



JUNE 2009

# Legal Update

A WRA Publication Exclusively for the Designated REALTOR®

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## Inside This Issue

7

**Wisconsin Foreclosure  
Reconveyances Law**

9

**Foreclosure  
Consultants**

10

**Wisconsin Foreclosure  
Consultants Law**

11

**Protecting Tenant  
Rights in Foreclosure**

13

**Regulation of Mortgage  
Loan Originators**

15

**Resources**

## Mortgage Foreclosure Scams

Recent problems in the nation's mortgage lending industry and an epidemic of home foreclosures have been accompanied by an increase in mortgage fraud schemes aimed at taking advantage of those having financial difficulties. According to the Federal Bureau of Investigation, the latest mortgage scams include "builder-bail-out" schemes where developers unload excess inventory through financial trickery, seller-assistance scams that use false appraisals to sell homes, identity theft that leads to home equity credit lines being opened and drained and foreclosure rescue frauds that trick homeowners into signing over their deeds.

Mortgage foreclosure rescue scams are sweeping the nation. Foreclosure rescue fraud is both devious and cruel. Homeowners, finding it difficult to make ends meet and facing foreclosure, are promised help to save their homes. Some scammers collect large fees for services never provided and are never heard from again. Others turn around and steal the homes from those they promised to aid.

This *Legal Update* examines various fraudulent mortgage scams and foreclosure problems that have dramatically increased in recent years and have now been addressed by both federal and Wisconsin legislation. These topics include

- Regulation of "foreclosure reconveyances" that specifies criminal penalties for abusive violations by foreclosure purchasers, allows the homeowner to bring action for damages and authorizes courts to order punitive damages.

- Regulation of foreclosure consultants that specifies prohibited actions, allows double damages and sets criminal forfeitures for violations.
- Tenant protections from foreclosure that require tenants of properties under foreclosure to receive notice of foreclosure actions and provide tenants with the ability to retain residency for a period after the foreclosure.
- State compliance with the federal Secure and Fair Enforcement for Standard for Mortgage Loan Originators means conforming to certain nationwide standards for mortgage loan originators, including registration with the National Mortgage Licensing System and Registry.

### **Mortgage Fraud**

Mortgage fraud is becoming increasingly common. Scam artists often target homeowners struggling to meet their mortgage commitments or anxious to sell their homes. The motives for mortgage fraud typically are either fraud for property or housing or fraud for profit.

### **Fraud for Property**

Fraud for property, also known as fraud for housing, generally occurs when a borrower wants to purchase a property they know they cannot afford. Borrowers are often aided by dishonest mortgage industry professionals who submit or encourage the submission of false information about the borrowers' employment, income or assets in order to obtain a loan.

Borrowers are often driven to engage in this type of fraud by a strong desire for homeownership and the belief

## Contacts

### EDITORIAL STAFF

#### Authors

Debbi Conrad

#### Production

Emily Zampardi

### ASSOCIATION MANAGEMENT

#### Chairman

Michael J. Mulleady, GRI

#### President

William E. Malkasian, CAE

### ADDRESS/PHONE

Wisconsin REALTORS®  
Association,  
4801 Forest Run Road,  
Suite 201  
Madison, WI 53704-7337  
(608) 241-2047  
(800) 279-1972

### LEGAL HOTLINE:

Ph (608) 242-2296

Fax (608) 242-2279

Web: [www.wra.org](http://www.wra.org)

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that no one will check the information. However, lenders detect fraud for housing schemes by thoroughly reviewing and validating documents and keeping diligent records. It is a federal crime to lie in connection with the loan application and these individuals may be at risk criminal prosecution.

### Fraud for Profit

Fraud for profit schemes often involve a group of people who defraud a prospective homebuyer or mortgage lender. For example, a dishonest mortgage broker may partner with a loan processor to create a fictitious credit profile, and with an appraiser to inflate the property value. Additionally, "straw borrowers," who falsely represent themselves, may be enticed to participate through the promise of financial gain.

Fraud for profit schemes are also attractive to criminal enterprises lured by the opportunity for greater profits, fewer dangers than those commonly associated with violent crime and reduced sentencing or jail time. Illegal property flipping is the fraud scheme commonly employed.

### Illegal Flipping

Flipping is a legitimate practice where an investor purchases a property in need of repairs or upgrades, makes the necessary changes to the property in a very short amount of time and sells the home for a profit.

We have all seen the TV shows about flipping and they are fun to watch. But there are scam artists who use flipping to make money illegally.

Often times, the scam artist will offer much more than the asking price of a home with a stipulation that the "surplus" amount over the asking price is given back to the borrower at closing.

At closing, the inflated value of the home will be attributed to home improvements that were never made. The scam artist will pocket that surplus

money and default on the loan.

To a homeowner, especially one whose house has been on the market a long time, this may seem like an attractive deal, but remember: falsifying documents is fraud.

### Mortgage Scams and Scammers

The following examples illustrate the shenanigans that have been occurring on a state and national basis.

### Oshkosh Man Pleads Guilty in Property Flipping Investment Scheme

Wisconsin Attorney General J.B. Van Hollen announced on May 19, 2009, that Brenner, a 50-year-old man from Oshkosh, had entered guilty pleas to three felonies, including two counts of securities fraud and one count of selling an unregistered security. Pursuant to a plea agreement, the court dismissed three other securities charges. Though dismissed, these charges, as well as uncharged securities offenses involving other victims and uncharged offenses in connection with the man's alleged misuse of another's credit card, will be considered by the court at the time of sentencing and provide the basis for a restitution order. Under the plea agreement, the state will recommend that the man serve 18 to 24 months in prison, followed by a period of extended supervision and probation totaling an additional eight to eight and a half years. The plea agreement also requires Brenner to make full restitution to all victims.

The criminal complaint describes the charges arising from a series of transactions with an elderly husband and wife. The man told the couple that his real estate business involved purchasing distressed properties, repairing and refurbishing them, and then reselling the properties for a profit. The business was represented as an established and "going" concern enabling him to pay big interest and

that he was working with a loan officer who fed him information when the loan officer's bank was getting ready to foreclose on a property.

The elderly couple invested a total of nearly \$97,000 in a series of transactions between November 2001 and November 2002. The interest rates for these investments ranged from 10 to 15 percent annually. By November 2004, the man owed nearly \$105,000, including principal and interest. In fact, the man and his business, Valley Home Buyers, never purchased a single property and the man used these investment funds to pay his living expenses and interest payments.

The uncharged securities offenses involved transactions with another elderly couple and the husband's elderly aunt in which they paid a total of \$40,000 between 1999 and 2003 to invest in a similar real estate venture in exchange for promises of high interest payments.

#### **Five Indicted and Arrested in Mortgage Fraud Scam**

On April 15, 2009, a federal grand jury indicted Nelson C. Cardoza of Ranson, Wv., Victor A. Valdez of Fairfax, Va., Monica J. Lambert of Gainesville, Va., Liguia Abaunza Miranda of Chantilly, Va., and Erick G. Chavarria of Manassas, Va., on conspiracy and wire fraud charges. Cardoza, Valdez and Lambert were each indicted on five counts and face a maximum penalty of 100 years in prison. Miranda was charged with four counts and faces a maximum of 80 years in prison, and Chavarria was charged with three counts and faces a maximum sentence of 60 years.

