

**California Civil Code, Home Equity Sales Contracts, sec. 1695-1695.17. Cal. Civ. Code § 1695-1695.17.**

Section 1695.

(a) The Legislature finds and declares that homeowners whose residences are in foreclosure have been subjected to fraud, deception, and unfair dealing by home equity purchasers. The recent rapid escalation of home values, particularly in the urban areas, has resulted in a significant increase in home equities which are usually the greatest financial asset held by the homeowners of this state. During the time period between the commencement of foreclosure proceedings and the scheduled foreclosure sale date, homeowners in financial distress, especially the poor, elderly, and financially unsophisticated, are vulnerable to the importunities of equity purchasers who induce homeowners to sell their homes for a small fraction of their fair market values through the use of schemes which often involve oral and written misrepresentations, deceit, intimidation, and other unreasonable commercial practices.

(b) The Legislature declares that it is the express policy of the state to preserve and guard the precious asset of home equity, and the social as well as the economic value of homeownership.

(c) The Legislature further finds that equity purchasers have a significant impact upon the economy and well-being of this state and its local communities, and therefore the provisions of this chapter are necessary to promote the public welfare.

(d) The intent and purposes of this chapter are the following:

(1) To provide each homeowner with information necessary to make an informed and intelligent decision regarding the sale of his or her home to an equity purchaser; to require that the sales agreement be expressed in writing; to safeguard the public against deceit and financial hardship; to insure, foster, and encourage fair dealing in the sale and purchase of homes in foreclosure; to prohibit representations that tend to mislead; to prohibit or restrict unfair contract terms; to afford homeowners a reasonable and meaningful opportunity to rescind sales to equity purchasers; and to preserve and protect home equities for the homeowners of this state.

(2) This chapter shall be liberally construed to effectuate this intent and to achieve these purposes.

1695.1. The following definitions apply to this chapter:

(a) "Equity purchaser" means any person who acquires title to any residence in foreclosure, except a person who acquires such title as follows:

(1) For the purpose of using such property as a personal residence.

(2) By a deed in lieu of foreclosure of any voluntary lien or encumbrance of record.

(3) By a deed from a trustee acting under the power of sale contained in a deed of trust or mortgage at a foreclosure sale conducted pursuant to Article 1 (commencing with Section 2920) of Chapter 2 of Title 14 of Part 4 of Division 3.

- (4) At any sale of property authorized by statute.
- (5) By order or judgment of any court.
- (6) From a spouse, blood relative, or blood relative of a spouse.

(b) "Residence in foreclosure" and "residential real property in foreclosure" means residential real property consisting of one- to four-family dwelling units, one of which the owner occupies as his or her principal place of residence, and against which there is an outstanding notice of default, recorded pursuant to Article 1 (commencing with Section 2920) of Chapter 2 of Title 14 of Part 4 of Division 3.

(c) "Equity seller" means any seller of a residence in foreclosure.

(d) "Business day" means any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

(e) "Contract" means any offer or any contract, agreement, or arrangement, or any term thereof, between an equity purchaser and equity seller incident to the sale of a residence in foreclosure.

(f) "Property owner" means the record title owner of the residential real property in foreclosure at the time the notice of default was recorded.

1695.2. Every contract shall be written in letters of a size equal to 10-point bold type, in the same language principally used by the equity purchaser and equity seller to negotiate the sale of the residence in foreclosure and shall be fully completed and signed and dated by the equity seller and equity purchaser prior to the execution of any instrument of conveyance of the residence in foreclosure.

1695.3. Every contract shall contain the entire agreement of the parties and shall include the following terms:

(a) The name, business address, and the telephone number of the equity purchaser.

(b) The address of the residence in foreclosure.

(c) The total consideration to be given by the equity purchaser in connection with or incident to the sale.

(d) A complete description of the terms of payment or other consideration including, but not limited to, any services of any nature which the equity purchaser represents he will perform for the equity seller before or after the sale.

(e) The time at which possession is to be transferred to the equity purchaser.

(f) The terms of any rental agreement.

(g) A notice of cancellation as provided in subdivision (b) of Section 1695.5.

(h) The following notice in at least 14-point boldface type, if the contract is printed or in capital letters if the contract is typed, and completed with the name of the equity purchaser, immediately above the statement required by Section 1695.5(a):

"NOTICE REQUIRED BY CALIFORNIA LAW Until your right to cancel this contract has ended, \_\_\_\_\_ (Name) or anyone working for \_\_\_\_\_ (Name) CANNOT ask you to sign or have you sign any deed or any other document." The contract required by this section shall survive delivery of any instrument of conveyance of the residence in foreclosure, and shall have no effect on persons other than the parties to the contract.

1695.4. (a) In addition to any other right of rescission, the equity seller has the right to cancel any contract with an equity purchaser until midnight of the fifth business day following the day on which the equity seller signs a contract that complies with this chapter or until 8 a.m. on the day scheduled for the sale of the property pursuant to a power of sale conferred in a deed of trust, whichever occurs first.

(b) Cancellation occurs when the equity seller personally delivers written notice of cancellation to the address specified in the contract or sends a telegram indicating cancellation to that address.

(c) A notice of cancellation given by the equity seller need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the equity seller not to be bound by the contract.

1695.5. (a) The contract shall contain in immediate proximity to the space reserved for the equity seller's signature a conspicuous statement in a size equal to at least 12-point bold type, if the contract is printed or in capital letters if the contract is typed, as follows: "You may cancel this contract for the sale of your house without any penalty or obligation at any time before \_\_\_\_\_. (Date and time of day) See the attached notice of cancellation form for an explanation of this right." The equity purchaser shall accurately enter the date and time of day on which the rescission right ends.

(b) The contract shall be accompanied by a completed form in duplicate, captioned "notice of cancellation" in a size equal to 12-point bold type, if the contract is printed or in capital letters if the contract is typed, followed by a space in which the equity purchaser shall enter the date on which the equity seller executes any contract. This form shall be attached to the contract, shall be easily detachable, and shall contain in type of at least 10-point, if the contract is printed or in capital letters if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION \_\_\_\_\_  
(Enter date contract signed) You may cancel this contract for the sale of your house,

without any penalty or obligation, at any time before \_\_\_\_\_ . (Enter date and time of day) To cancel this transaction, personally deliver a signed and dated copy of this cancellation notice, or send a telegram to \_\_\_\_\_, (Name of purchaser) at \_\_\_\_\_ (Street address of purchaser's place of \_\_\_\_\_ business) NOT LATER THAN \_\_\_\_\_ . (Enter date and time of day) I hereby cancel this transaction \_\_\_\_\_ . (Date) \_\_\_\_\_ " Seller's signature)

(c) The equity purchaser shall provide the equity seller with a copy of the contract and the attached notice of cancellation.

(d) Until the equity purchaser has complied with this section, the equity seller may cancel the contract.

1695.6. (a) The contract as required by Sections 1695.2, 1695.3, and 1695.5, shall be provided and completed in conformity with those sections by the equity purchaser.

(b) Until the time within which the equity seller may cancel the transaction has fully elapsed, the equity purchaser shall not do any of the following:

(1) Accept from any equity seller an execution of, or induce any equity seller to execute, any instrument of conveyance of any interest in the residence in foreclosure.

(2) Record with the county recorder any document, including, but not limited to, any instrument of conveyance, signed by the equity seller.

(3) Transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any third party, provided no grant of any interest or encumbrance shall be defeated or affected as against a bona fide purchaser or encumbrancer for value and without notice of a violation of this chapter, and knowledge on the part of any such person or entity that the property was "residential real property in foreclosure" shall not constitute notice of a violation of this chapter. This section shall not be deemed to abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the residential real property in foreclosure.

(4) Pay the equity seller any consideration.

(c) Within 10 days following receipt of a notice of cancellation given in accordance with Sections 1695.4 and 1695.5, the equity purchaser shall return without condition any original contract and any other documents signed by the equity seller.

(d) An equity purchaser shall make no untrue or misleading statements regarding the value of the residence in foreclosure, the amount of proceeds the equity seller will receive after a foreclosure sale, any contract term, the equity seller's rights or obligations incident to or arising out of the sale transaction, the nature of any document which the equity purchaser induces the equity seller to sign, or any other untrue or misleading statement concerning the sale of the residence in foreclosure to the equity purchaser.

(e) Whenever any equity purchaser purports to hold title as a result of any transaction in which the equity seller grants the residence in foreclosure by any instrument which purports to be an absolute conveyance and reserves or is given by the equity purchaser an option to repurchase such residence, the equity purchaser shall not cause any encumbrance or encumbrances to be placed on such property or grant any interest in such property to any other person without the written consent of the equity seller. Nothing in this subdivision shall preclude the application of paragraph (3) of subdivision (b).

1695.7. An equity seller may bring an action for the recovery of damages or other equitable relief against an equity purchaser for a violation of any subdivision of Section 1695.6 or Section 1695.13. The equity seller shall recover actual damages plus reasonable attorneys' fees and costs. In addition, the court may award exemplary damages or equitable relief, or both, if the court deems such award proper, but in any event shall award exemplary damages in an amount not less than three times the equity seller's actual damages for any violation of paragraph (3) of subdivision (b) of Section 1695.6 or Section 1695.13; or the court may award a civil penalty of up to two thousand five hundred dollars (\$2,500), but it may not award both exemplary damages and a civil penalty. Any action brought pursuant to this section shall be commenced within four years after the date of the alleged violation.

