rescue
32 transaction. The term does not apply to a person who acquires the legal, equitable, or
33 beneficial interest in such property:

34 (A) By a certificate of title from a foreclosure sale;

35 (B) At a sale of property authorized by statute;

36 (C) By order or judgment of any court;

37 (D) From a spouse, parent, grandparent, child, grandchild, or sibling of the person; or

38 (E) As a deed in lieu of foreclosure, a workout agreement, a bankruptcy plan, or any
39 other agreement between a foreclosing lender and a homeowner.

40 (2) 'Foreclosure related rescue services' means any good or service related to, or
41 promising assistance in connection with:

42 (A) Stopping, avoiding, or delaying foreclosure proceedings concerning residential real
43 property; or

44 (B) Curing or otherwise addressing a default or failure to timely pay a residential
45 mortgage loan obligation.

46 (3) 'Foreclosure-rescue consultant' means a person who directly or indirectly makes a
47 solicitation, representation, or offer to a homeowner to provide or perform, in return for
48 payment of money or other valuable consideration, foreclosure related rescue services.

49 The term shall not apply to:

50 (A) A person acting under the express authority or written approval of the United
51 States Department of Housing and Urban Development or other department or agency
52 of the United States or this state to provide foreclosure related rescue services;

53 (B) A charitable, nonprofit agency or organization, as determined by the United States
54 Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code, which
55 offers counseling or advice to an owner of residential real property in foreclosure or
56 loan default if the agency or organization does not contract for foreclosure related
57 rescue services with a for profit lender or person facilitating or engaging in
58 foreclosure-rescue transactions;

59 (C) A person who holds or is owed an obligation secured by a lien or other instrument
 60 against residential real property in foreclosure if the person performs foreclosure related
 61 rescue services in connection with this obligation or lien and the obligation or lien was
 62 not the result of or part of a proposed foreclosure reconveyance or foreclosure-rescue
 63 transaction;

64 (D) A financial institution and any parent company or subsidiary of the financial
 65 institution as such terms are defined in Code Section 7-1-4; or

66 (E) A licensed mortgage broker, mortgage lender, or correspondent mortgage lender
 67 that provides mortgage counseling or advice regarding residential real property in
 68 foreclosure which is provided without payment of money or other consideration other
 69 than a mortgage brokerage commission.

70 (4) 'Foreclosure-rescue transaction' means a transaction:

71 (A) By which residential real property in foreclosure is conveyed to an equity
 72 purchaser and the homeowner maintains a legal or equitable interest in the residential
 73 real property conveyed, including, without limitation, a lease option interest, an option
 74 to acquire the property, an interest as beneficiary or trustee to a land trust, or other
 75 interest in the property conveyed; and

76 (B) That is designed or intended by the parties to stop, avoid, or delay foreclosure
 77 proceedings against a homeowner's residential real property.

78 (5) 'Homeowner' means any record title owner of residential real property that is the
 79 subject of foreclosure proceedings.

80 (6) 'Residential real property' means real property consisting of single-family to
 81 four-family dwelling units, one of which is occupied by the owner as his or her principal
 82 place of residence.

83 (7) 'Residential real property in foreclosure' means residential real property against
 84 which there is an outstanding notice of the pendency of foreclosure proceedings properly
 85 filed and recorded.

86 44-14-311.

87 In the course of offering or providing foreclosure related rescue services, a
 88 foreclosure-rescue consultant shall not:

89 (1) Engage in or initiate foreclosure related rescue services without first executing a
 90 written agreement with the homeowner for foreclosure related rescue services; or

91 (2) Solicit, charge, receive, or attempt to collect or secure payment, directly or indirectly,
 92 for foreclosure related rescue services before completing or performing all services
 93 contained in the agreement for foreclosure related rescue services.

126 TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A
 127 STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE
 128 MAILED (POSTMARKED) OR DELIVERED TO (NAME) AT
 129(ADDRESS) NO LATER THAN MIDNIGHT OF(DATE).

