ENROLLED ORIGINAL

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Codification District of Columbia Official Code

2001 Edition

2008 Winter Supp.

West Group Publisher

To prohibit equity stripping through unscrupulous real property transactions and protect financially distressed homeowners; and to amend section 28-3904 of the District of Columbia Code to make a conforming amendment.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Home Equity Protection Act of 2007".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Foreclosure rescue service" means any good or service related to or promising assistance in connection with:

(A) Avoiding or delaying actual or anticipated foreclosure proceedings concerning residential property; or

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

(2) "Foreclosure rescue transaction" means a transaction involving the transfer of title to real property, or an interest in the property, by a homeowner during or incident to a mortgage default, foreclosure, or tax sale proceeding, either by transfer of any interest from the homeowner to another party or by creation of a mortgage, trust, or other lien or encumbrance during the foreclosure process; provided, that the transaction includes the subsequent conveyance, the promise of a subsequent conveyance, or a right to a subsequent conveyance of an interest back to the homeowner from the acquirer or a person acting in participation with the acquirer, including an interest in a contract for deed, purchase agreement, land installment sale, contract for sale, option to purchase, sale/leaseback, trust, or other contractual arrangement.

Sec. 3. Prohibited foreclosure transactions and practices.

(a) It shall be unlawful, for compensation or gain or for potential or contingent compensation or gain, whether at the time of the transaction or in the future, to engage in, arrange, offer, promote, promise, solicit participation in, or carry out a foreclosure rescue transaction in the District or concerning residential property in the District. Nothing in this subsection shall be interpreted to prohibit foreclosure rescue transactions that are not carried out for compensation or gain or for potential or contingent compensation or gain, including transactions engaged in between or among family members or arranged by a bona fide nonprofit community organization or nonprofit housing organization.

(b) It shall be unlawful to advertise, offer, or promote the availability of foreclosure rescue transactions or services related to foreclosure rescue transactions.

(c) It shall be unlawful to advertise, offer, or promote foreclosure rescue services without disclosing, clearly and conspicuously, a precise description of the goods or services offered and how they will assist persons in avoiding or delaying foreclosure or curing or otherwise addressing a default or failure to timely pay a residential mortgage loan obligation.

(d) Nothing in this section shall be interpreted to prohibit the advertising of, offering of, promoting of, or engaging in foreclosure rescue transactions or foreclosure rescue services that are not carried out for compensation or gain or for potential or contingent compensation or gain, including transactions engaged in between or among family members or arranged by a bona fide nonprofit community organization or nonprofit housing organization.

Sec. 4. Fiduciary duties.

Any person who advertises, offers, promotes, or provides foreclosure rescue services to a homeowner owes a fiduciary duty to the homeowner and shall discharge that duty in accordance with all applicable laws.

Sec. 5. Private actions.

(a) In addition to any action by the Attorney General authorized under this act and any other action otherwise authorized by law, a homeowner may bring an action for damages incurred, or equitable relief, as the result of a practice prohibited by this act.

(b) A homeowner who brings an action under this act and who is awarded damages or equitable relief may also be awarded reasonable attorney's fees and costs.

(c) A violation of this act shall be a violation of Chapter 39 of Title 28 of the District of Columbia Official Code and all remedies of the chapter shall be available for such action. A private cause of action under the chapter is in the public interest.

(d) The remedies provided in this section are cumulative and do not restrict any remedy that is otherwise available.

Sec. 6. Criminal penalties.

(a) Any person who knowingly violates any provision of this act, or any rule promulgated pursuant to this act, shall be fined an amount not to exceed $10,000, imprisoned for not more than one year, or both. All prosecutions of this subsection shall be instituted by the Attorney General for the District of Columbia or any of his or her assistants.

(b) A person who knowingly commits a 2nd or subsequent violation of any provision of this act, or any rule promulgated pursuant to this act, shall be fined an amount not to exceed $50,000, imprisoned for not more than 5 years, or both.

Amend § 28-3904

Sec. 7. Section 28-3904 of the District of Columbia Official Code is amended as follows:

(a) Paragraph (ee) is amended by striking the phrase "; or" at the end of the paragraph and inserting a semicolon in its place.

(b) Paragraph (ff) is amended by striking the period at the end of the paragraph and inserting the phrase "; or" in its place.

(c) A new paragraph (gg) is added to read as follows:

"(gg) violate any provision of the Home Equity Protection Act of 2007, passed on 2nd reading on November 6, 2007 (Enrolled version of Bill 17-101).

Sec. 8. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 9. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman
Council of the District of Columbia

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Mayor
District of Columbia