1695.8. Any equity purchaser who violates any subdivision of Section 1695.6 or who engages in any practice which would operate as a fraud or deceit upon an equity seller shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars (\$25,000), by imprisonment in the county jail for not more than one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code, or by both that fine and imprisonment for each violation.

1695.9. The provisions of this chapter are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law.

1695.10. Any waiver of the provisions of this chapter shall be void and unenforceable as contrary to the public policy.

1695.11. If any provision of this chapter, or if any application thereof to any person or circumstance is held unconstitutional, the remainder of this chapter and the application of its provisions to other persons and circumstances shall not be affected thereby.

1695.12. In any transaction in which an equity seller purports to grant a residence in foreclosure to an equity purchaser by any instrument which appears to be an absolute conveyance and reserves to himself or herself or is given by the equity purchaser an option to repurchase, such transaction shall create a presumption affecting the burden of proof, which may be overcome by clear and convincing evidence to the contrary that the transaction is a loan transaction, and the purported absolute conveyance is a mortgage; however, such presumption shall not apply to a bona fide purchaser or encumbrancer for value without notice of a violation of this chapter, and knowledge on

the part of any such person or entity that the property was "residential real property in foreclosure" shall not constitute notice of a violation of this chapter. This section shall not be deemed to abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the residential real property in foreclosure.

1695.13. It is unlawful for any person to initiate, enter into, negotiate, or consummate any transaction involving residential real property in foreclosure, as defined in Section 1695.1, if such person, by the terms of such transaction, takes unconscionable advantage of the property owner in foreclosure.

1695.14. (a) In any transaction involving residential real property in foreclosure, as defined in Section 1695.1, which is in violation of Section 1695.13 is voidable and the transaction may be rescinded by the property owner within two years of the date of the recordation of the conveyance of the residential real property in foreclosure.

(b) Such rescission shall be effected by giving written notice as provided in Section 1691 to the equity purchaser and his successor in interest, if the successor is not a bona fide purchaser or encumbrancer for value as set forth in subdivision (c), and by recording such notice with the county recorder of the county in which the property is located, within two years of the date of the recordation of the conveyance to the equity purchaser. The notice of rescission shall contain the names of the property owner and the name of the equity purchaser in addition to any successor in interest holding record title to the real property and shall particularly describe such real property. The equity purchaser and his successor in interest if the successor is not a bona fide purchaser or encumbrancer for value as set forth in subdivision (c), shall have 20 days after the delivery of the notice in which to reconvey title to the property free and clear of encumbrances created subsequent to the rescinded transaction. Upon failure to reconvey title within such time, the rescinding party may bring an action to enforce the rescission and for cancellation of the deed.

(c) The provisions of this section shall not affect the interest of a bona fide purchaser or encumbrancer for value if such purchase or encumbrance occurred prior to the recordation of the notice of rescission pursuant to subdivision (b). Knowledge that the property was residential real property in foreclosure shall not impair the status of such persons or entities as bona fide purchasers or encumbrancers for value. This subdivision shall not be deemed to abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the residential real property in foreclosure.

(d) In any action brought to enforce a rescission pursuant to this section, the prevailing party shall be entitled to costs and reasonable attorneys fees.

(e) The remedies provided by this section shall be in addition to any other remedies provided by law.

1695.15. (a) An equity purchaser is liable for all damages resulting from any statement made or act committed by the equity purchaser's representative in any manner

connected with the equity purchaser's acquisition of a residence in foreclosure, receipt of any consideration or property from or on behalf of the equity seller, or the performance of any act prohibited by this chapter.

(b) "Representative" for the purposes of this section means a person who in any manner solicits, induces, or causes any property owner to transfer title or solicits any member of the property owner's family or household to induce or cause any property owner to transfer title to the residence in foreclosure to the equity purchaser.

1695.16. (a) Any provision of a contract which attempts or purports to limit the liability of the equity purchaser under Section 1695.15 shall be void and shall at the option of the equity seller render the equity purchase contract void. The equity purchaser shall be liable to the equity seller for all damages proximately caused by that provision. Any provision in a contract which attempts or purports to require arbitration of any dispute arising under this chapter shall be void at the option of the equity seller only upon grounds as exist for the revocation of any contract.

(b) This section shall apply to any contract entered into on or after January 1, 1991.

1695.17. (a) Any representative, as defined in subdivision (b) of Section 1695.15, deemed to be the agent or employee, or both the agent and the employee of the equity purchaser shall be required to provide both of the following:

(1) Written proof to the equity seller that the representative has a valid current California Real Estate Sales License and that the representative is bonded by an admitted surety insurer in an amount equal to twice the fair market value of the real property which is the subject of the contract.

(2) A statement in writing, under penalty of perjury, that the representative has a valid current California Real Estate Sales License, is bonded by an admitted surety insurer in an amount equal to at least twice the value of the real property which is the subject of the contract and has complied with paragraph (1). The written statement required by this paragraph shall be provided to all parties to the contract prior to the transfer of any interest in the real property which is the subject of the contract.

(b) The failure to comply with subdivision (a) shall at the option of the equity seller render the equity purchase contract void and the equity purchaser shall be liable to the equity seller for all damages proximately caused by the failure to comply.

Source: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=civ&group=01001-02000&file=1695-1695.17>

**California Civil Code, Article 1.5. Mortgage Foreclosure Consultants, sec. 2945 - 2945.11. Cal. Civ. Code § 2945 - 2945.11.**

2945. (a) The Legislature finds and declares that homeowners whose residences are in foreclosure are subject to fraud, deception, harassment, and unfair dealing by foreclosure consultants from the time a Notice of Default is recorded pursuant to

Section 2924 until the time surplus funds from any foreclosure sale are distributed to the homeowner or his or her successor. Foreclosure consultants represent that they can assist homeowners who have defaulted on obligations secured by their residences. These foreclosure consultants, however, often charge high fees, the payment of which is often secured by a deed of trust on the residence to be saved, and perform no service or essentially a worthless service. Homeowners, relying on the foreclosure consultants' promises of help, take no other action, are diverted from lawful businesses which could render beneficial services, and often lose their homes, sometimes to the foreclosure consultants who purchase homes at a fraction of their value before the sale. Vulnerable homeowners are increasingly relying on the services of foreclosure consultants who advise the homeowner that the foreclosure consultant can obtain the remaining funds from the foreclosure sale if the homeowner executes an assignment of the surplus, a deed, or a power of attorney in favor of the foreclosure consultant. This results in the homeowner paying an exorbitant fee for a service when the homeowner could have obtained the remaining funds from the trustee's sale from the trustee directly for minimal cost if the homeowner had consulted legal counsel or had sufficient time to receive notices from the trustee pursuant to Section 2924j regarding how and where to make a claim for excess proceeds.

(b) The Legislature further finds and declares that foreclosure consultants have a significant impact on the economy of this state and on the welfare of its citizens.

(c) The intent and purposes of this article are the following:

(1) To require that foreclosure consultant service agreements be expressed in writing; to safeguard the public against deceit and financial hardship; to permit rescission of foreclosure consultation contracts; to prohibit representations that tend to mislead; and to encourage fair dealing in the rendition of foreclosure services.

(2) The provisions of this article shall be liberally construed to effectuate this intent and to achieve these purposes.

2945.1. The following definitions apply to this chapter:

(a) "Foreclosure consultant" means any person who makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:

(1) Stop or postpone the foreclosure sale.

(2) Obtain any forbearance from any beneficiary or mortgagee.

(3) Assist the owner to exercise the right of reinstatement provided in Section 2924c.

(4) Obtain any extension of the period within which the owner may reinstate his or her obligation.

(5) Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained that deed of trust or mortgage.

(6) Assist the owner to obtain a loan or advance of funds.

(7) Avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale.

(8) Save the owner's residence from foreclosure.



(9) Assist the owner in obtaining from the beneficiary, mortgagee, trustee under a power of sale, or counsel for the beneficiary, mortgagee, or trustee, the remaining proceeds from the foreclosure sale of the owner's residence.

(b) A foreclosure consultant does not include any of the following:

(1) 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.

(2) A person licensed under Division 3 (commencing with Section 12000) of the Financial Code when the person is acting as a prorater as defined therein.

(3) A person licensed under Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code when the person is acting under the authority of that license, as described in Section 10131 or 10131.1 of the Business and Professions Code.

(4) A person licensed under Chapter 1 (commencing with Section 5000) of Division 3 of the Business and Professions Code when the person is acting in any capacity for which the person is licensed under those provisions.

(5) A person or his or her 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 United States or this state to provide services.

(6) A person who holds or is owed an obligation secured by a lien on any residence in foreclosure when the person performs services in connection with this obligation or lien.

(7) Any person licensed to make loans pursuant to Division 9 (commencing with Section 22000) of the Financial Code when the person is acting under the authority of that license.