According to the indictment and other court documents, Cardoza provided names of two different people to purchase five different properties. These buyers did not know of or authorize the purchases but the conspirators used their names and Social Security

numbers to apply for and obtain the mortgage financing. Lambert, a real estate agent, prepared the sales contracts and Valdez, a mortgage broker, prepared fraudulent mortgage applications that falsified the income and assets of the buyers. Chavarria worked for Valdez and added the names of one of the buyers to his bank account so the buyer would appear to have the funds needed to qualify for the loan. Miranda, the mother of Lambert and mother-in-law of Valdez, operated a tax preparation business and authored letters to substantiate the fake employment of the buyers as listed in the fraudulent mortgage applications.

The conspirators profited by using part of the mortgage proceeds to pay "home improvement" expenses to themselves, entities they controlled and their associates. These home improvement expenses were approximately \$33,000 to \$55,000 per house. Some of the conspirators also earned thousands of dollars in commissions on the sales. According to the indictment, the conspiracy resulted in a total of at least \$336,957 in fraudulent proceeds. The properties involved in the scheme have been foreclosed upon, causing substantial losses to the lenders.

#### **Mortgage Brokerage Company Owner and Operator Sentenced in Connection with Mortgage Fraud Scheme**

Gohar J. Mirza of Annandale, Va, was sentenced to 63 months in prison, followed by a term of three years supervised release, and was ordered to pay more than \$3 million in restitution. Mirza pled guilty on September 23, 2008, to conspiring to commit mail and wire fraud in connection with a mortgage fraud scheme.

According to court documents, Mirza was an owner and operator of E-Star Lending, Inc., a mortgage brokerage company located in Virginia. From approximately April 2005 through

July 2008, Mirza and his co-conspirators profited by selling residential real estate in the Northern Virginia area to individuals referred to as "straw buyers." Mirza and his co-conspirators, through E-Star, helped the straw buyers obtain 100-percent mortgage financing to purchase the properties by producing fraudulent loan applications, which included materially false statements about the buyers' employment, income and other factors that lenders look at when deciding whether or not to make a loan. The straw buyers frequently defaulted on these mortgages, causing millions of dollars in losses to banks and commercial lenders.

The response to the increasing number of fraudulent mortgage schemes includes increased staffing and funding for the FBI and other federal regulatory agencies.

#### **FBI Mortgage Fraud Hotline: 210-650-6777**

The FBI has a new telephone hotline to receive complaints from the public regarding mortgage fraud matters. The FBI considers mortgage fraud to be a significant and growing crime problem that often affects unknowing consumers, and which has a direct impact on the overall economic health of the United States. The collapse of the subprime mortgage market, as well as the recent economic downturn, has been met with a corresponding increase in fraud and schemes connected to mortgages and related transactions. The establishment of this hotline will aid the FBI and the community by providing a direct line of alert should mortgage fraud be suspected.

#### **The Fraud Enforcement and Recovery Act**

On May 20, 2009, President Obama signed the Fraud Enforcement and Recovery Act (FERA) that gives prosecutors and regulators

new tools to crack down on mortgage fraud and predatory lending.

In 2008, the Treasury Department received 62,000 reports of mortgage fraud and the number of criminal mortgage fraud investigations opened by the FBI has more than doubled over the past three years. And yet the federal government's ability to investigate and prosecute these frauds has been severely hindered by outdated laws and a lack of resources.

FERA nearly doubles the FBI's mortgage and financial fraud program and provides resources to other law enforcement and federal agencies, from the Department of Justice to the Securities and Exchange Commission to the Secret Service, to pursue these criminals. FERA provides funding to hire about 160 more FBI agents and 200 more Justice Department prosecutors to work on mortgage fraud cases. FERA also allows the DOJ to prosecute anyone who fraudulently obtains Recovery Act or Troubled Asset Relief Program funds.

Over half of sub-prime mortgages issued as recently as 2005 involved private mortgage brokers and similar entities not covered by federal bank fraud criminal statutes. FERA amends the definition of a "financial institution" in the criminal code to extend federal laws to private mortgage brokers and companies that are not directly regulated or insured by the federal government. The new law changes the federal mortgage applications statute (18 U.S.C. § 1014) to make it a crime to make a materially false statement or to willfully overvalue a property in order to influence any action by a mortgage lending business. Currently, the offense only applies to federally regulated institutions.

While these beefed up enforcement resources target mortgage fraud schemes that unfortunately have been in play over the past several years,

new varieties of fraudulent scams prey upon homeowners in distress.

### **Foreclosure Rescue Scams: Pressure for Homeowners in Distress**

Americans reeling from 401(k) losses, layoffs or looming foreclosures are under attack from scammers aiming precisely at their desperation. Not only are there more potential victims, there are more desperate people who have resorted to running fraudulent schemes. In one of the latest fraudulent cons, scammers take advantage of vulnerable mortgage holders who are about to lose their homes. They take homeowners' money, ruin victims' credit and wipe out the hard-earned equity that owners have built up in their homes. The scams are big business and range from simple theft to complex schemes involving living trusts, money laundering and tax dodges. These fraudulent businesses market themselves as "foreclosure consultants," "mortgage consultants," a "foreclosure service" or a "foreclosure rescue agency."

### **We'll renegotiate your mortgage payment for you!**

The most widespread scam these days is foreclosure rescue or loan modification, targeted at those who are having trouble paying their mortgages. Typically, scammers call themselves foreclosure consultants and offer to renegotiate the terms of a mortgage with the lender in exchange for large upfront fees. The typical foreclosure rescue company convinces homeowners to pay large fees and then tells them to stop all communication with their mortgage lender because the rescue company has a "special relationship" with the mortgage company that will enable them to save the home from foreclosure. Meanwhile, the rescue company does nothing and the homeowner's failure to communicate with the lender and failure

to take any action concerning the delinquency causes the homeowner to get further behind on his or her loan, if not into foreclosure. Many times, these scammers are just after the fees and will disappear once paid. The former homeowner may end up with no home and no savings.

Another form of the foreclosure "consultant" scam is theft by the use of a power of attorney, a practice that has occurred in Milwaukee County. The scam artist looks for victims in foreclosure who still have equity in their homes. Once a victim is identified, the sympathetic rescuer contacts the homeowner by mail, personal solicitation or telephone, offering to help save the victim from sheriff's sale, preserve the equity in his or her home and get the victim some cash. When the scammer meets with the homeowner, they come with a power of attorney ready for the property owner's signature. The scammer may then sell the home and pocket the proceeds as a fee, an outright case of theft by a fiduciary.

In some instances, there are some former mortgage brokers and real estate agents out there scrambling to make a buck. They think they know everything about foreclosures and call themselves foreclosure consultants. However, loan brokers and real estate agents generally do not have the expertise or the authority to renegotiate loans for homeowners.

