

**DISTRESSED
PROPERTY
CONSULTANTS**

DISTRESSED PROPERTY CONSULTANTS

New York City Administrative Code: Title 20

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Note: New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting www.nyc.gov/consumers. For convenience, sections of relevant New York State Law and/or New York City Law and Rules are included as a handout in this packet. The New York City Law and Rules are current as of 2011.

Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in the handout provided in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

NEW YORK CITY ADMINISTRATIVE CODE
TITLE 20: CONSUMER AFFAIRS
CHAPTER 5: UNFAIR TRADE PRACTICES
SUBCHAPTER 5: REPRESENTATIONS IN ADVERTISING

§ 20-723.3. Disclosure Requirements for Distressed Property Consultants.

- a. Definitions. For the purposes of this section the following terms shall have the following meanings:
1. “Consulting services” means services promised by a distressed property consultant to a homeowner, including but not limited to services that the consultant represents will help to achieve any of the following:
 - i. An action to stop, enjoin, delay, set aside, annul, stay or postpone a foreclosure filing, a foreclosure sale or the loss of a home for nonpayment of taxes;
 - ii. A forbearance from any servicer, beneficiary or mortgagee or relief with respect to the potential loss of the home for nonpayment of taxes;
 - iii. The exercise of a right of reinstatement or similar right by the homeowner as provided in the mortgage documents or any law or the refinancing of a distressed home loan;
 - iv. Any extension of the period within which the homeowner may reinstate or otherwise restore his or her rights with respect to the property;
 - v. A waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a property in foreclosure;
 - vi. A loan or advance of funds;
 - vii. Assistance to the homeowner in answering or responding to a summons and complaint, or otherwise providing information regarding the foreclosure complaint and process;
 - viii. The avoidance or amelioration of the impairment of the homeowner's credit resulting from the commencement of a foreclosure proceeding or tax sale;
 - ix. The saving of the homeowner's property from foreclosure or loss for non-payment of taxes; or
 - x. Any other action as may be deemed subject to section 265-b of the New York state general business law.
 2. “Distressed home loan” means a home loan that is in danger of being foreclosed because the homeowner has one or more defaults under the mortgage that entitles the lender to accelerate full payment of the mortgage and repossess the property, or a home loan where the lender has commenced a foreclosure action. For purposes of this paragraph, a “home loan” is a loan in which the debt is incurred by the homeowner, or shareholder in a cooperative corporation, primarily for personal, family, or household purposes, and the loan is secured by a mortgage or deed of trust on property, or in the case of a cooperative by a security agreement in shares in a corporation, upon which there is located or there is to be located a structure or structures