(8) Any person or entity doing business under any law of this state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, insurance companies, or any person or entity authorized under the laws of this state to conduct a title or escrow business, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of the above, and any agent or employee of the above while engaged in the business of these persons or entities.

(9) A person licensed as a residential mortgage lender or servicer pursuant to Division 20 (commencing with Section 50000) of the Financial Code, when acting under the authority of that license.

(c) Notwithstanding subdivision (b), any person who provides services pursuant to paragraph (9) of subdivision (a) is a foreclosure consultant unless he or she is the owner's attorney.

(d) "Person" means any individual, partnership, corporation, limited liability company, association or other group, however organized.

(e) "Service" means and includes, but is not limited to, any of the following:

(1) Debt, budget, or financial counseling of any type.

(2) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure.

(3) Contacting creditors on behalf of an owner of a residence in foreclosure.

(4) Arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure may cure his or her default and reinstate his or her obligation pursuant to Section 2924c.

(5) Arranging or attempting to arrange for any delay or postponement of the time of sale of the residence in foreclosure.

(6) Advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court.

(7) Giving any advice, explanation, or instruction to an owner of a residence in foreclosure which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a residence in foreclosure pursuant to a power of sale contained in any deed of trust.

(8) Arranging or attempting to arrange for the payment by the beneficiary, mortgagee, trustee under a power of sale, or counsel for the beneficiary, mortgagee, or trustee, of the remaining proceeds to which the owner is entitled from a foreclosure sale of the owner's residence in foreclosure. Arranging or attempting to arrange for the payment shall include any arrangement where the owner transfers or assigns the right to the remaining proceeds of a foreclosure sale to the foreclosure consultant or any person designated by the foreclosure consultant, whether that transfer is effected by agreement, assignment, deed, power of attorney, or assignment of claim.

(9) Arranging or attempting to arrange an audit of any obligation secured by a lien on a residence in foreclosure.

(f) "Residence in foreclosure" means a residence in foreclosure as defined in Section 1695.1.

(g) "Owner" means a property owner as defined in Section 1695.1.

(h) "Contract" means any agreement, or any term thereof, between a foreclosure consultant and an owner for the rendition of any service as defined in subdivision (e).

2945.2. (a) In addition to any other right under law to rescind a contract, an owner has the right to cancel such a contract until midnight of the fifth business day, as defined in subdivision (e) of Section 1689.5, after the day on which the owner signs a contract that complies with Section 2945.3.

(b) Cancellation occurs when the owner gives written notice of cancellation to the foreclosure consultant by mail at the address specified in the contract, or by facsimile or electronic mail at the number or address identified in the contract.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. If given by facsimile or electronic mail, notice of cancellation is effective when successfully transmitted.

(d) Notice of cancellation given by the owner need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

2945.3. (a) Every contract shall be in writing and shall fully disclose the exact nature of the foreclosure consultant's services and the total amount and terms of compensation.

(b) The following notice, printed in at least 14-point boldface type and completed with the name of the foreclosure consultant, shall be printed immediately above the statement required by subdivision (d): "NOTICE REQUIRED BY CALIFORNIA LAW \_\_\_\_\_ or anyone working (Name) for him or her CANNOT: (1) Take any money from you or ask you for money until \_\_\_\_\_ has (Name) completely finished doing everything he or she said he or she would do; and (2) Ask you to sign or have you sign any lien, deed of trust, or deed."

(c) The contract shall be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract. In addition, the foreclosure consultant shall provide the owner, before the owner signs the contract, with a copy of a completed contract written in any other language used in any communication between the foreclosure consultant and the owner and in any language described in subdivision (b) of Section 1632 and requested by the owner. If English is the language principally used by the foreclosure consultant to describe the foreclosure consultant's services or to negotiate the contract, the foreclosure consultant shall notify the owner orally and in writing before the owner signs the contract that the owner has the right to ask for a completed copy of the contract in a language described in subdivision (b) of Section 1632.

(d) The contract shall be dated and signed by the owner and shall contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least 10-point boldface type, as follows: "You, the owner, may cancel this transaction at any time prior to midnight of the fifth business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(e) The contract shall contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

- (1) The name, mailing address, electronic mail address, and facsimile number of the foreclosure consultant to which the notice of cancellation is to be mailed.
- (2) The date the owner signed the contract.

(f) The contract shall be accompanied by a completed form in duplicate, captioned "notice of cancellation," which shall be attached to the contract, shall be easily detachable, and shall contain in type of at least 10-point the following statement written in the same language as used in the contract: "NOTICE OF CANCELLATION \_\_\_\_\_ (Enter date of transaction) (Date) You may cancel this transaction, without any penalty or

obligation, within five business days from the above date. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram,

to \_\_\_\_\_ (Name of foreclosure consultant) at \_\_\_\_\_

(Address of foreclosure consultant's place of business) You may also cancel by sending a facsimile (fax) of a signed and dated copy of this cancellation notice, or any other written notice, to the following number:

\_\_\_\_\_ (Facsimile telephone number of foreclosure consultant's place of business) You may also cancel by sending an e-mail canceling this transaction to the following e-mail address:

\_\_\_\_\_ (E-mail address of foreclosure consultant's business) I hereby cancel this transaction

\_\_\_\_\_; (Date)  
" (Owner's

signature)

(g) The foreclosure consultant shall provide the owner with a copy of the contract and the attached notice of cancellation.

(h) Until the foreclosure consultant has complied with this section, the owner may cancel the contract, claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant.

2945.4. It shall be a violation for a foreclosure consultant to:

(a) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that he or she would perform.

(b) Claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason which exceeds 10 percent per annum of the amount of any loan which the foreclosure consultant may make to the owner.

(c) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation. That security shall be void and unenforceable.

(d) Receive any consideration from any third party in connection with services rendered to an owner unless that consideration is fully disclosed to the owner.

(e) Acquire any interest in a residence in foreclosure from an owner with whom the foreclosure consultant has contracted. Any interest acquired in violation of this subdivision shall be voidable, provided that nothing herein shall affect or defeat the title of a bona fide purchaser or encumbrancer for value and without notice of a violation of this article. Knowledge that the property was "residential real property in foreclosure," does not constitute notice of a violation of this article. This subdivision may not be deemed to abrogate any duty of inquiry which exists as to rights or interests of persons in possession of residential real property in foreclosure.

(f) Take any power of attorney from an owner for any purpose.

(g) Induce or attempt to induce any owner to enter into a contract which does not comply in all respects with Sections 2945.2 and 2945.3.

(h) Enter into an agreement at any time to assist the owner in arranging, or arrange for the owner, the release of surplus funds after the trustee's sale is conducted, whether the agreement involves direct payment, assignment, deed, power of attorney, assignment of claim from an owner to the foreclosure consultant or any person designated by the foreclosure consultant, or any other compensation.

2945.45. (a) Except as provided in subdivision (b) of Section 2945.1, a person shall not take any action specified in subdivision (a) of Section 2945.1 unless the person satisfies the following requirements:

(1) The person registers with, and is issued and maintains a certificate of registration from, the Department of Justice in accordance with the following requirements:

(A) The person shall submit a completed registration form, along with applicable fees, to the department. The registration form shall include the name, address, and telephone number of the foreclosure consultant, all of the names, addresses, telephone numbers, Internet Web sites, and e-mail addresses used or proposed to be used in connection with acting as a foreclosure consultant, a statement that the person has not been convicted of, or pled nolo contendere to, any crime involving fraud, misrepresentation, dishonesty, or a violation of this article, a statement that the person has not been liable under any civil judgment for fraud, misrepresentation, or violations of this article or of Section 17200 or 17500 of the Business and Professions Code, and any additional information required by the department.

(B) The registration form shall be accompanied by a copy of all print or electronic advertising and other promotional material, and scripts of all telephonic or broadcast advertising and other statements used or proposed to be used in connection with acting as a foreclosure consultant.

(C) The registration form shall be accompanied by a copy of the bond required pursuant to paragraph (2).

(D) The person shall file an update of any material change in the information required by subparagraphs (A) and (B) with the department.

(E) The person shall pay any fee set by the department to defray reasonable costs incurred in connection with the department's responsibilities under this article.

(2) The person obtains and maintains in force a surety bond in the amount of one hundred thousand dollars (\$100,000). The bond shall be executed by a corporate surety admitted to do business in this state. The bond shall be made in favor of the State of California for the benefit of homeowners for damages caused by the foreclosure consultant's violation of this article or any other provision of law. A copy of the bond shall be filed with the Secretary of State, with a copy provided to the department pursuant to subparagraph (C) of paragraph (1).

(b) The Foreclosure Consultant Regulation Fund is hereby created in the State Treasury for the deposit of fees submitted to the Department of Justice pursuant to subparagraph (A) of paragraph (1) of subdivision (a) for registration as a foreclosure consultant. Moneys in the fund shall be available, upon appropriation by the Legislature, for the costs of the department incurred in connection with the administration of the registration program.

(c) The Department of Justice may refuse to issue, or may revoke, a certificate of registration because of any misstatement in the registration form, because the foreclosure consultant has been held liable for the violation of any law described in subparagraph (A) of paragraph (1) of subdivision (a), because the foreclosure consultant has failed to maintain the bond required under paragraph (2) of subdivision (a), or because of any violation of this chapter.