### **Deed us your title and we'll save you from foreclosure!**

Another common foreclosure rescue scam is "equity stripping." These foreclosure reconveyance schemes involve a scam artist promising to pay off the homeowner's delinquent mortgage and allowing the owner to stay in the home as a renter with the option to purchase the home back when the owner's financial situation improves. Instead, the scammer strips the equity by charging excessive fees, doing phony renovations and not making

the mortgage payments. Sometimes the home owner is fully aware that the title is changing hands, counting on the promise to be able to redeem it later. For instance, the homeowner is required to deed the property to a new borrower who is often “investing” in rental property, but who is really part of the scam. The proceeds of the sale pay off the delinquent loan and the new borrower removes all the equity in the house, never to be seen again. The distressed homeowner is now merely a renter in a home he or she no longer owns, unaware that the new borrower is not making payments. When the new borrower defaults on the loan, the homeowner is evicted from the home; they have lost the house and all the equity in it.

Many victims are low-income minorities, the elderly or immigrants in poor neighborhoods. For example, attorney Jessica Attie of South Brooklyn Legal Services worked with a mentally ill woman with a \$60,000 mortgage balance and an interest rate of more than 10 percent. She was falling behind on payments, had few other resources and wanted to reduce her payments. A scam artist convinced the woman to sign over her title while he cleared up the arrears. She could rent the home for six months and then he would sell it back to her. Instead, the scammer sold the house and ran off with more than \$400,000. Other times the scammer tricks the owner by burying the transfer of title in an avalanche of paperwork and contract legalese.

Another example from Wisconsin: Ms. D, a low-income disabled mother of two small children, went into foreclosure. Ms. D read an ad in a local shopping guide promoting a company that could help people get out of foreclosure. She called the number in the ad and spoke to a rescuer, Jeffrey, who explained that he could help her save her home. His plan was to find a buyer for her home and rent her home back to her for one

year. After a year, Jeffrey assured Ms. D that he would assist her to get a new mortgage so she could repurchase her home. Jeffrey got his son, Jason, to purchase Ms. D’s house. Jason took out a loan against Ms. D’s home. After payment in full of Ms. D’s mortgage, Jeffrey and Jason helped themselves to the entire net proceeds of the sale, \$11,700. After one year, Ms. D contacted Jeffrey to repurchase her home and was told that she did not qualify for a mortgage loan and could not repurchase her home. Jason then sold the home to another buyer for \$112,000, making an additional \$40,000 on the sale of Ms. D’s home. Altogether the rescuers netted \$51,000 from the sale of Ms. D’s home. Ms. D. has had to find another place for her family to live. For other examples of scams that have occurred in Wisconsin, see “Foreclosure Aftermath: Preying on Senior Homeowners,” Testimony of Catherine M. Doyle, Chief Staff Attorney, Legal Aid Society of Milwaukee, Inc., to the Special Committee on Aging, online at <http://aging.senate.gov/events/hr187cd.pdf>.

Some warning signs that a scam artist may be trying to set up a distressed homeowner as a victim of a foreclosure rescue scheme include:

- Being approached by a stranger with an unsolicited rescue offer.
- Receiving an unsolicited call, mail or flyer about foreclosure rescue or saving the home.
- Participating in a complicated deal that the owner does not fully understand.
- Signing documents that have blanks or false statements (this is never okay).
- “Guarantee” to stop the foreclosure process – no matter what your circumstances.
- Advising the owner not to contact

his or her lender, lawyer, or credit or housing counselor.

- Demanding a fee before providing any services.
- Accepting payment only by cashier’s check or wire transfer.
- Encouraging the homeowner to lease the home so he or she can buy it back over time.
- Telling the owner to make mortgage payments to anyone other than the loan servicer or lender.
- Advising the homeowner to transfer ownership of the property (deed or title).
- Offering to buy the house for cash at a price that is below market value.
- Offering to fill out paperwork for the homeowner.
- Pressuring the owner to sign papers he or she has not had a chance to read thoroughly or that he or she does not understand.
- Having no telephone number or physical address.
- Having an “.org” Web site or e-mail address without being a nonprofit.
- Making verbal promises that are not put in writing.
- Claiming to be a national company but having only one or very few local offices.

### **The Fight against Foreclosure Rescue and Loan Modification Scams**

As homeowners and communities throughout the country continue to face devastating consequences from the deep contraction in the economy and the housing market, the Obama Administration announced a new coordinated effort across federal and state government and the private sector to target mortgage loan modification fraud and foreclosure rescue scams that threaten to hurt American homeowners and prevent

them from getting the help they need during these challenging times.

As part of the multi-agency effort, the DOJ has been cracking down on mortgage fraud schemes, including several successful convictions of scam artists in recent months. The Justice Department is committed to working with federal and state law enforcement and regulatory partners to ensure a coordinated and comprehensive response to the problem. The Attorney General also discussed the DOJ's focus on investigating and prosecuting lenders who discriminate against borrowers based on race, national origin or other protected classes. "The Department of Justice's message is simple: if you discriminate against borrowers or prey on vulnerable homeowners with fraudulent mortgage schemes, we will find you, and we will punish you."

On the civil enforcement side, the Federal Trade Commission recently surveyed online and print advertising for mortgage foreclosure rescue operations nationwide and identified approximately 71 distinct companies running suspicious ads. The FTC has filed five new cases to halt the illegal practices of individuals and companies offering loan modification or foreclosure scams – including one company that spent \$9 million on TV and radio ads in less than one year. The FTC is also joining forces with a wide array of government, non-profit and mortgage industry members to launch a new consumer education campaign to help those in financial trouble avoid becoming the victims of a loan modification or foreclosure rescue scam.

Jon Leibowitz, Chairman of the FTC, remarked, "We're enforcing the law against these scam artists who are deceiving consumers while they're down; we're putting others on notice that unless they change their ways, they're next;

and we're working with other government agencies, non-profits, and mortgage servicers to reach out to our neighbors in distress with the details of how and where to get help."

Under the new campaign, several private sector national loan servicers, including Chase Home Finance, Suntrust Mortgage, GMAC Mortgage and American Home Mortgage Servicing, are distributing FTC consumer alerts that provide consumers with tips for avoiding mortgage relief scams and direct them to free, legitimate counseling services for at-risk homeowners. The servicers will distribute the materials in monthly statements, in correspondence to delinquent borrowers, in counseling sessions and on their Web sites.

There are also more than 20 states that have already taken law enforcement action on loan modification or foreclosure rescue scams. "We have repeatedly found that these foreclosure rescue operations are swindling desperate homeowners out of money they can't afford to lose," said Illinois Attorney General Madigan. "Struggling homeowners need to know that free help is available. The 24 lawsuits I have filed prove

foreclosure rescue operators don't help. They don't call your lender, they don't modify your loan, and they don't represent you in court if you're in foreclosure. All they do is take your money. By combining our powers, state and federal authorities are sending a clear message to these mortgage rescue scammers: It is not a question of *if* we'll come after you; it is only a question of *when*."

### **Treasury Gives Banks Guidance on Loan Modification/Foreclosure Rescue Scams**

The Treasury Department's Financial Crimes Enforcement Network (FinCEN) also conducted a recent study on mortgage fraud and found that between July 2002 and June 2008, depository institutions filed nearly 180,000 mortgage fraud suspicious activity reports (SARs) with those involved in mortgage fraud often involved in other types of crime as well.

