



Legislation Text

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Int. No. 785

By the Public Advocate (Mr. Williams) and Council Members Won and Restler

A Local Law to amend the administrative code of the city of New York, in relation to distressed property consultant disclosures and homeowner foreclosure prevention education

Be it enacted by the Council as follows:

Section 1. Subdivisions b, c and e of section 20-723.3 of the administrative code of the city of New York, as added by local law number 74 for the year 2009, are amended to read as follows:

b. Every distressed property consultant who does business in the city of New York [City] and who advertises distressed property consulting services through the media of a newspaper, magazine, circular, pamphlet, store display, website, e-mail, letter or handbill [and/or] or via a unit or units of advertising space, or through in-person or telephonic solicitation, shall disclose in such advertising or communication, in accordance with the rules established by the commissioner, in plain language in clear and prominent letter type, in a print color that contrasts with the background against which it appears:

1. that the city of New York can provide referrals through 311 to community-based organizations that may be able to provide education, information or low-cost or free foreclosure prevention assistance;

2. that, pursuant to section 265-b of the New York state real property law, a distressed property consultant is prohibited from:

[i.] (a) performing consulting services without a written, fully executed contract with a homeowner;

[ii.] (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;

[iii.] (c) taking a power of attorney from a homeowner; [and]

[iv.] (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[.];

(e) inducing the transfer of a deed to any person or entity, including to the distressed property consultant;

(f) accepting or taking ownership of a deed from a homeowner for any period of time whatsoever;

(g) communicating with the homeowner or any member of the homeowner's family or household with such frequency or at such unusual hours or in such a manner as can reasonably be expected to abuse or harass the homeowner;

(h) claiming, attempting or threatening to enforce a right with knowledge or reason to know that the right does not exist;

(i) using a communication which simulates in any manner legal or judicial process or which gives the appearance of being authorized, issued, or approved by a government, governmental agency, or attorney at law when it is not; and

(j) encumbering the property with a lien without any contractual or legal basis.

[2.] 3. 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[.];

4. that hiring a distressed property consultant is not a replacement for hiring independent legal counsel; and

5. that there is no obligation to accept assistance from a distressed property consultant.

c. The commissioner may make and promulgate such rules as may be necessary for the proper implementation and enforcement of this section. The commissioner shall publish and make available a disclosure template that contains the disclosures that are required to be made by a distressed property consultant pursuant to subdivision b. Such disclosure shall be provided to each homeowner seeking services of a

distressed property consultant at the first in-person meeting between such homeowner and such distressed property consultant.

e. [(1)] 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] \$2,500 nor more than [five thousand dollars] \$5,000 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)] 2. All such proceedings shall be commenced by the service of a notice of violation returnable to the office of administrative trials and hearings. 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.

3. In addition to any proceedings permitted by paragraph 1, any person who violates any of the provisions of this section or any rule or regulation issued thereunder shall be guilty of a class A misdemeanor.

§ 2. Section 20-726 of the administrative code of the city of New York is amended to read as follows:

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. This section shall not apply to violations of section 20-723.3.

§ 3. Title 11 of the administrative code of the city of New York is amended by adding a new chapter 32 to read as follows:

CHAPTER 32

HOMEOWNER FORECLOSURE PREVENTION EDUCATION

§ 11-3201 Homeowner foreclosure prevention education. The commissioner of finance, in conjunction with the commissioner of consumer and worker protection, and the commissioner of housing preservation and development, shall create an educational guide about foreclosure prevention intended for use by homeowners. Such guide shall be published on the websites of the department of finance, the department of consumer and worker protection, and the department of housing preservation and development, made available upon request through 311 and at in-person at locations that are operated by such departments. Such guide shall include, but need not be limited to, the following:

1. Information about financial assistance programs for homeowners offered by city agencies;

2. Foreclosure prevention resources; and

3. Information about deed theft, deed fraud, and foreclosure fraud, and information about how to avoid becoming a victim of deed theft, deed fraud, and foreclosure fraud.

§ 4. This local law takes effect 120 days after it becomes law.

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