(d) A person who violates subdivision (a) shall be punished, for each violation, by a fine of not less than one thousand dollars (\$1,000) and not more than twenty-five thousand dollars (\$25,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. The imposition of a penalty pursuant to this subdivision shall not be affected by the availability of any other relief, remedy, or penalty provided by law, and shall not affect the availability of any such relief, remedy, or penalty.

2945.5. Any waiver by an owner of the provisions of this article shall be deemed void and unenforceable as contrary to public policy. Any attempt by a foreclosure consultant to induce an owner to waive his rights shall be deemed a violation of this article.

2945.6. (a) An owner may bring an action against a foreclosure consultant for any violation of this chapter. Judgment shall be entered for actual damages, reasonable attorneys' fees and costs, and appropriate equitable relief. The court also may, in its discretion, award exemplary damages and shall award exemplary damages equivalent to at least three times the compensation received by the foreclosure consultant in violation of subdivision (a), (b), or (d) of Section 2945.4, and three times the owner's actual damages for any violation of subdivision (c), (e), or (g) of Section 2945.4, in addition to any other award of actual or exemplary damages.

(b) The rights and remedies provided in subdivision (a) are cumulative to, and not a limitation of, any other rights and remedies provided by law. Any action brought pursuant to this section shall be commenced within four years from the date of the alleged violation.

2945.7. Any person who commits any violation described in Section 2945.4 shall be punished by a fine of not more than ten thousand dollars (\$10,000), by imprisonment in the county jail for not more than one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code, or by both that fine and imprisonment for each violation. These penalties are cumulative to any other remedies or penalties provided by law.

2945.8. If any provision of this article or the application thereof to any person or circumstance is held to be unconstitutional, the remainder of the article and the

application of such provision to other persons and circumstances shall not be affected thereby.

2945.9. (a) A foreclosure consultant is liable for all damages resulting from any statement made or act committed by the foreclosure consultant's representative in any manner connected with the foreclosure consultant's

(1) performance, offer to perform, or contract to perform any of the services described in subdivision (a) of Section 2945.1,

(2) receipt of any consideration or property from or on behalf of an owner, or

(3) performance of any act prohibited by this article.

(b) "Representative" for the purposes of this section means a person who in any manner solicits, induces, or causes

(1) any owner to contract with a foreclosure consultant,

(2) any owner to pay any consideration or transfer title to the residence in foreclosure to the foreclosure consultant, or

(3) any member of the owner's family or household to induce or cause any owner to pay any consideration or transfer title to the residence in foreclosure to the foreclosure consultant.

2945.10. (a) Any provision in a contract which attempts or purports to limit the liability of the foreclosure consultant under Section 2945.9 shall be void and shall at the option of the owner render the contract void. The foreclosure consultant shall be liable to the owner for all damages proximately caused by that provision. Any provision in a contract which attempts or purports to require arbitration of any dispute arising under this chapter shall be void at the option of the owner only upon grounds as exist for the revocation of any contract.

(b) This section shall apply to any contract entered into on or after January 1, 1991.

2945.11. (a) Any representative, as defined in subdivision (b) of Section 2945.9, deemed to be the agent or employee or both the agent and the employee of the foreclosure consultant shall be required to provide both of the following:

(1) Written proof to the owner that the representative has a valid current California Real Estate Sales License and that the representative is bonded by an admitted surety insurer in an amount equal to at least twice the fair market value of the real property that is the subject of the contract.

(2) A statement in writing, under penalty of perjury, that the representative has a valid current California Real Estate Sales License, that the representative is bonded by an admitted surety insurer in an amount equal to at least twice the value of the real property that is the subject of the contract and has complied with paragraph (1). The written statement required by this paragraph shall be provided to all parties to the contract prior to the transfer of any interest in the real property that is the subject of the contract.

(b) The failure to comply with subdivision (a) shall, at the option of the owner, render the contract void and the foreclosure consultant shall be liable to the owner for all damages proximately caused by the failure to comply.

Source:[http://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CIV&division=3.&title=14.&part=4.&chapter=2.&article=1.5](http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&division=3.&title=14.&part=4.&chapter=2.&article=1.5).



**Colorado Foreclosure Protection Act, Colorado Revised Statutes, sec. 6-1-1102-1121. C.R.S § 6-1-1102-1121.**

6-1-1102. Legislative declaration

The general assembly hereby finds, determines, and declares that home ownership and the accumulation of equity in one's home provide significant social and economic benefits to the state and its citizens. Unfortunately, too many home owners in financial distress, especially the poor, elderly, and financially unsophisticated, are vulnerable to a variety of deceptive or unconscionable business practices designed to dispossess them or otherwise strip the equity from their homes. There is a compelling need to curtail and to prevent the most deceptive and unconscionable of these business practices, to provide each home owner with information necessary to make an informed and intelligent decision regarding transactions with certain foreclosure consultants and equity purchasers, to provide certain minimum requirements for contracts between such parties, including statutory rights to cancel such contracts, and to ensure and foster fair dealing in the sale and purchase of homes in foreclosure. Therefore, it is the intent of the general assembly that all violations of this part 11 have a significant public impact and that the terms of this part 11 be liberally construed to achieve these purposes.

6-1-1103. Definitions

As used in this part 11, unless the context otherwise requires:

(1) "Associate" means a partner, subsidiary, affiliate, agent, or any other person working in association with a foreclosure consultant or an equity purchaser. "Associate" does not include a person who is excluded from the definition of an "equity purchaser" or a "foreclosure consultant".

(2) "Equity purchaser" means a person, other than a person who acquires a property for the purpose of using such property as his or her personal residence, who acquires title to a residence in foreclosure; except that the term does not include a person who acquires such title:

(a) (Deleted by amendment, L. 2010, (HB 10-1133), ch. 350, p. 1615, § 1, effective January 1, 2011.)

(b) By a deed in lieu of foreclosure to the holder of an evidence of debt, or an associate of the holder of an evidence of debt, of a consensual lien or encumbrance of record if such consensual lien or encumbrance is recorded in the real property records of the clerk and recorder of the county where the residence in foreclosure is located prior to the recording of the notice of election and demand for sale required under section 38-38-101, C.R.S.;

(c) By a deed from the public trustee or a county sheriff as a result of a foreclosure sale conducted pursuant to article 38 of title 38, C.R.S.;

(d) At a sale of property authorized by statute;

(e) By order or judgment of any court;

(f) From the person's spouse, relative, or relative of a spouse, by the half or whole blood or by adoption, or from a guardian, conservator, or personal representative of a person identified in this paragraph (f);

(g) While performing services as a part of a person's normal business activities under any law of this state or the United States that regulates banks, trust companies, savings and loan associations, credit unions, insurance companies, title insurers, insurance producers, or escrow companies authorized to conduct business in the state, an affiliate or subsidiary of such person, or an employee or agent acting on behalf of such person;  
or

(h) As a result of a short sale transaction in which a short sale addendum form, as promulgated by the Colorado real estate commission, is part of the contract used to acquire a residence in foreclosure and such transaction complies with section 6-1-1121.

(3) "Evidence of debt" means a writing that evidences a promise to pay or a right to the payment of a monetary obligation, such as a promissory note, bond, negotiable instrument, a loan, credit, or similar agreement, or a monetary judgment entered by a court of competent jurisdiction.

(4) (a) "Foreclosure consultant" means a person who does not, directly or through an associate, take or acquire any interest in or title to a homeowner's property and who, in the course of such person's business, vocation, or occupation, makes a solicitation, representation, or offer to a home owner to perform, in exchange for compensation from the home owner or from the proceeds of any loan or advance of funds, a service that the person represents will do any of the following:

(I) Stop or postpone a foreclosure sale;

(II) Obtain a forbearance from a beneficiary under a deed of trust, mortgage, or other lien;

(III) Assist the home owner in exercising a right to cure a default as provided in article 38 of title 38, C.R.S.;

(IV) Obtain an extension of the period within which the home owner may cure a default as provided in article 38 of title 38, C.R.S.;

(V) Obtain a waiver of an acceleration clause contained in an evidence of debt secured by a deed of trust, mortgage, or other lien on a residence in foreclosure or contained in such deed of trust, mortgage, or other lien;

(VI) Assist the home owner to obtain a loan or advance of funds;

(VII) Avoid or reduce the impairment of the home owner's credit resulting from the recording of a notice of election and demand for sale, commencement of a judicial foreclosure action, or due to any foreclosure sale or the granting of a deed in lieu of foreclosure or resulting from any late payment or other failure to pay or perform under the evidence of debt, the deed of trust, or other lien securing such evidence of debt;

(VIII) In any way delay, hinder, or prevent the foreclosure upon the home owner's residence; or

(IX) Assist the home owner in obtaining from the beneficiary, mortgagee, or grantee of the lien in foreclosure, or from counsel for such beneficiary, mortgagee, or grantee, the remaining or excess proceeds from the foreclosure sale of the residence in foreclosure.