The FinCEN has issued guidance to financial institutions related to the practice of using SARs to report loan modification and foreclosure rescue scams. Financial institutions may interact with loan modification and foreclosure rescue scams in two ways:



1. Persons or entities perpetrating scams may use the services of a financial institution to receive, deposit or transfer funds related to such scams.
2. Financial institutions may interact with customers who are victims of loan modification or foreclosure rescue scams.

A list of “red flags” was also provided to help financial institutions identify loan modification and foreclosure rescue scams. Financial institutions should be alert to any homeowner stating that:

- He or she has been making payments to a party other than the mortgage holder or servicer.
- He or she has hired a third party to help avoid foreclosure or help renegotiate the terms of his or her mortgage.
- A third-party company used aggressive tactics to seek out the homeowner.
- He or she paid someone to assist in obtaining help from the correct federal affordable housing program.
- He or she has been advised that there is no need to pay a mortgage because the contract is invalid.

Financial institutions that become aware of potentially fraudulent activities related to loan modification or foreclosure rescue scams should file SARs with the Treasury Department that include the term “foreclosure rescue scam” in the narrative and all information available for each party suspected of fraudulent activity.

## Wisconsin Foreclosure Reconveyances Law

Wisconsin has also taken action against fraudulent foreclosure rescue schemes. The law guards against foreclosure rescue plans that are nothing but equity-stripping scams.

The new Wis. Stat. § 846.40 regulates foreclosure reconveyances. A “foreclosure reconveyance” is a transaction where a homeowner transfers title to residential real property in foreclosure to a third party, called a foreclosure purchaser. The foreclosure purchaser is the foreclosure

rescue service or agency. The foreclosure purchaser redeems the property from foreclosure and later conveys, or promises to later convey, to the foreclosed homeowner an interest in the property that allows the foreclosed homeowner to remain in possession of the property. These interests may include a land contract, a purchase agreement, an option to purchase or a lease. The foreclosure purchaser may also take a mortgage on the property rather than taking title.

Wis. Stat. § 846.40 applies to owners of Wisconsin properties with one- to four-family dwelling units who are in default on any loan or debt secured by the residential property, including land contract payments. This property is referred to as the “residence in foreclosure” and the property owner is called the “foreclosed homeowner.” The property need not be owner-occupied and the owner’s lender will have initiated a foreclosure action or be on the verge of doing so. The purpose of the foreclosure reconveyance is for the owner to convey the property to the foreclosure purchaser so that the foreclosure purchaser can redeem the property from the foreclosure.

There does need to be a written contract for any foreclosure reconveyance. A foreclosure reconveyance contract must be in at least 12-point boldface type both in English and in the language principally used by the foreclosure purchaser and the residential property owner to negotiate the sale of the residential property. The contract must be fully completed and signed and dated before any conveyance of the residential property can be executed. The contract must include:

- the name, business address and telephone number of the foreclosure purchaser,
- the address of the residence;
- the total consideration to be given by the foreclosure purchaser in connection with the sale;
- a complete description of the terms of payment or other consideration, including any services the foreclosure purchaser

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4801 Forest Run Road,  
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will perform for the residential property owner;

- the time when possession of the property will be transferred to the foreclosure purchaser;
- a complete description of the terms of any rental agreement, repurchase agreement, land contract or lease with option to purchase designed to allow the property owner to stay in the home;
- the time when the fair market value will be determined;
- a notice of cancellation; and
- a notice advising the property owner that until the cancellation period is over the foreclosure purchaser cannot ask the owner to sign any deeds or other documents.

The owner must receive a copy of the contract and cancellation form upon signing.

Duplicate copies of a completed notice of cancellation must be attached to the contract. Language for the notice of cancellation is provided in the statute. The foreclosed homeowner may cancel the foreclosure reconveyance contract until midnight of the fifth business day following the day when the owner signed the foreclosure reconveyance contract, or until 8:00 a.m. on the last day of the owner's redemption period under a foreclosure action. The owner must sign and date the notice of cancellation attached to the contract and deliver it to the foreclosure purchaser personally or by certified mail. The foreclosure purchaser must provide a receipt to the owner if the cancellation notice is personally delivered, and the notice is considered effective when it is handed to the foreclosure purchaser. The notice is effective upon mailing if certified mail is used. The foreclosure purchaser shall return any original documents to the owner within 10 days of receipt of a cancellation notice.

The statute prohibits any waiver of any

of the § 846.40 foreclosure reconveyance provisions as void and contrary to public policy, except for the five-day right to cancel the contract if the property is to be sold at sheriff's sale within those five days and the foreclosed homeowner waives his or her right to cancel in a handwritten statement.

The foreclosure reconveyance law contains various prohibitions and requirements, including:

1. Prohibiting a foreclosure purchaser from entering into a foreclosure reconveyance unless, among other things, the foreclosure purchaser verifies that the homeowner has a reasonable ability to pay for the subsequent conveyance of an interest in the residence back to the homeowner.

- There is a rebuttable presumption that a foreclosed homeowner is reasonably able to pay for the subsequent conveyance if the foreclosed homeowner's monthly payments for primary housing expenses and regular monthly principal and interest payments on other personal debt do not exceed 60 percent of the foreclosed homeowner's monthly gross income. "Primary housing expenses" means the sum of payments for regular principal, interest, rent, utilities, fire and casualty insurance, real estate taxes and association dues.

- There is a rebuttable presumption that the foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the foreclosed homeowner of assets, liabilities and income.

2. Requiring a foreclosure purchaser either to ensure that title to the dwelling has been reconveyed to the foreclosed homeowner or to pay to the foreclosed homeowner consideration of at least 82 percent of the fair market value of the property within 150 days of either the

owner's eviction from the property or the owner's voluntary relinquishment of possession. If the foreclosure purchaser pays the foreclosed homeowner, the foreclosure purchaser must provide a detailed accounting of the basis for the payment amount on a form prescribed by the Attorney General, in consultation with the Secretary of Agriculture, Trade and Consumer Protection.

- There is a rebuttable presumption that an appraisal by a person licensed or certified by an agency of the federal government or this state to appraise real estate constitutes the fair market value of the property.

- The time for determining the fair market value amount shall be specified in the foreclosure reconveyance contract as either at the time of the execution of the foreclosure reconveyance contract or upon resale of the property by the foreclosure purchaser to an unaffiliated third party. If the contract states that the fair market value shall be determined at the time of resale, the fair market value shall be the resale price if it is sold within 120 days after the property owner is evicted or voluntarily relinquishes the property.

3. Prohibiting a foreclosure purchaser from entering into repurchase or lease terms, as part of the subsequent conveyance, that are unfair or commercially unreasonable, and from engaging in any other unfair conduct.