130 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR LENDER OR
 131 MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR LENDER
 132 OR MORTGAGE SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT
 133 PLAN OR A RESTRUCTURING WITH YOU FREE OF CHARGE.'

134 (d) The inclusion of the statement shall not prohibit the foreclosure-rescue consultant from
 135 giving the homeowner more time in which to cancel the agreement than is set forth in the
 136 statement, provided all other requirements of this Code section are met.

137 (e) The foreclosure-rescue consultant shall give the homeowner a copy of the signed
 138 agreement within three hours after the homeowner signs the agreement.

139 44-14-313.

140 (a) A foreclosure rescue transaction shall include a written agreement prepared in capital
 141 letters in at least 12 point font, except where 14 point font is required by this Code Section,
 142 that is completed, signed, and dated by the homeowner and the equity purchaser before
 143 executing any instrument from the homeowner to the equity purchaser quitclaiming,
 144 assigning, transferring, conveying, or encumbering an interest in the residential real
 145 property in foreclosure. The equity purchaser shall give the homeowner a copy of the
 146 completed agreement within three hours after the homeowner signs the agreement. The
 147 agreement shall contain the entire understanding of the parties and shall include:

148 (1) The name, business address, and telephone number of the equity purchaser;

149 (2) The street address and full legal description of the property;

150 (3) Clear and conspicuous disclosure of any financial or legal obligations of the
 151 homeowner that will be assumed by the equity purchaser;

152 (4) The total consideration to be paid by the equity purchaser in connection with or
 153 incident to the acquisition of the property by the equity purchaser;

154 (5) The terms of payment or other consideration, including, but not limited to, any
 155 services that the equity purchaser represents will be performed for the homeowner before
 156 or after the sale; and

157 (6) The date and time when possession of the property is to be transferred to the equity
 158 purchaser.

159 (b) A foreclosure-rescue transaction agreement shall contain, above the signature line and
160 above the name and signature of the purchasing party or parties, a statement in capital
161 letters in at least 14 point font that substantially complies with the following:

162 'I UNDERSTAND THAT UNDER THIS AGREEMENT I AM SELLING MY HOME
163 TO THE UNDERSIGNED PARTY.'

164 (c) A foreclosure-rescue transaction agreement shall state the specifications of any option
165 or right to repurchase the residential real property in foreclosure, including the specific
166 amounts of any escrow payments or deposit, down payment, purchase price, closing costs,
167 commissions, or other fees or costs.

168 (d) A foreclosure-rescue transaction agreement shall comply with all applicable provisions
169 of 15 U.S.C. Section 1600, et seq., and related regulations.

170 (e) The homeowner may cancel the foreclosure-rescue transaction agreement without
171 penalty if the homeowner notifies the equity purchaser of such cancellation no later than
172 5:00 P.M. on the third business day after signing the written agreement. Any moneys paid
173 by the equity purchaser to the homeowner or by the homeowner to the equity purchaser
174 must be returned at cancellation. The right to cancel shall not limit or otherwise affect the
175 homeowner's right to cancel the transaction under any other law. The right to cancel may
176 not be waived by the homeowner or limited in any way by the equity purchaser. The
177 equity purchaser shall give the homeowner, at the time the written agreement is signed, a
178 notice of the homeowner's right to cancel the foreclosure-rescue transaction as set forth in
179 this subsection. The notice, which shall be set forth on a separate cover sheet to the written
180 agreement that contains no other written or pictorial material, shall be in capital letters in
181 at least 14 point font, double spaced, and read as follows:

182 'NOTICE TO THE HOMEOWNER/SELLER

183 PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. IT CONTAINS
184 VALUABLE INFORMATION REGARDING CANCELLATION RIGHTS.