(b) The term "foreclosure consultant" does not include:

(I) A person licensed to practice law in this state, while performing any activity related to the person's attorney-client relationship with a home owner or any activity related to the person's attorney-client relationship with the beneficiary, mortgagee, grantee, or holder of any lien being enforced by way of foreclosure;

(II) A holder or servicer of an evidence of debt or the attorney for the holder or servicer of an evidence of debt secured by a deed of trust or other lien on any residence in foreclosure while the person performs services in connection with the evidence of debt, lien, deed of trust, or other lien securing such debt;

(III) A person doing business under any law of this state or the United States, which law regulates banks, trust companies, savings and loan associations, credit unions, insurance companies, title insurers, insurance producers, or escrow companies authorized to conduct business in the state, while the person performs services as part of the person's normal business activities, an affiliate or subsidiary of any of the foregoing, or an employee or agent acting on behalf of any of the foregoing;

(IV) A person originating or closing a loan in a person's normal course of business if, as to that loan:

(A) The loan is subject to the requirements of the federal "Real Estate Settlement Procedures Act of 1974", as amended, 12 U.S.C. sec. 2601 to 2617; or

(B) With respect to any second mortgage or home equity line of credit, the loan is subordinate to and closed simultaneously with a qualified first mortgage loan under subparagraph (A) of this subparagraph (IV) or is initially payable on the face of the note or contract to an entity included in subparagraph (III) of this paragraph (b);

(V) A judgment creditor of the home owner, if the judgment is recorded in the real property records of the clerk and recorder of the county where the residence in foreclosure is located and the legal action giving rise to the judgment was commenced before the notice of election and demand for sale required under section 38-38-101, C.R.S.;

(VI) A title insurance company or title insurance agent authorized to conduct business in this state, while performing title insurance and settlement services;

(VII) A person licensed as a real estate broker under article 61 of title 12, C.R.S., while the person engages in any activity for which the person is licensed; or

(VIII) A nonprofit organization that solely offers counseling or advice to home owners in foreclosure or loan default, unless the organization is an associate of the foreclosure consultant.

(5) "Foreclosure consulting contract" means any agreement between a foreclosure consultant and a home owner.

(6) "Holder of evidence of debt" means the person in actual possession of or otherwise entitled to enforce an evidence of debt; except that "holder of evidence of debt" does not include a person acting as a nominee solely for the purpose of holding the evidence of debt or deed of trust as an electronic registry without any authority to enforce the evidence of debt or deed of trust. The following persons are presumed to be the holder of evidence of debt:

(a) The person who is the obligee of and who is in possession of an original evidence of debt;

(b) The person in possession of an original evidence of debt together with the proper indorsement or assignment thereof to such person in accordance with section 38-38-101 (6), C.R.S.;

(c) The person in possession of a negotiable instrument evidencing a debt, which has been duly negotiated to such person or to bearer or indorsed in blank; or

(d) The person in possession of an evidence of debt with authority, which may be granted by the original evidence of debt or deed of trust, to enforce the evidence of debt as agent, nominee, or trustee or in a similar capacity for the obligee of the evidence of debt.

(7) "Home owner" means the owner of a dwelling who occupies it as his or her principal place of residence, including a vendee under a contract for deed to real property, as that term is defined in section 38-35-126 (1) (b), C.R.S.

(8) (a) Except as otherwise provided in paragraph (b) of this subsection (8), "residence

in foreclosure" means a residence or dwelling, as defined in sections 5-1-201 and 5-1-301, C.R.S., that is occupied as the home owner's principal place of residence and that is encumbered by a residential mortgage loan that is at least thirty days delinquent or in default.

(b) With respect to subpart 3 of this part 11, "residence in foreclosure" means a residence or dwelling, as defined in sections 5-1-201 and 5-1-301, C.R.S., that is occupied as the home owner's principal place of residence, is encumbered by a residential mortgage loan, and against which a foreclosure action has been commenced or as to which an equity purchaser otherwise has actual or constructive knowledge that the loan is at least thirty days delinquent or in default.

(9) "Short sale" or "short sale transaction" means a transaction in which the residence in foreclosure is sold when:

(a) A holder of evidence of debt agrees to release its lien for an amount that is less than the outstanding amount due and owing under such evidence of debt; and

(b) The lien described in paragraph (a) of this subsection (9) is recorded in the real property records of the county where the residence in foreclosure is located.

#### 6-1-1104. Foreclosure consulting contract

(1) A foreclosure consulting contract shall be in writing and provided to and retained by the home owner, without changes, alterations, or modifications, for review at least twenty-four hours before it is signed by the home owner.

(2) A foreclosure consulting contract shall be printed in at least twelve-point type and shall include the name and address of the foreclosure consultant to which a notice of cancellation can be mailed and the date the home owner signed the contract.

(3) A foreclosure consulting contract shall fully disclose the exact nature of the foreclosure consulting services to be provided and the total amount and terms of any compensation to be received by the foreclosure consultant or associate.

(4) A foreclosure consulting contract shall be dated and personally signed, with each page being initialed, by each home owner and the foreclosure consultant and shall be acknowledged by a notary public in the presence of the home owner at the time the contract is signed by the home owner.

(5) A foreclosure consulting contract shall contain the following notice, which shall be printed in at least fourteen-point bold-faced type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the home owner's signature:

## Notice Required by Colorado Law

----- (Name) or (his/her/its) associate cannot ask you to sign or have you sign any document that transfers any interest in your home or property to (him/her/it) or (his/her/its) associate.

----- (Name) or (his/her/its) associate cannot guarantee you that they will be able to refinance your home or arrange for you to keep your home.

You may, at any time, cancel this contract, without penalty of any kind.

If you want to cancel this contract, mail or deliver a signed and dated copy of this notice of cancellation, or any other written notice, indicating your intent to cancel to -----

- (name and address of foreclosure consultant) at

-

----- (address of foreclosure consultant, including facsimile and electronic mail address).

As part of any cancellation, you (the home owner) must repay any money actually spent on your behalf by ----- (name of foreclosure consultant) prior to receipt of this notice and as a result of this agreement, within sixty days, along with interest at the prime rate published by the federal reserve plus two percentage points, with the total interest rate not to exceed eight percent per year.

This is an important legal contract and could result in the loss of your home. Contact an attorney or a housing counselor approved by the federal department of housing and urban development before signing.

(6) A completed form in duplicate, captioned "Notice of Cancellation" shall accompany the foreclosure consulting contract. The notice of cancellation shall:

(a) Be on a separate sheet of paper attached to the contract;

(b) Be easily detachable; and

(c) Contain the following statement, printed in at least fourteen-point type:  
Notice of Cancellation

(Date of contract)

To: (name of foreclosure consultant)

(Address of foreclosure consultant, including facsimile and electronic mail)

I hereby cancel this contract.

----- (Date)

----- (Home owner's signature)

(7) The foreclosure consultant shall provide to the home owner a signed, dated, and acknowledged copy of the foreclosure consulting contract and the attached notice of cancellation immediately upon execution of the contract.

(8) The time during which the home owner may cancel the foreclosure consulting contract does not begin to run until the foreclosure consultant has complied with this section.

#### 6-1-1105. Right of cancellation

(1) In addition to any right of rescission available under state or federal law, the home owner has the right to cancel a foreclosure consulting contract at any time.

(2) Cancellation occurs when the home owner gives written notice of cancellation of the foreclosure consulting contract to the foreclosure consultant at the address specified in the contract or through any facsimile or electronic mail address identified in the contract or other materials provided to the home owner by the foreclosure consultant.

(3) Notice of cancellation, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid.

(4) Notice of cancellation need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the home owner to cancel the foreclosure consulting contract.

(5) As part of the cancellation of a foreclosure consulting contract, the home owner shall repay, within sixty days after the date of cancellation, all funds paid or advanced in good faith prior to the receipt of notice of cancellation by the foreclosure consultant or associate under the terms of the foreclosure consulting contract, together with interest at the prime rate published by the federal reserve plus two percentage points, with the total interest rate not to exceed eight percent per year, from the date of expenditure until repaid by the home owner.

(6) The right to cancel may not be conditioned on the repayment of any funds.

#### 6-1-1106. Waiver of rights - void

(1) A provision in a foreclosure consulting contract is void as against public policy if the

provision attempts or purports to:

- (a) Waive any of the rights specified in this subpart 2 or the right to a jury trial;
- (b) Consent to jurisdiction for litigation or choice of law in a state other than Colorado;
- (c) Consent to venue in a county other than the county in which the property is located;  
or
- (d) Impose any costs or fees greater than the actual costs and fees.

#### 6-1-1108. Criminal penalties

A person who violates section 6-1-1107 is guilty of a misdemeanor, as defined in section 18-1.3-504, C.R.S., and shall be subject to imprisonment in county jail for up to one year, a fine of up to twenty-five thousand dollars, or both.