4. Prohibiting a foreclosure purchaser from acting as an advisor or consultant or in any other manner representing that the foreclosure purchaser is acting on behalf of the foreclosed homeowner. The foreclosure purchaser cannot misrepresent his or her credentials, cannot state that the foreclosure purchaser is helping the owner to "save the house" or any similar phrase, and cannot represent that the foreclosure purchaser is helping the owner prevent a

completed foreclosure if the property will not be redeemed.

5. Prohibiting a foreclosure purchaser from making any other statements, directly or by implication, or engaging in any other conduct that is false, deceptive or misleading, or that has the likelihood to cause confusion or misunderstanding, including statements regarding the value of the property, the amount of proceeds the owner will receive, any contract term or the owner's rights or obligations incident to or arising out of the foreclosure reconveyance.
6. Prohibiting a foreclosure purchaser from taking certain actions, such as accepting from the owner any instrument of conveyance of any interest in the residence or transferring any interest in the residence to an unaffiliated third party before the time for the foreclosed homeowner to cancel the transaction has fully elapsed.

A court must grant a 90-day stay in an eviction action if the property was the subject of a foreclosure reconveyance and the defendant was a property owner who has continuously occupied the property since it was conveyed to a third party and has either commenced an action concerning the foreclosure reconveyance or asserts fraud or other deceptive practices in connection with the foreclosure reconveyance.

A violation of this § 846.40 shall be considered fraud. An owner may sue a foreclosure purchaser who violates the statute section for civil damages and the court may order punitive damages under Wis. Stat. § 895.043. With regard to criminal penalties, a foreclosure purchaser who violates § 846.40 by engaging in any practice that would operate as a fraud or deceit upon the property owner may be fined not more than \$50,000 or imprisoned for not more than one year in the county jail or both. The failure of the parties to complete a foreclosure reconveyance transaction shall not subject a foreclosure purchaser to the criminal

penalties unless the foreclosure purchaser committed fraud or deceit.

Wis. Stat. § 846.40 may be viewed on Pages 6-9 at [www.legis.state.wi.us/statutes/Stat0846.pdf](http://www.legis.state.wi.us/statutes/Stat0846.pdf).

## Foreclosure Consultants

If a property owner's home is in foreclosure, he or she may want help in understanding the foreclosure process and his or her options. Some may contact real estate agents or foreclosure attorneys for assistance, but some may be attracted to mortgage foreclosure consultants. Unfortunately there are many so-called foreclosure consultants who are nothing but scam artists looking for easy profits. These scam artists have made it difficult for homeowners to distinguish them from legitimate foreclosure consultants or loss mitigation specialists.

Basically, a mortgage foreclosure consultant is any person who offers to help homeowners resolve their foreclosure problems by stopping or postponing the foreclosure sale, obtaining a forbearance of mortgage obligations, helping the owner obtain a loan or an advance of funds, avoiding any impairment of the owner's credit resulting from the foreclosure or saving the home from foreclosure.

Legitimate foreclosure consultants can be found by contacting government agencies and nonprofit organizations. For instance, see the resources listed in "Best of the Legal Hotline: Finding Help for Homeowners," in the May 2009 edition of the *Wisconsin Real Estate Magazine*, online at <http://news.wra.org/story.asp?a=1114>. A wide range of services are available over the phone, in person and online, and the cost of services differs from one option to the next. There are many options at no cost.

A legitimate foreclosure consultant will work with the homeowner and, when necessary, the lender to:

- Review the homeowner's financial situation, determine what options are available and negotiate with the lender.
- Advise on various workout arrangements that the homeowner's lender will consider and that make sense to the homeowner and his or her family.
- Call the lender to discuss a workout plan.
- Help protect the homeowner from future credit problems before he or she gets too far behind on mortgage payments.
- Provide information on services and programs in the local area that provide financial, legal, medical or other assistance.
- Help the homeowner create a budget and financial plan to ensure that monthly expenses are met and to show how much money is available to make mortgage payments so that the owner and lender can determine if the home can be saved.

On the other side of the coin, there are signs that indicate if a property owner is dealing with a scam artist. The homeowner is probably dealing with a scam artist if the consultant:

- Initiates the contact.
- Says to stop all communication with the lender.
- Demands compensation before doing any work.
- Demands a high fee for his or her services.
- Demands that the homeowner sign a wage assignment, a lien on any property or a security agreement to secure payment of compensation.
- Is receiving compensation from a third party, unless the compensation agreement is disclosed.
- Demands that the owner give him or her or anyone else an interest in the home.

- Asks for a power of attorney for other activities besides inspecting documents.
- Asks the owner to sign a contract that does not give a right of cancellation.

## Wisconsin Foreclosure Consultants Law

Under the new Wis. Stat. § 846.45, a “foreclosure consultant” is generally defined as a person who directly or indirectly makes a solicitation, representation or offer to a homeowner in default and facing foreclosure to perform, for compensation, any service that the person in any manner represents will assist the homeowner with the loan default or foreclosure. Examples include stopping or postponing the foreclosure sale, obtaining a forbearance, obtaining a waiver of the mortgage loan acceleration clause, helping the homeowner obtain a loan or saving the property from foreclosure. There are, however, several exceptions to this definition.

A foreclosure consultant does not include:

- A person licensed to practice law in this state when the person renders service in the course of his or her practice as an attorney at law.
- A person licensed as a real estate broker or salesperson under Wis. Stat. chapter 452 when the person engages in acts for which licensure is required, unless the person is engaged in offering services designed to enable the homeowner to retain possession of the residence.
- A person certified or licensed to practice as a certified public accountant under Wis. Stat. chapter 442 when the person is acting in any capacity for which the person is certified or licensed.
- A person, or the person’s authorized agent, acting under the express authority or written approval of the Department of Housing and Urban Development or other department or agency of the U.S. or this state to provide services.
- A person who holds or is owed an obligation secured by a lien on a residence in foreclosure when the person performs services in connection with this obligation or lien if the obligation or lien did not arise as the result of a proposed foreclosure reconveyance.
- A person or entity doing business under any law of this state, or of the U.S., relating to a financial institution [Wis. Stat. § 214.01(1)(jn)], a lender [Wis. Stat. §138.09], an insurance company or a mortgagee that is a HUD-approved mortgagee, a subsidiary or affiliate of any of these persons or entities, or an agent or employee of any of these persons or entities while engaged in the business of these persons or entities.
- A person registered under Wis. Stat. § 224.72 as a mortgage banker, loan originator or mortgage broker, when acting under the authority of that registration.
- A judgment creditor of the homeowner, to the extent that the judgment creditor’s claim accrued prior to the recording of the lis pendens in the foreclosure action.
- A foreclosure purchaser.
- An adjustment service company licensed under Wis. Stat. § 218.02, but only when engaged in business unrelated to real estate (an adjustment service company assumes the obligations of a debtor by purchasing accounts the debtor may have with creditors for a service charge or other consideration).

“Services” that a foreclosure consultant may offer to perform include:

1. Debt, budget or financial counseling.
2. Receiving money for the purpose of distributing it to creditors in payment or partial payment of obligations secured by liens on the property.
3. Contacting creditors on behalf of the

homeowner.