185 BY THIS CONTRACT, YOU ARE AGREEING TO SELL YOUR HOME. YOU MAY
186 CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. OF THE THIRD
187 BUSINESS DAY FOLLOWING RECEIPT OF THIS NOTICE.

188 THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY YOU
189 OR BY THE PURCHASER.

190 ANY MONEY PAID DIRECTLY TO YOU BY THE PURCHASER MUST BE
191 RETURNED TO THE PURCHASER AT CANCELLATION. ANY MONEY PAID BY
192 YOU TO THE PURCHASER MUST BE RETURNED TO YOU AT CANCELLATION.

193 TO CANCEL, SIGN THIS FORM AND RETURN IT TO THE PURCHASER BY 5:00
194 P.M. ON(DATE) AT (ADDRESS). IT IS BEST TO MAIL IT BY
195 CERTIFIED MAIL OR OVERNIGHT DELIVERY, RETURN RECEIPT REQUESTED,
196 AND TO KEEP A PHOTOCOPY OF THE SIGNED FORM AND YOUR POST OFFICE
197 RECEIPT.

198 I (we) hereby cancel this transaction.

199seller's signature

200 seller's name

201 date'

202 44-14-314.

203 (a) In any foreclosure-rescue transaction in which the homeowner is provided the right to
204 repurchase the residential real property, the homeowner has a 30 day right to cure any
205 default of the terms of the contract with the equity purchaser, and this right to cure may be
206 exercised on up to three separate occasions. The homeowner's right to cure must be
207 included in any written agreement required by this Code section.

208 (b) In any foreclosure-rescue transaction, before or at the time of conveyance, the equity
209 purchaser shall fully assume or discharge any lien in foreclosure as well as any prior liens
210 that will not be extinguished by the foreclosure.

211 (c) If the homeowner has the right to repurchase the residential real property, the equity
212 purchaser shall verify and be able to demonstrate that the homeowner has or will have a
213 reasonable ability to make the required payments to exercise the option to repurchase under
214 the written agreement. For purposes of this subsection, there is a rebuttable presumption
215 that the homeowner has a reasonable ability to make the payments required to repurchase
216 the property if the homeowner's monthly payments for primary housing expenses and
217 regular monthly principal and interest payments on other personal debt do not exceed 60
218 percent of the homeowner's monthly gross income.

219 (d) If the homeowner has the right to repurchase the residential real property, the price the
220 homeowner pays shall not be unconscionable, unfair, or commercially unreasonable. A

221 rebuttable presumption, solely between the equity purchaser and the homeowner, arises that
222 the foreclosure-rescue transaction was unconscionable if the homeowner's repurchase price
223 is greater than 17 percent per annum more than the total amount paid by the equity
224 purchaser to acquire, improve, maintain, and hold the property. Unless the record provided
225 by this part is properly filed and recorded, the presumption arising under this subsection
226 shall not apply against creditors or purchasers for a valuable consideration and without
227 notice.

228 44-14-315.

229 Any foreclosure-rescue transaction involving a lease option or other repurchase agreement
230 creates a rebuttable presumption, solely between the equity purchaser and the homeowner,
231 that the transaction is a loan transaction and the conveyance from the homeowner to the
232 equity purchaser is a mortgage. Unless the lease option or other repurchase agreement, or
233 a memorandum of the lease option or other repurchase agreement, is properly filed and
234 recorded, the presumption created under this subsection shall not apply against creditors
235 or subsequent purchasers for a valuable consideration and without notice.

236 44-14-316.

237 A person who violates any provision of this part commits an unfair and deceptive trade
238 practice. Violators are subject to the penalties and remedies provided for in Part 2 of
239 Article 15 of Chapter 1 of Title 10, relating to the 'Fair Business Practices Act,' and in
240 addition may be subject to a monetary penalty not to exceed \$30,000.00 per violation."

241 **SECTION 4.**

242 This Act shall become effective on July 1, 2011, and shall apply to agreements entered into
243 on or after such date.

244 **SECTION 5.**

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