#### 6-1-1107. Prohibited acts

(1) A foreclosure consultant may not:

- (a) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;
- (b) Claim, demand, charge, collect, or receive any interest or any other compensation for a loan that the foreclosure consultant makes to the home owner that exceeds the prime rate published by the federal reserve at the time of any loan plus two percentage points, with the total interest rate not to exceed eight percent per year;
- (c) Take a wage assignment, lien of any type on real or personal property, or other security to secure the payment of compensation;
- (d) Receive any consideration from a third party in connection with foreclosure consulting services provided to a home owner unless the consideration is first fully disclosed in writing to the home owner;
- (e) Acquire an interest, directly, indirectly, or through an associate, in the real or personal property of a home owner with whom the foreclosure consultant has contracted;
- (f) Obtain a power of attorney from a home owner for any purpose other than to inspect documents as provided by law; or



(g) Induce or attempt to induce a home owner to enter into a foreclosure consulting contract that does not comply in all respects with this subpart 2.

#### 6-1-1109. Unconscionability

(1) A foreclosure consultant or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.

(2) (a) If a court, as a matter of law, finds a foreclosure consultant contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.

(b) When it is claimed or appears to the court that a foreclosure consultant contract or any clause of such contract may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.

(c) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the foreclosure consultant or associate such as that which results from an unreasonable inequality of bargaining power or other circumstances in which there is an absence of meaningful choice for one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the foreclosure consultant or associate.

#### 6-1-1110. Language

A foreclosure consulting contract, and all notices of cancellation provided for therein, shall be written in English and shall be accompanied by a written translation from English into any other language principally spoken by the home owner, certified by the person making the translation as a true and correct translation of the English version. The translated version shall be presumed to have equal status and credibility as the English version.

#### 6-1-1111. Written contract required

Every contract shall be written in at least nine-point, legible type and fully completed, signed, and dated by the home owner and equity purchaser prior to the execution of any instrument quit-claiming, assigning, transferring, conveying, or encumbering an interest in the residence in foreclosure.

#### 6-1-1112. Written contract - contents - notice

(1) Every contract shall contain the entire agreement of the parties and shall include the following terms:

- (a) The name, business address, and telephone number of the equity purchaser;
- (b) The street address and full legal description of the residence in foreclosure;
- (c) Clear and conspicuous disclosure of any financial or legal obligations of the home owner that will be assumed by the equity purchaser. If the equity purchaser will not be assuming any financial or legal obligations of the home owner, the equity purchaser shall provide to the home owner a separate written disclosure that substantially complies with section 18-5-802 (6), C.R.S.
- (d) The total consideration to be paid by the equity purchaser in connection with or incident to the acquisition by the equity purchaser of the residence in foreclosure;
- (e) The terms of payment or other consideration, including, but not limited to, any services of any nature that the equity purchaser represents will be performed for the home owner before or after the sale;
- (f) The date and time when possession of the residence in foreclosure is to be transferred to the equity purchaser;
- (g) The terms of any rental agreement or lease;
- (h) The specifications of any option or right to repurchase the residence in foreclosure, including the specific amounts of any escrow deposit, down payment, purchase price, closing costs, commissions, or other fees or costs;
- (i) A notice of cancellation as provided in section 6-1-1114; and
- (j) The following notice, in at least nine-point bold-faced type, and completed with the name of the equity purchaser, immediately above the statement required by section 6-1-1114:

**NOTICE REQUIRED BY COLORADO LAW**

Until your right to cancel this contract has ended, (Name) or anyone working for \_\_\_\_\_ (Name) CANNOT ask you to sign or have you sign any deed or any other document.

(2) The contract required by this section survives delivery of any instrument of conveyance of the residence in foreclosure, but does not have any effect on persons other than the parties to the contract or affect title to the residence in foreclosure.

**6-1-1113. Cancellation**

(1) In addition to any right of rescission available under state or federal law, the home

owner has the right to cancel a contract with an equity purchaser until 12 midnight of the third business day following the day on which the home owner signs a contract that complies with this part 11 or until 12 noon on the day before the foreclosure sale of the residence in foreclosure, whichever occurs first.

(2) Cancellation occurs when the home owner personally delivers written notice of cancellation to the address specified in the contract or upon deposit of such notice in the United States mail, properly addressed, with postage prepaid.

(3) A notice of cancellation given by the home owner need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the home owner not to be bound by the contract.

(4) In the absence of any written notice of cancellation from the home owner, the execution by the home owner of a deed or other instrument of conveyance of an interest in the residence in foreclosure to the equity purchaser after the expiration of the rescission period creates a rebuttable presumption that the home owner did not cancel the contract with the equity purchaser.

#### 6-1-1114. Notice of cancellation

(1) (a) The contract shall contain, as the last provision before the space reserved for the home owner's signature, a conspicuous statement in at least twelve-point bold-faced type, as follows:

You may cancel this contract for the sale of your house without any penalty or obligation at any time before \_\_\_\_\_ (Date and time of day). See the attached notice of cancellation form for an explanation of this right.

(b) The equity purchaser shall accurately specify the date and time of day on which the cancellation right ends.

(2) The contract shall be accompanied by duplicate completed forms, captioned "notice of cancellation" in at least nine-point bold-faced type if the contract is printed or in capital letters if the contract is typed, followed by a space in which the equity purchaser shall enter the date on which the home owner executed the contract. Such form shall:

(a) Be attached to the contract;

(b) Be easily detachable; and

(c) Contain the following statement, in at least nine-point type if the contract is printed or in capital letters if the contract is typed:

**NOTICE OF CANCELLATION**

\_\_\_\_\_ (Enter date contract signed). You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before \_\_\_\_\_ (Enter date and time of day). To cancel this transaction, personally deliver a signed and dated copy of this Notice of Cancellation in the United States mail, postage prepaid, to \_\_\_\_\_, (Name of purchaser) at \_\_\_\_\_ (Street address of purchaser's place of business) NOT LATER THAN \_\_\_\_\_ (Enter date and time of day). I hereby cancel this transaction \_\_\_\_\_ (Date) \_\_\_\_\_ (Seller's signature)

(3) The equity purchaser shall provide the home owner with a copy of the contract and the attached notice of cancellation.

(4) Until the equity purchaser has complied with this section, the home owner may cancel the contract.

#### 6-1-1115. Options through reconveyances

(1) A transaction in which a home owner purports to grant a residence in foreclosure to an equity purchaser by an instrument that appears to be an absolute conveyance and reserves to the home owner or is given by the equity purchaser an option to repurchase shall be permitted only where all of the following conditions have been met:

(a) The reconveyance contract complies in all respects with section 6-1-1112;

(b) The reconveyance contract provides the home owner with a nonwaivable thirty-day right to cure any default of said reconveyance contract and specifies that the home owner may exercise this right to cure on at least three separate occasions during such reconveyance contract;

(c) The equity purchaser fully assumes or discharges the lien in foreclosure as well as any prior liens that will not be extinguished by such foreclosure, which assumption or discharge shall be accomplished without violation of the terms and conditions of the liens being assumed or discharged;

(d) The equity purchaser verifies and can demonstrate that the home owner has or will have a reasonable ability to make the lease payments and to repurchase the residence in foreclosure within the term of the option to repurchase under the reconveyance contract. For purposes of this section, there is a rebuttable presumption that the home owner has a reasonable ability to make lease payments and to repurchase the residence in foreclosure if the home owner's payments for primary housing expenses and regular principal and interest payments on other personal debt do not exceed sixty percent of the home owner's monthly gross income; and

(e) The price the home owner must pay to exercise the option to repurchase the residence in foreclosure is not unconscionable. Without limitation on available claims

under section 6-1-1119, a repurchase price exceeding twenty-five percent of the price at which the equity purchaser acquired the residence in foreclosure creates a rebuttable presumption that the reconveyance contract is unconscionable. The acquisition price paid by the equity purchaser may include any actual costs incurred by the equity purchaser in acquiring the residence in foreclosure.

#### 6-1-1116. Waiver of rights - void

(1) A provision in a contract between an equity purchaser and home owner is void as against public policy if it attempts or purports to:

- (a) Waive any of the rights specified in this subpart 3 or the right to a jury trial;
- (b) Consent to jurisdiction for litigation or choice of law in a state other than Colorado;
- (c) Consent to venue in a county other than the county in which the property is located;  
or
- (d) Impose any costs or fees greater than the actual costs and fees.

#### 6-1-1117. Prohibited conduct

(1) The contract provisions required by sections 6-1-1111 to 6-1-1114 shall be provided and completed in conformity with such sections by the equity purchaser.

(2) Until the time within which the home owner may cancel the transaction has fully elapsed, the equity purchaser shall not do any of the following:

- (a) Accept from a home owner an execution of, or induce a home owner to execute, an instrument of conveyance of any interest in the residence in foreclosure;
- (b) Record with the county recorder any document, including, but not limited to, the contract or any lease, lien, or instrument of conveyance, that has been signed by the home owner;
- (c) Transfer or encumber or purport to transfer or encumber an interest in the residence in foreclosure to a third party; or
- (d) Pay the home owner any consideration.

(3) Within ten days following receipt of a notice of cancellation given in accordance with sections 6-1-1113 and 6-1-1114, the equity purchaser shall return without condition the original contract and any other documents signed by the home owner.

(4) An equity purchaser shall make no untrue or misleading statements of material fact regarding the value of the residence in foreclosure, the amount of proceeds the home

owner will receive after a foreclosure sale, any contract term, the home owner's rights or obligations incident to or arising out of the sale transaction, the nature of any document that the equity purchaser induces the home owner to sign, or any other untrue or misleading statement concerning the sale of the residence in foreclosure to the equity purchaser.