- intended principally for occupancy of from one to four families, which is or will be occupied by the homeowner as the homeowner's principal dwelling.
3. “Distressed property consultant” means an individual or corporation, partnership, limited liability company or other business entity that, directly or indirectly, solicits or undertakes employment to provide consulting services to a homeowner for compensation or promise of compensation with respect to a distressed home loan or a potential loss of the home for nonpayment of taxes, or any individual or business entity considered a distressed property consultant for purposes of [New York state real property law section 265-b](#). A distressed property consultant does not include the following:
 - i. An attorney admitted to practice in the State of New York;
 - ii. A person or entity who holds or is owed an obligation secured by a lien on any property in foreclosure while the person or entity performs services in connection with the obligation or lien;
 - iii. A bank, trust company, private banker, bank holding company, savings bank, savings and loan association, thrift holding company, credit union or insurance company organized under the laws of this state, another state or the United States, or a subsidiary or affiliate of such entity or a foreign banking corporation licensed by the superintendent of banks or the comptroller of the currency;
 - iv. A federal Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of such mortgagee, and any agent or employee of these persons while engaged in the business of such mortgagee;
 - v. A judgment creditor of the homeowner, if the judgment creditor's claim accrues before the written notice of foreclosure sale is sent;
 - vi. A title insurer authorized to do business in this state, while performing title insurance and settlement services;
 - vii. A person licensed as a mortgage banker or registered as a mortgage broker or registered as a mortgage loan servicer as defined in article 12-d of the New York state banking law;
 - viii. A bona fide not-for-profit organization that offers counseling or advice to homeowners in foreclosure or loan default; or
 - ix. A person or entity that the superintendent of banks has determined is not subject to [section 265-b of the New York state real property law](#).
 4. “Homeowner” means a natural person who is the mortgagor with respect to a distressed home loan or who is in danger of losing a home for nonpayment of taxes.
 5. “Unit of advertising space” means any real property, space, facility or instrumentality, or any portion thereof, owned or operated by the city of New York, or which is located or operates on real property owned or operated by the city of New York, and which is the subject of the same contract, lease, rental agreement, franchise, revocable consent, concession or other similar written agreement with the city of New York which allows the placement or display of advertisements, but not including any real property, space or facility leased from the city of New York for a term of thirty years or more during the entire term of the lease or any real property, space or facility leased from or to the industrial development agency.
- b. Every distressed property consultant who does business in New York City and who advertises distressed property consulting services through the media of a newspaper, magazine, circular, pamphlet, store display, letter or handbill and/or via a unit or units of advertising space, shall disclose in such advertising, in accordance with the rules established by the commissioner, in clear and prominent letter type, in a print color that contrasts with the background against which it appears:
1. that, pursuant to [section 265-b of the New York state real property law](#), a distressed property consultant is prohibited from:
 - i. performing services without a written, fully executed contract with a homeowner;

- ii. accepting payment for consulting services before the full completion of such services;
 - iii. taking power of attorney from a homeowner; and
 - iv. retaining any original loan document or other original document related to the distressed home loan, the property, or the potential loss of the home for nonpayment of taxes.
- 2. that hiring a distressed property consultant does not stop the foreclosure process, nor can a distressed property consultant guarantee any particular result with regards to a distressed property.
- c. The commissioner may make and promulgate such rules as may be necessary for the proper implementation and enforcement of this section.
- d. Any person who is a party to an otherwise valid agreement with the city of New York in effect on the date of enactment of the local law that added this section shall not be subject to the requirements of this section for the term of such agreement. However, where such agreement provides for a right or rights of renewal for one or more periods upon the same terms and conditions or terms and conditions set forth in such agreement, the holder who is a party to such agreement or any agreements entered into pursuant to such right or rights of renewal shall be subject to the requirements of this section at the commencement of the first renewal period.
- e. (1) Notwithstanding any other provision of law, the department shall be authorized upon due notice and hearing, to impose civil penalties for the violation of any provision of this section. The department shall have the power to render decisions and orders and to impose civil penalties of not less than two thousand five hundred dollars nor more than five thousand dollars for each violation. All proceedings authorized pursuant to this paragraph shall be conducted in accordance with rules promulgated by the commissioner. The remedies and penalties provided for in this paragraph shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.
- (2) All such proceedings shall be commenced by the service of a notice of violation returnable to the administrative tribunal of the department. The commissioner shall prescribe the form and wording of notices of violation. The notice of violation or copy thereof shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein.

§ 20-724. Requirements of records.

Any such person, firm, corporation or association or agent, or employee thereof, doing business in New York city, making any one or more of the aforesaid statements, claims, offers, or representations of the types described in subdivisions (a), (b) and (c) of section 20-723 shall maintain full and adequate records disclosing the facts upon which any such statements, offers, claims or representations are based.

- (a) All such records shall be open and available for inspection to the commissioner or to his or her duly designated representatives for a period of ninety days from the date of the offer.
- (b) The failure of any such person, firm, corporation or association, or agent or employee thereof doing business in New York city to produce such records in substantiation of its claims shall be presumptive of the falsity of the advertisement.

§ 20-725. Rules and regulations.

The commissioner may make and promulgate such rules and regulations as may be necessary to carry out the purposes of this subchapter.