4. Arranging or attempting to arrange for a delay or postponement of the time of the sheriff’s sale.
5. Advising the filing of any document, or assisting with the preparation of any document for filing, with a bankruptcy court.
6. Giving any advice, explanation or instruction to a property owner that in any manner relates to curing a default in or reinstating an obligation secured by a lien on the residence, the full satisfaction of that obligation, or the postponement or avoidance of a sheriff’s sale of the residence under a power of sale contained in any mortgage.

## Foreclosure Consultant Contract

Every contract between a foreclosure consultant and a homeowner must be in writing and must fully disclose the exact nature of the foreclosure consultant’s services and the total amount and terms of compensation. The contract must be written both in English and in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract if other than English, be dated and signed by the homeowner and contain in not less than 10-point boldface type, near the owner’s signature, the following statement: “You, the owner, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.”

Another notice, printed in not less than 14-point boldface type, must be printed in the contract to indicate that the foreclosure consultant cannot:

1. “Take any money from you or ask you for money until .... (name of foreclosure consultant) has completely finished doing everything he or she said he or she would do.

2. Ask you to sign or have you sign any lien, mortgage, or deed.”

This must be followed by the statement: “You, the owner, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.”

### **Contract Cancellation**

A foreclosed homeowner would have the right to cancel a contract until midnight of the third business day after the day on which the foreclosed homeowner signs a contract. Cancellation would occur when the homeowner delivers, personally or by certified mail, written notice of cancellation to the foreclosure consultant at the foreclosure consultant’s address specified in the contract. If notice of cancellation is given by certified mail, cancellation is effective when the notice is deposited in the U.S. mail, properly addressed with postage prepaid. If notice of cancellation is personally delivered, the foreclosure consultant must give the foreclosed homeowner a receipt. Cancellation, if personally delivered, is effective when the foreclosed homeowner hands the notice to the foreclosure consultant.

The notice of cancellation form and the contract must contain on the first page, in a type size that is no smaller than that generally used in the body of the document, the name and street or physical address of the foreclosure consultant to which the notice of cancellation is to be mailed by certified mail or personally delivered. A post office box may be designated for delivery by certified mail only if it is accompanied by a street or physical address at which the notice may be personally delivered. The form would also have to include the date the foreclosure consultant contract was signed. Language for the cancellation form is included in Wis. Stat § 846.45. The contract must be accompanied

by a completed cancellation form in duplicate. The foreclosure consultant would have to provide the homeowner with a copy of the contract and the attached notice of cancellation immediately upon execution of the contract.

### **Requirements and Prohibitions**

A foreclosure consultant is prohibited from doing any of the following:

1. Claim, demand, charge, collect or receive any compensation until after the foreclosure consultant has fully performed each and every service the consultant contracted to perform or represented that he or she would perform.
2. Claim, demand, charge, collect or receive any fee, interest or any other compensation for any reason that exceeds eight percent per year of the amount of any loan that the foreclosure consultant may make to the homeowner. Any loan may not be secured by the residence or any other real or personal property.
3. Take a wage assignment, a lien of any type on real or personal property or any other security to secure the payment of compensation.
4. Receive any consideration from any third party in connection with services rendered to a foreclosed homeowner unless the consideration is first fully disclosed to the owner.
5. Acquire any interest, directly or indirectly or by means of a subsidiary or affiliate, in a residence in foreclosure from a homeowner with whom the foreclosure consultant has contracted.
6. Except as otherwise provided by law, take any power of attorney from a foreclosed homeowner for any purpose.
7. Induce or attempt to induce any foreclosed homeowner to enter into a contract that does not comply with the requirements of the contract and notice of cancellation of the contract.
8. Fail to give a receipt to a foreclosed homeowner if the foreclosed

homeowner personally delivers a timely cancellation notice.

Any waiver by a foreclosed homeowner of any rights under Wis. Stat. § 846.45 is void and unenforceable as contrary to public policy.

### **Enforcement and Penalties**

DATCP would be authorized to investigate § 846.45 violations and commence legal action. The court may provide equitable relief and award any person who suffered a pecuniary loss twice the amount of the pecuniary loss or \$200, whichever is greater, for each violation.

Any person suffering a pecuniary loss because of a § 846.45 violation may sue the violator for twice the amount of the pecuniary loss or \$200, whichever is greater, for each violation, together with costs and reasonable attorney fees. DATCP or a district attorney may commence an action to recover a forfeiture of not less than \$100 nor more than \$10,000 for a violation. Violators could be fined not less than \$25 nor more than \$10,000 or imprisoned for not more than one year in the county jail, or both.

Wis. Stat. § 846.45 may be viewed on Pages 9-10 at [www.legis.state.wi.us/statutes/Stat0846.pdf](http://www.legis.state.wi.us/statutes/Stat0846.pdf).

### **Protecting Tenant Rights in Foreclosure**

One of the often overlooked problems in the foreclosure crisis has been the eviction of renters in good standing, through no fault of their own, from properties in foreclosure.

#### **Protecting Tenants at Foreclosure Act of 2009**

A new law passed by Congress and signed May 20, 2009, by President Obama provides protections for tenants whose landlords fall into foreclosure. Under the Helping Families Save Their Homes Act, tenants have the right to stay in their homes after

foreclosure for 90 days or through the end of their lease term. The protections go into effect immediately and expire at the end of 2012.

This law will provide tenants 90-days' notice of eviction, require banks to honor leases and protect section 8 tenants after foreclosure. The new law applies immediately to foreclosures of federally related mortgage loans on any dwelling or residential real property and requires 90-days' notice for evictions of bona fide tenants who are month-to-month or without a lease. Tenants with leases are allowed to remain for the balance of the lease term except that they may be evicted with a 90-day notice if the unit is to be sold to a purchaser who will occupy the unit as his or her primary residence. Any state laws providing longer time periods or additional protections for tenants will continue to apply. All tenancies and leases must be the result of arms' length transactions and require rent that is not substantially less than fair market rent for the property.

### **New Wisconsin Law Protects Tenants' Rights in Foreclosure**

Imagine returning home to find an eviction notice giving you 24 hours to get out because, unbeknownst to you, your landlord's property has gone through foreclosure and has just been sold at sheriff's sale. Under current law, if the landlord loses rental property in a foreclosure action, the tenant may be evicted, often with little notice. The eviction goes on the tenant's record whether or not the tenant is in compliance with the rental agreement. The tenant may not be able to get the security deposit back from the foreclosed landlord or the new owner (often a lender). The tenant must immediately find another apartment and the money for a security deposit and first month's rent, which is very hard if the eviction occurs in the middle of the month when the tenant has already paid the rent.

Recognition that homeowners are not the only victims of foreclosure led the Wisconsin Legislature to include new tenant protections as part of the economic stimulus package bill. The protections for tenants caught in a foreclosure situation cover three main areas: landlord notice to new tenants if a foreclosure action has begun, lender notice to existing tenants at different stages of the foreclosure and a prohibition against reporting tenant evictions due to foreclosure on the Wisconsin Circuit Court Access Web site, commonly known as CCAP.