#### 6-1-1118. Criminal penalties

A person who violates section 6-1-1117 (2) or (3) or who intentionally violates section 6-1-1117 (4) is guilty of a misdemeanor, as defined in section 18-1.3-504, C.R.S., and shall be subject to imprisonment in county jail for up to one year, a fine of up to twenty-five thousand dollars, or both.

#### 6-1-1119. Unconscionability

(1) An equity purchaser or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.

(2) (a) If a court, as a matter of law, finds an equity purchaser contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.

(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.

(c) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the equity purchaser or associate such as that which results from an unreasonable inequality of bargaining power or under other circumstances in which there is an absence of meaningful choice for one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the equity purchaser or associate.

#### 6-1-1120. Language

(1) Any contract, rental agreement, lease, option or right to repurchase, and any notice, conveyance, lien, encumbrance, consent, or other document or instrument signed by a home owner, shall be written in English; except that, if the equity purchaser has actual or constructive knowledge that the home owner's principal language is other than English, the home owner shall be provided with a notice, written in the home owner's principal language, substantially as follows:

This transaction involves important and complex legal consequences, including your

right to cancel this transaction within three business days following the date you sign this contract. You should consult with an attorney or seek assistance from a housing counselor by calling the Colorado foreclosure hotline at \_\_\_\_\_ [current, correct telephone number].

(2) If a notice in the home owner's principal language is required to be provided under subsection (1) of this section, the notice shall be given to the home owner as a separate document accompanying the written contract required by section 6-1-1111.

#### 6-1-1121. Short sales - subsequent purchaser - definition

(1) With respect to any short sale transaction in which an equity purchaser intends to resell the residence in foreclosure to a subsequent purchaser, the equity purchaser shall:

(a) Provide full disclosure to the home owner and to the holders of the evidence of debt on the residence in foreclosure, or such holders' representatives, of the terms of the agreement between the equity purchaser and any subsequent purchaser, including but not limited to the purchase price to be paid by the subsequent purchaser for the residence in foreclosure, which disclosure shall be made within one business day of identifying any such subsequent purchaser and in no event later than closing on the short sale transaction;

(b) Provide full disclosure to any subsequent purchaser and to any subsequent purchaser's lender, or such lender's representative, at the time of contract with the equity purchaser, of the terms of the agreement between the equity purchaser and the home owner, including but not limited to the purchase price paid by the equity purchaser for the residence in foreclosure;

(c) Comply with all applicable rules adopted by the Colorado real estate commission with regard to short sales; and

(d) Comply with section 38-35-125, C.R.S.

(2) As used in this section, a "subsequent purchaser" means any person who enters into a contract with an equity purchaser prior to the disbursement of the short sale transaction to acquire the residence in foreclosure and who acquires the residence in foreclosure within fourteen days after the disbursement of the short sale transaction.

**Delaware Civil Code, Mortgage Rescue Fraud Protection Act, sec. 2400B.76 Del. Laws, c. 419, § 1.**

§2400B. Short Title.

This chapter may be cited as the “Mortgage Rescue Fraud Protection Act.”

§2401B. Purpose.

The purpose of this chapter is to protect homeowners from unfair or deceptive practices by foreclosure consultants or through foreclosure reconveyance agreements.

§2402B. Definitions.

As used in this chapter, unless the context requires otherwise:

(1) ‘Foreclosure consultant’ means a person who:

a. Solicits or contacts a homeowner in writing, in person, or through any electronic or telecommunications medium, and directly or indirectly makes a representation or offer to perform any service that the person represents will:

- (i) Stop, enjoin, delay, void, set aside, annul, stay, or postpone a foreclosure sale;
- (ii) Obtain forbearance from any mortgager servicer, mortgagee or mortgage assignee;
- (iii) Assist the homeowner to exercise a right of reinstatement provided in the mortgage loan documents or to refinance a mortgage loan that is in foreclosure and for which an action to foreclose the mortgage has been filed;
- (iv) Obtain an extension of the period within which the homeowner may reinstate the homeowner’s obligation or extend the deadline to object to a ratification;
- (v) Obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;
- (vi) Assist the homeowner to obtain a loan or advance of funds;
- (vii) Avoid or ameliorate the impairment of the homeowner’s credit resulting from an action to foreclose the mortgage or the conduct of a foreclosure sale;
- (viii) Save the homeowner’s residence from foreclosure;
- (ix) Purchase or obtain an option to purchase the homeowner’s residence in foreclosure within twenty days prior to the date advertised for a foreclosure sale;
- (x) Arrange for the homeowner to become a lessee or renter entitled to continue to reside in the homeowner’s residence in foreclosure;
- (xi) Arrange for the homeowner to have an option to repurchase the homeowner’s residence in foreclosure; or
- (xii) Engage in any documentation, grant, conveyance, sale, lease, trust, or gift by which the homeowner limits or impairs the homeowner’s equity of redemption in the homeowner’s residence in foreclosure; or

b. Systematically contacts owners of property that court records or newspaper advertisements show are in foreclosure or in danger of foreclosure.



(2) 'Foreclosure consulting contract' means a written, oral, or equitable agreement between a foreclosure consultant and a homeowner for the provision of any foreclosure consulting service or foreclosure reconveyance.

(3) 'Foreclosure consulting service' includes:

- a. Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure;
- b. Contacting creditors on behalf of a homeowner;
- c. Arranging or attempting to arrange for an extension of the period within which a homeowner may cure the homeowner's default and reinstate the homeowner's obligation;
- d. Arranging or attempting to arrange for any delay or postponement of the foreclosure sale of a residence in foreclosure;
- e. Arranging or facilitating the purchase of a homeowner's equity of redemption or legal or equitable title in the homeowner's residence in foreclosure within twenty days prior to date advertised for a foreclosure sale;
- f. Arranging or facilitating any transaction through which a homeowner will become a lessee, optionee, life tenant, partial owner, or vested or contingent remainderman of the homeowner's residence in foreclosure;
- g. Arranging or facilitating the sale of a homeowner's residence in foreclosure or the transfer of legal title, in any form, to another party as an alternative to foreclosure;
- h. Arranging for a homeowner to have an option to repurchase the homeowner's residence in foreclosure after its sale or transfer;
- i. Arranging for or facilitating a homeowner remaining in the homeowner's residence in foreclosure as a tenant, renter, or lessee; or
- j. Arranging or facilitating any other grant, conveyance, sale, lease, trust, or gift of the homeowner's residence in foreclosure.

(4) 'Foreclosure purchaser' means a person who acquires title or possession of a deed or other document transferring title to a residence in foreclosure as a result of a foreclosure reconveyance.

(5) 'Foreclosure reconveyance' means a transaction involving:

- a. The transfer of title to a residence in foreclosure by a homeowner during or incident to a foreclosure proceeding, either by transfer of interest from the homeowner to another party or by creation of a mortgage, trust, or other lien or encumbrance that allows the acquirer to obtain legal or equitable title to all or part of the property; and
- b. The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the homeowner by the acquirer, or a person acting in participation with the acquirer, that allows the homeowner to possess the real property following the completion of the foreclosure proceeding, including an interest in a contract for deed, purchase agreement, land installment sale, contract for sale, option to purchase, lease, trust, or other contractual arrangement.

(6) 'Homeowner' means an individual holding record title to real property used as the individual's principal place of residence as of the date on which an action to foreclose on that residence is filed.

(7) 'Primary housing expenses' means the total amount required to pay regular mortgage principal, mortgage interest, rent, utilities, hazard insurance, real estate taxes, and association dues on a property.

(8) 'Related person' for an individual, means the individual's parents, spouse, children (natural or adopted), and siblings of the whole or half blood; and for an entity, means a person who directly or indirectly or with another related person owns 5% or more of the equity in that entity.

(9) "Resale" means a bona fide market sale of property subject to a foreclosure reconveyance by the foreclosure purchaser to an unaffiliated third party.

(10) 'Resale price' means the gross sale price of a property on resale.

(11) 'Residence in foreclosure' means residential real property consisting of not more than four single family dwelling units, one of which is occupied by the owner as the individual's principal place of residence, and against which any type of foreclosure action has been filed.

(12) 'Settlement' means an in-person, face-to-face meeting with the homeowner to complete final documents incident to the sale or transfer of real property, or the creation of a mortgage or equitable interest in real property, conducted by a settlement agent who is not employed by, or an affiliate of, the foreclosure purchaser, during which the homeowner must be presented with a completed copy of the HUD-1 Settlement form.

#### §2403B. Exempt Agreements and Persons.

This chapter does not apply to:

(1) An individual admitted to practice law in this State, while performing any activity related to the individual's regular practice of law in this State;

(2) A person who holds, or is owed as an obligation secured by, a lien on any residence in foreclosure with respect to which the person performs services in connection with the obligation or lien, if the obligation or lien did not arise as a result of a foreclosure reconveyance;

(3) A person doing business under any law of this State or the United States, which law regulates banks, trust companies, savings and loan associations, credit unions, insurance companies-while performing services as part of the person's normal business activities.