§ 20-726. Violations.

Any person, firm, corporation or association or agent or employee thereof, who shall violate any of the provisions of this subchapter upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment not exceeding thirty (30) days, or by both.

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**MCKINNEY’S CONSOLIDATED LAWS OF NEW YORK ANNOTATED
REAL PROPERTY LAW
CHAPTER 50: OF THE CONSOLIDATED LAWS
ARTICLE 8: CONVEYANCES AND MORTGAGES**

§ 265-b. Distressed Property Consulting Contracts.

1. Definitions. The following definitions shall apply to this section:
 - (a) “Homeowner” means a natural person who is the mortgagor with respect to a distressed home loan or who is in danger of losing a home for nonpayment of taxes.
 - (b) “Consulting contract” or “contract” means an agreement between a homeowner and a distressed property consultant under which the consultant agrees to provide consulting services.
 - (c) “Consulting services” means services provided by a distressed property consultant to a homeowner that the consultant represents will help to achieve any of the following:
 - (i) stop, enjoin, delay, void, set aside, annul, stay or postpone a foreclosure filing, a foreclosure sale or the loss of a home for nonpayment of taxes;
 - (ii) obtain forbearance from any servicer, beneficiary or mortgagee or relief with respect to the potential loss of the home for nonpayment of taxes;
 - (iii) assist the homeowner to exercise a right of reinstatement or similar right provided in the mortgage documents or any law or to refinance a distressed home loan;
 - (iv) obtain any extension of the period within which the homeowner may reinstate or otherwise restore his or her rights with respect to the property;
 - (v) obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a property in foreclosure;
 - (vi) assist the homeowner to obtain a loan or advance of funds;
 - (vii) assist the homeowner in answering or responding to a summons and complaint, or otherwise providing information regarding the foreclosure complaint and process;
 - (viii) avoid or ameliorate the impairment of the homeowner's credit resulting from the commencement of a foreclosure proceeding or tax sale; or
 - (ix) save the homeowner's property from foreclosure or loss for nonpayment of taxes.
 - (d) “Distressed home loan” means a home loan that is in danger of being foreclosed because the homeowner has one or more defaults under the mortgage that entitle the lender to accelerate full payment of the mortgage and repossess the property, or a home loan where the lender has commenced a foreclosure action. For purposes of this paragraph, a “home loan” is a loan in which the debt is incurred by the homeowner

primarily for personal, family or household purposes, and the loan is secured by a mortgage or deed of trust on property upon which there is located or there is to be located a structure or structures intended principally for occupancy of from one to four families which is or will be occupied by the homeowner as the homeowner's principal dwelling.

- (e) “Distressed property consultant” or “consultant” means an individual or a corporation, partnership, Limited Liability Company or other business entity that, directly or indirectly, solicits or undertakes employment to provide consulting services to a homeowner for compensation or promise of compensation with respect to a distressed home loan or a potential loss of the home for nonpayment of taxes. A consultant does not include the following:
 - (i) an attorney admitted to practice in the state of New York when the attorney is directly providing consulting services to a homeowner in the course of his or her regular legal practice;
 - (ii) a person or entity who holds or is owed an obligation secured by a lien on any property in foreclosure while the person or entity performs services in connection with the obligation or lien;
 - (iii) a bank, trust company, private banker, bank holding company, savings bank, savings and loan association, thrift holding company, credit union or insurance company organized under the laws of this state, another state or the United States, or a subsidiary or affiliate of such entity or a foreign banking corporation licensed by the superintendent of financial services or the comptroller of the currency;
 - (iv) a federal Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of such mortgagee, and any agent or employee of these persons while engaged in the business of such mortgagee;
 - (v) a judgment creditor of the homeowner, if the judgment creditor's claim accrued before the written notice of foreclosure sale is sent;
 - (vi) a title insurer authorized to do business in this state, while performing title insurance and settlement services;
 - (vii) a person licensed as a mortgage banker or registered as a mortgage broker or registered as a mortgage loan servicer as defined in article twelve-D of the banking law, provided that no such person shall take any upfront fee in conjunction with activities constituting the business of a distressed property consultant;
 - (viii) a bona fide not-for-profit organization that offers counseling or advice to homeowners in foreclosure or loan default; or
 - (ix) a person licensed or registered in the state to engage in the practice of other professions that the superintendent of financial services has determined should not be subject to this section.
 - (f) “Property” shall mean real property located in this state improved by a one-to-four family dwelling used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons, but shall not refer to unimproved real property upon which such dwellings are to be constructed.
 - (g) “Business day” shall mean any calendar day except Sunday or the public holidays as set forth in section twenty-four of the general construction law.
2. Prohibitions. A distressed property consultant is prohibited from doing the following:
- (a) performing consulting services without a written, fully executed consulting contract with a homeowner;