#### **Wis. Stat. § 704.35: Residential Rental Property in Foreclosure**

The landlord must notify any prospective tenant in writing if a foreclosure action has commenced and, if judgment has been entered, the date on which the redemption period ends. The redemption period generally will be three to six months for residential rental properties unless the property is a one- to four-family property that is owner-occupied; then the redemption period may be 12 months. Any rental agreement entered into must include a separate written statement signed by the tenant indicating that the tenant has received this notice. Any rental agreement without the signed statement is voidable at the option of the tenant. This law applies if the foreclosure action was commenced on or after March 6, 2009.

#### **Wis. Stat. § 846.35: Protection for Tenants in Foreclosure Actions**

If a foreclosure action is commenced against a residential rental property, the foreclosing party (typically a lender) must notify the tenants of the following:

1. That a foreclosure action has been filed. This notice must be given no later than five days after the foreclosure action is filed.
2. That the lender has been granted a foreclosure judgment and the date when the redemption period ends. This notice must be given no later

than five days after the foreclosure judgment is filed with the clerk of court.

3. The date and time of the judicial confirmation hearing, once it has been scheduled.

These notices may be given by personal service or by certified mail with return receipt requested. The notice is considered given when mailed unless the mail is returned unopened.

If the lender/foreclosing party fails to provide any of these notices, the court will award the tenant \$250 plus reasonable attorney fees. A tenant, however, may not recover under this provision more than once.

If the landlord's property is foreclosed upon and sold at sheriff's sale:

- The tenant may remain in the rental unit for up to two months after the end of the month in which the sheriff's sale is confirmed. The tenant must pay rent at the same rate that applied immediately before judicial confirmation of the sheriff's sale.
- The tenant may withhold rent in an amount equal to the security deposit during the last period the tenant remains in possession. The tenant's right to possession expires at the end of the month for which the tenant withholds rent.
- No writ of assistance or writ of restitution may be executed against a tenant whose tenancy is terminated by foreclosure before the additional two months have passed unless the tenant waives this right in writing.

This portion of the new law applies to rental agreements entered into on or after March 6, 2009.

#### **Wis. Stat. § 846.35(4): CCAP Reporting**

Beginning July 1, 2009, the CCAP Web site cannot display information regarding a tenant evicted because of a foreclosure of the landlord's property.

## Regulation of Mortgage Loan Originators

Many observers of the housing crisis have blamed mortgage brokers and loan originators (real estate professionals that find mortgages for homeowners) for originating loans that were both unaffordable and based on false or misleading information – such as overstatements of the applicant’s income. Previously, there was little accountability. Once a mortgage broker brought the prospective homeowner and lender together and received a commission, the mortgage broker’s role in the transaction was done and the loan became somebody else’s problem.

On July 30, 2008, President Bush signed into law the Secure and Fair Enforcement (SAFE) Mortgage Licensing Act of 2008 as part of the Housing and Economic Recovery Act. The SAFE Act is intended to provide uniform licensing standards nationwide, as these licensing standards have been non-uniform from state to state for at least the past 20 years. It is also designed to create a comprehensive licensing database so that all loan originators will be known and presumably, bad actors can be kept out of the industry. The national licensing system should enable government and consumers to track loan originators. Loan originators include those who take residential mortgage loan applications, assist borrowers to obtain or apply for mortgage loans and negotiate residential mortgage loan terms.

The SAFE Act sets forth procedures, requirements, education, testing and standards including mandatory registration and state licensing of mortgage loan originators through the creation of a Nationwide Mortgage Licensing System and Registry (NMLSR). The NMLSR aims to:

- Help ensure that loan originators are required to “act in the best interests of the consumer.”

- Give consumers easy access to a loan originator’s employment history and disciplinary/enforcement actions taken.
- Set uniform education and licensing requirements.
- Create accountability and tracking of loan originators.

There are two categories of loan originators in NMLSR – registered loan originators and state-licensed loan originators. Loan originators working for a federally regulated depository institution (or subsidiary) will be registered in the Registry by their employers (registered loan originator) and licensing is not required.

While all loan officers must be registered and obtain a permanent identifier, only loan officers not employed by federally regulated institutions or their subsidiaries will be required to be licensed. They will have to be licensed by a state and registered in the Registry (state-licensed loan originator). All loan originators will be assigned a “unique identifier” to permanently identify the loan originator. This will identify a loan originator in the System and will enable public access to the employment history and any enforcement actions taken against a loan originator.

### Impact for Real Estate Firms

The implementation of the SAFE Act has two potential impacts for real estate firms. First, a real estate agent who is compensated by a mortgage lender or mortgage broker in a transaction must be licensed. In addition, depending on the structure of the mortgage subsidiary, i.e., owned by the real estate firm, loan originators may have to be licensed as well as registered. For example, if a real estate firm owns 100 percent of a mortgage subsidiary, the loan originators will have to be registered and licensed.

### Loan Originator Defined

A loan originator is defined as a

person who takes a mortgage loan application, offers or negotiates the terms of the mortgage, and is compensated for doing so. It is a person who assists a consumer in obtaining or applying for a mortgage loan by advising on loan terms, collecting information on behalf of the consumer or preparing the loan package. Additionally, a loan processor or underwriter acting as an independent contractor is covered and therefore is required to obtain a loan originator’s license. A real estate agent or broker who only performs sales/brokerage activities and receives any compensation from a lender or mortgage broker is covered and would therefore be required to be licensed as a loan originator. The definition excludes:

- Loan processors (on staff) who only perform administrative or clerical tasks such as the collection of information (including communication with the consumer) for the processing and underwriting of the mortgage loan.
- A real estate agent or broker who only performs sales/brokerage activities and receives no compensation from the lender, mortgage broker or their agents.

### State Licensing Requirements for Loan Originators

For loan originators that are employed by lenders not federally regulated, a background check that includes fingerprinting, any criminal history and review of the credit report is mandatory. Additionally, a review of education and work experience; a review of any administrative, civil or criminal findings by a governmental authority; and a demonstration of financial responsibility, character and general fitness to ensure that the loan originator will operate honestly, fairly and efficiently is required. At least 20 hours of educational courses approved by the NMLSR, a passing score on a test developed by NMLSR and annual continuing education of

at least eight hours is also included in the licensing. Other requirements include a net worth, surety bond or payment to a state fund component, and an annual report from each licensed originator to the NMLSR containing info to be determined by the NMLSR. A license will not be issued to a person with a previous revocation of a loan originator's license, a felony in the last seven years or, at any time in the past, a felony involving an act of fraud, dishonesty, a breach of trust or money laundering.

### Timeline for Implementation

The system to process registered loan originators and provide information to the NMLSR is to be implemented by the Federal banking agencies (through the Federal Financial Institutions Examination Council) within one year of the enactment of the law (July 30, 2009). States have one year (two years for states with legislatures that meet biennially) to establish a loan originator licensing and registration system. If not done within that time, HUD is to implement one. HUD may provide a state up to 24 additional months if it is determined that the state is making a good faith effort to establish a system. If HUD determines that the NMLSR is not performing as expected, HUD is to establish the system.

### Wisconsin Response

The federal SAFE Act establishes certain nationwide standards for mortgage loan originators. If a state does not meet a certain level of compliance with the federal standards established under the SAFE Act, HUD must undertake the licensing and registration of mortgage loan originators operating within that state. One required component under the SAFE Act is that states must license and register mortgage loan originators through the NMLSR. Accordingly, numerous changes have been made to various sections of Wis. Stat. chapter 224 to comply with

the federal legislation (see [www.legis.state.wi.us/statutes/Stat0224.pdf](http://www.legis.state.wi.us/statutes/Stat0224.pdf)). Many of these changes, however, are not effective until January 1, 2010.

This legislation makes numerous changes, both substantive and stylistic, in the statutes relating to the regulation of mortgage loan originators, mortgage brokers and mortgage bankers (mortgage regulatory provisions). The legislation requires the Division of Banking in the Department of Financial Institutions to participate in the NMLSR and authorizes the DFI to process and maintain mortgage loan originator licenses and register mortgage loan originators with the NMLSR.

Definitions applicable to mortgage regulatory provisions have been modified, thereby changing the scope of regulation. A "residential mortgage loan" is now defined as any loan primarily for personal, family or household use that is secured by a lien, mortgage or equivalent security interest on a dwelling or residential real property located in this state. With certain exceptions, a "mortgage loan originator" is defined as an individual who, for compensation or gain, takes a residential mortgage loan application or offers or negotiates the terms of a residential mortgage loan. However, certain persons are exempt from all mortgage regulatory provisions, including mortgage loan originators who are employees of a depository institution or its regulated subsidiary and who are registered with NMLSR. A "depository institution" is a federally chartered or state-chartered bank, savings association or credit union. The legislation essentially maintains the current law definitions of "mortgage banker" and "mortgage broker," but eliminates the exceptions under current law to these definitions and replaces them with new exceptions. Among the new exceptions to the definitions of "mortgage banker" and "mortgage broker" are

depository institutions and regulated subsidiaries of depository institutions.

The legislation includes a number of changes to current law with respect to the regulation of mortgage loan originators:

1. The legislation requires that DFI licensing of mortgage loan originators be processed through the NMLSR and that all mortgage loan originator licensees be registered with the NMLSR.
2. Each applicant for a mortgage loan originator license must furnish to the NMLSR specified information concerning the applicant's identity, including the applicant's fingerprints, personal history, and authorization for credit and criminal history checks.
3. The legislation specifies certain disqualifying factors preventing the issuance of a mortgage loan originator license, including a mortgage loan originator license revocation or a felony conviction within a specified period. As derived from the SAFE Act, an applicant may be issued a mortgage loan originator license only if the applicant has demonstrated financial responsibility, character and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly and efficiently under applicable law.
4. Current law requirements related to professional education and testing requirements for mortgage loan originators are modified. Each education course must be reviewed and approved by the NMLSR.
5. Each mortgage loan originator must be covered by a surety bond in an amount, as determined by the DFI, reflecting the dollar amount of residential mortgage loans originated by the mortgage loan originator.
6. Each mortgage loan originator must submit to NMLSR an annual report of condition.

7. Each mortgage loan originator must be issued a unique number or other identifier. Any person originating a residential mortgage loan must place the person's unique identifier on all residential mortgage loan application forms, solicitations and advertisements.

The legislation also includes some changes to current law relating to the regulation of mortgage bankers and mortgage brokers, including requiring mortgage bankers and mortgage brokers to annually submit call reports to the NMLSR and to maintain surety bonds in the amount of \$300,000 and \$120,000, respectively, and a minimum net worth of \$250,000 and \$100,000, respectively.

Changes were also made relating to the prohibited acts and practices of mortgage bankers, mortgage brokers, mortgage loan originators, and officers and directors of corporate mortgage bankers and mortgage brokers, including the following:

1. Current law provisions to prohibit materially false or deceptive statements or representations or knowing omissions of material facts were modified and expanded.
2. Mortgage bankers and mortgage brokers are prohibited from paying commissions to unassociated or unlicensed mortgage loan originators.
3. Mortgage bankers and mortgage brokers are prohibited from conducting business at an unlicensed office.
4. The impeding of an investigation or examination or the denial of access to or destruction of books, records or other information that the DFI is authorized to obtain is prohibited.
5. Contracts with borrowers that provide in substance that the mortgage banker, mortgage broker or mortgage loan originator may earn a fee through "best efforts" to obtain a residential mortgage loan even if no loan is actually obtained for the

borrower are prohibited.

6. The solicitation or advertisement of interest rates, points or other financing terms are prohibited unless the terms are actually available at the time of the solicitation or advertisement.
7. Assisting, aiding or abetting any person in unlawfully conducting mortgage-related business without a valid license is prohibited.
8. Withholding payments or making payments, threats or promises for the purpose of influencing a person's independent judgment in connection with a residential mortgage loan, or withholding payments or making payments, threats or promises to a property appraiser for the purpose of influencing the appraiser's independent judgment with respect to the value of the property is forbidden.
9. The legislation prohibits requiring a borrower to obtain property insurance coverage in an amount exceeding the replacement cost of improvements on the property. The penalty for violations is increased from a maximum of \$2,000 to a maximum of \$25,000. This increase applies both to civil forfeitures imposed by DFI and to criminal fines imposed by a court. The number of violations for which these penalties are applicable is expanded. These penalties may be applied to any violation of a mortgage regulatory provision or of any rule promulgated by DFI under a mortgage regulatory provision. DFI is empowered to order restitution in connection with a violation in the same manner in which DFI imposes administrative assessments for a violation.

DFI has enacted an emergency rule (see [www.wdfr.org/resources/indexed/site/fi/mortbank/EmergencyRuleEffectiveMay042009.pdf](http://www.wdfr.org/resources/indexed/site/fi/mortbank/EmergencyRuleEffectiveMay042009.pdf)) as its first step toward instituting an orderly and efficient transition from a state registration system to a licensing system for mortgage bankers, mortgage brokers and loan originators, and creating timelines for registration on the NMLSR. Additional information

and analyses will be forthcoming as the transition process continues.

## Resources

- **FTC Brochure:** *Foreclosure Rescue Scams: Another Potential Stress for Homeowners in Distress:* [www.ftc.gov/bcp/edu/pubs/consumer/credit/cre42.shtm](http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre42.shtm)
- **Freddie Mac:** Avoiding Mortgage Foreclosure: [www.freddiemac.com/avoidfraud/](http://www.freddiemac.com/avoidfraud/)
- **Office of the Comptroller of the Currency Consumer Tips for Avoiding Mortgage Modification Scams and Foreclosure Rescue Scams:** [www.occ.treas.gov/ftp/ADVISORY/2009-1.pdf](http://www.occ.treas.gov/ftp/ADVISORY/2009-1.pdf)
- **The Federal Reserve Board's Five Tips for Avoiding Foreclosure Scams:** [www.federalreserve.gov/pubs/foreclosurescamtips/default.htm](http://www.federalreserve.gov/pubs/foreclosurescamtips/default.htm)
- **DFI Licensing Information:** [www.wdfr.org/fi/mortbank/](http://www.wdfr.org/fi/mortbank/)
- **FBI Mortgage Fraud Hotline:** 210-650-6777

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