- (b) charging for or accepting any payment for consulting services before the full completion of all such services, including a payment to be placed in escrow pending the completion of such services;
 - (c) taking a power of attorney from a homeowner;
 - (d) retaining any original loan document or other original document related to the distressed home loan, the property or the potential loss of the home for nonpayment of taxes; or
 - (e) inducing or attempting to induce a homeowner to enter a consulting contract that does not fully comply with the provisions of this article.
3. Distressed property consulting contracts.
- (a) A distressed property consulting contract shall:
 - (i) contain the entire agreement of the parties;
 - (ii) be provided in writing to the homeowner for review before signing;
 - (iii) be printed in at least twelve point type and written in the same language that is used by the homeowner and was used in discussions between the consultant and the homeowner to describe the consultant's services or to negotiate the contract;
 - (iv) fully disclose the exact nature of the distressed property consulting services to be provided by the distressed property consultant or anyone working in association with the distressed property consultant;
 - (v) fully disclose the total amount and terms of compensation for such consulting services;
 - (vi) contain the name, business address and telephone number of the consultant and the street address (if different) and facsimile number or email address of the distressed property consultant where communications from the homeowner may be delivered;
 - (vii) be dated and personally signed by the homeowner and the distressed property consultant and be witnessed and acknowledged by a New York notary public; and
 - (viii) contain the following notice, which shall be printed in at least fourteen point boldface type, completed with the name of the distressed property consultant, and located in immediate proximity to the space reserved for the homeowner's signature

“NOTICE REQUIRED BY NEW YORK LAW

You may cancel this contract, without any penalty or obligation, at any time before midnight of (fifth business day after execution)

..... (Name of Distressed Property Consultant) (the “Consultant”) or anyone working for the Consultant may not take any money from you or ask you for money until the Consultant has completely finished doing everything this Contract says the Consultant will do

You should consider consulting an attorney or a government-approved housing counselor before signing any legal document concerning your home. It is advisable that you find your own attorney, and not consult with an attorney recommended or provided to you by the Consultant. A list of housing counselors may be found on the website of the New York State Banking Department, www.banking.state.ny.us or by calling the Banking Department toll-

free at 1-877-BANK-NYS (1-877-226-5697). The law requires that this contract contain the entire agreement between you and the Consultant. You should not rely upon any other written or oral agreement or promise.”

The distressed property consultant shall accurately enter the date on which the right to cancel ends.

- (b) (i) The homeowner has the right to cancel, without any penalty or obligation, any contract with a distressed property consultant until midnight of the fifth business day following the day on which the distressed property consultant and the homeowner sign a consulting contract. Cancellation occurs when the homeowner, or a representative of the homeowner, either delivers written notice of cancellation in person to the address specified in the consulting contract or sends a written communication by facsimile, by United States mail or by an established commercial letter delivery service. A dated proof of facsimile delivery or proof of mailing creates a presumption that the notice of cancellation has been delivered on the date the facsimile is sent or the notice is deposited in the mail or with the delivery service. Cancellation of the contract shall release the homeowner of all obligations to pay fees or any other compensation to the distressed property consultant.
- (ii) The consulting contract shall be accompanied by two copies of a form, captioned “notice of cancellation” in at least twelve-point bold type. This form shall be attached to the contract, shall be easily detachable, and shall contain the following statement written in the same language as used in the contract, and the contractor shall insert accurate information as to the date on which the right to cancel ends and the contractor's contact information:

“NOTICE OF CANCELLATION

Note: You may cancel this contract, without any penalty or obligation, at any time before midnight of (Enter date)

To cancel this contract, sign and date both copies of this cancellation notice and personally deliver one copy or send it by facsimile, United States mail, or an established commercial letter delivery service, indicating cancellation to the Distressed Property Consultant at one of the following:

Name of Contractor.....

Street Address.....

City, State, Zip.....

Facsimile:.....

I hereby cancel this transaction.

Name of Homeowner:.....
Signature of Homeowner:.....
Date:.....”

- (iii) Within ten days following receipt of a notice of cancellation given in accordance with this subdivision, the distressed property consultant shall return any original contract and any other documents signed by or provided by the homeowner. Cancellation shall release the homeowner of all obligations to pay any fees or compensation to the distressed property consultant.
- 3. Distressed property consultant advertisements.
 - (a) All advertisements disseminated by a distressed property consultant must prominently include the following statement: “In New York State, Housing Counselors, who are approved by the U.S. Department of Housing & Urban Development or the New York State Banking Department, may provide the same or similar services as a distressed property consultant for free. A list of approved Housing Counselors can be found on the New York State Banking Department website at www.banking.state.ny.us or by contacting the New York State Banking Department toll-free at 1-877-BANK-NYS (1-877-226-5697). You should consider consulting an attorney or a government-approved housing counselor before signing any legal document concerning a distressed property consultant.” Such statement, if disseminated by print media or the internet, shall be clearly and legibly printed or displayed in not less than twelve-point bold type, or, if the advertisement is printed to be displayed in print that is smaller than twelve point, in bold type print that is no smaller than the print in which the text of the advertisement is printed or displayed.
 - (b) For the purposes of this subdivision, the term “advertisement” shall include, but is not limited to, all forms of marketing, solicitation, or dissemination of information related, directly or indirectly, to securing or obtaining a consulting contract or services. Further, it shall include any and all commonly recognized forms of media marketing via television, radio, print media, all forms of electronic communication via the internet, and all prepared sales presentations given in person or over the internet to the general public.
 - (c) The advertising provisions of this subdivision shall apply to all distressed property consultants who disseminate advertisements in the state of New York or who intend to directly or indirectly contact a homeowner who has property located in New York State. Distressed property consultants shall establish and at all times maintain control over the content, form, and method of dissemination of all advertisements of its services. Further, all advertisements shall be sufficiently complete and clear to avoid the possibility of deception or the ability to mislead or deceive.
- 4. Penalties and other provisions.
 - (a) If a court finds that a distressed property consultant has violated any provision of this section, the court may make null and void any agreement between the distressed homeowner and the distressed property consultant.
 - (b) If the distressed property consultant violates any provision of this section and the homeowner suffers damage because of the violation, the homeowner may recover actual and consequential damages and costs from the distressed property consultant in an

action based on this section. If the distressed property consultant intentionally or recklessly violates any provision of this section, the court may award the homeowner treble damages, attorneys' fees, and costs.

- (c) Any provision of a consulting contract that attempts or purports to limit the liability of the distressed property consultant under this section shall be null and void. Inclusion of such provision shall at the option of the homeowner render the consulting contract void. Any provision in a contract which attempts or purports to require arbitration of any dispute arising under this section shall be void at the option of the homeowner. Any waiver of the provisions of this section shall be void and unenforceable as contrary to public policy.
- (d) In addition to the other remedies provided, whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than ten thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.
- (e) The provisions of this section are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law.