(4) A person originating or closing a loan in a person's normal course of business if, as to that loan:

a. The loan is subject to the requirements of the federal 'Real Estate Settlement Procedures Act', 12 USC §§2601-2617; or

b. With respect to any second mortgage or home equity line of credit, the loan is subordinate to, and closed simultaneously with, a qualified first mortgage loan under subparagraph a. or is initially payable on the face of the note or contract to an entity included in paragraph (3);

(5) A judgment creditor of the homeowner, if the judgment creditor's claim accrued before the action to foreclose is filed;

(6) A title insurer authorized to conduct business in this State while performing title insurance services;

(7) A person licensed as a mortgage broker or lender under Title 5 of the Delaware Code while acting under the authority of that license;

(8) A person licensed as a real estate broker or real estate salesperson under the Delaware Code while engaging in any activity for which the person is licensed;

(9) A non-profit organization that offers counseling or advice to homeowners in foreclosure or loan default, if the organization is not directly or indirectly related to, and does not contract for services with, for-profit lenders or foreclosure purchasers;

(10) An organization that is licensed to practice debt management services under Chapter 24A of this title while the person engages in any activity for which the organization is licensed; or

(11) A public corporation, government or governmental subdivision, agency, or instrumentality.

(12) A lien hold mortgagee who takes title through the normal state prescribed foreclosure process or through a deed in lieu of foreclosure.

§2405B. Required Language.

The disclosures and documents required by this chapter must be in English. If a person communicates with an individual primarily in a language other than English, that person must furnish a translation into the other language of the disclosures and documents required by this chapter.

§2406B – §2412B. Reserved.

SUBCHAPTER II. FORECLOSURE CONSULTANTS.

§2413B. Foreclosure Consulting Contract.

(a) A foreclosure consulting contract shall be in writing and provided to the homeowner, without changes, alterations, or modification, for review at least twenty-four hours before it signed by the homeowner.

(b) A foreclosure consulting contract shall be printed in at least twelve point type and shall include the name and address of the foreclosure consultant to which a Notice of Cancellation can be mailed and the date the homeowner signed the contract.

(c) A foreclosure consulting contract shall fully disclose the exact nature of the foreclosure consulting services to be provided and the total amount and terms of any compensation to be received by the foreclosure consultant.

(d) A foreclosure consulting contract shall be dated and personally signed, with each page being initialed, by both the homeowner of the residence in foreclosure and the foreclosure consultant and shall be witnessed and acknowledged by a notary public in the presence of the homeowner at the time the contract is signed by the homeowner.

(e) A foreclosure consulting contract shall contain the following notice, which shall be printed in at least fourteen point bold-face type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the homeowner's signature:

**'NOTICE REQUIRED BY DELAWARE LAW**

**[Name of foreclosure consultant] or anyone working for that company or individual CANNOT ask you to sign or have you sign any lien, mortgage or deed as part of signing this agreement unless the terms of the transfer or encumbrance are specified in this document and you are given a separate explanation of the precise nature of the transaction.**

**[Name of foreclosure consultant] or anyone working for that company or individual CANNOT guarantee you that they will be able to refinance your home or arrange for you to keep your home. Continue making mortgage payments until a refinancing, if applicable, is approved.**

**You may at any time cancel this contract, without penalty of any kind. If you want to cancel this contract, mail or deliver a signed and dated copy of the Notice of Cancellation, or any other written notice indicating your intent to cancel, to [name and address of the foreclosure consultant].**

**As part of any cancellation, you , the homeowner, must repay any money actually spent on your behalf by [name of foreclosure consultant] prior to receipt of this notice and as a result of this agreement, within sixty days, along with interest at the primary credit rate established by the United States Federal Reserve Board plus 2 percentage points, with the total interest rate not to exceed 8% per year.**

**THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY FOR LEGAL ADVICE OR A HOUSING COUNSELOR APPROVED BY THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR OTHER OPTIONS WITH YOUR LENDER BEFORE SIGNING.'**

(f) A completed form in duplicate, entitled 'NOTICE OF CANCELLATION', shall accompany the foreclosure consulting contract. The Notice of Cancellation shall:

(1) be on a separate sheet of paper attached to the contract;

(2) be easily detachable; and

(3) contain the following statement, printed in at least fourteen point type:

'NOTICE OF CANCELLATION

Date of Contract: [Contract date]

To: [Name of foreclosure consultant]

[Address of foreclosure consultant]

I hereby cancel this contract.

[Signature date] \_\_\_\_\_ [Homeowner's signature] \_\_\_\_\_'.

(g) A notice of cancellation need not take the particular form specified in this subchapter or any form contained in any agreement with the foreclosure consultant, and is effective, however expressed, if it indicates the intention of the homeowner to cancel the foreclosure consulting contract.

(h) If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of a foreclosure consulting contract, the foreclosure purchaser shall provide the homeowner with a document entitled 'NOTICE OF RIGHT TO RESCIND TRANSFER OF DEED OR TITLE' in the form required under Subchapter III of this chapter.

(i) The foreclosure consultant shall provide to the homeowner a signed, dated, and acknowledged copy of the foreclosure consulting contract and the attached Notice of Cancellation immediately upon execution of the contract.

#### §2414B. Waiver of Rights.

Any provision in a foreclosure consulting contract that attempts or purports to waive the homeowner's rights under this chapter, consent to jurisdiction for litigation or choice of law in a state other than this State, consent to a venue in a county other than the county in which the property is located or impose any costs or filing fees greater than the actual costs and fees, is void.

#### §2415B. Prohibited Acts.

(a) A foreclosure consultant may not:

(1) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;

(2) Claim, demand, charge, collect, or receive any interest or any other compensation for any loan that the foreclosure consultant makes to the homeowner that exceeds 8% per year;

(3) Take any wage assignment, any lien, or any type of real or personal property, or other security to secure the payment of compensation;

(4) Receive any consideration from any third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner;

(5) Acquire any interest, directly or indirectly, or by means of a related person, in a residence in foreclosure from a homeowner with whom the foreclosure consultant has contracted;

(6) Take any power of attorney from a homeowner to enter into a foreclosure consulting contract that does not comply in all respects with this subchapter; or

(7) Facilitate or engage in any transaction that is unconscionable under the terms and circumstances of the transaction.

(b) No person may engage in any of the activities identified in §2402B(1) or (3) of this chapter if such activities are prohibited by §910 of Title 11 of the Delaware Code.

(c) No person may engage in any of the activities identified in §2402B(1) or (3) of this chapter for which registration is required under Chapter 24 of this title, unless such person has registered and fulfilled all other applicable requirements of that chapter.

§2416B - §2422B. Reserved.

### SUBCHAPTER III. FORECLOSURE RECONVEYANCES.

§2423B. Notice of Transfer of Deed or Title.

(a) If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of a foreclosure consulting contract, the foreclosure purchaser shall provide the homeowner with a document entitled 'NOTICE OF TRANSFER OF DEED OR TITLE.'

(b) The 'NOTICE OF TRANSFER OF DEED OR TITLE' shall:

(1) Contain the entire agreement of the parties;

(2) Be printed in at least twelve point type;

(3) Be dated and personally signed, with each page being initialed by both the homeowner of the residence in foreclosure and the foreclosure purchaser and witnessed and acknowledged by a notary public in the presence of the homeowner at the time the contract is signed by the homeowner;

(4) Describe in detail the terms of any foreclosure reconveyance including:

a. The name, business address, telephone number, and facsimile number of the person to whom the deed or title will be transferred;

b. The address of the residence in foreclosure;

c. The total consideration to be given by the foreclosure purchaser, the foreclosure consultant, and any other party as a result of the transfer;

d. The time at which title is to be transferred to the foreclosure purchaser and the terms of any conveyance;

- e. Any financial or legal obligations that the homeowner may remain subject to, including a description of any mortgages, liens, or other obligations that will remain in place;
- f. A description of any services of any nature that the foreclosure purchaser will perform for the homeowner before or after the sale or transfer;
- g. A complete description of the terms of any related agreement designed to allow the homeowner to remain in the home, including the terms of any rental agreement, repurchase agreement, contract for deed, land installment contract, or option to buy, and any provisions for eviction or removal of the homeowner in the case of late payment; and
- h. How any repurchase price or fee associated with any transfer of title or deed back to the homeowner will be calculated; and

(5) Contain the following statement printed in at least fourteen point bold-face type and located in immediate proximity to the space reserved for the homeowner's signature:

'If you change your mind about transferring ownership of your property, you, the homeowner, may cancel or rescind the transfer of the deed or title to your property at any time before midnight of the third business day that begins the day after you sign the deed or title.

To rescind this transaction, mail or deliver a signed and dated copy of the Notice of Rescission provided, or any other written notice indicating your intent to rescind, to [name of foreclosure purchaser] at [address of foreclosure purchaser].

**THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY FOR LEGAL ADVICE OR A HOUSING COUNSELOR APPROVED BY THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR OTHER OPTIONS WITH YOUR LENDER BEFORE SIGNING'.**

(c) If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of a foreclosure consulting contract, the foreclosure purchaser shall provide the homeowner with a document entitled 'NOTICE OF RIGHT TO RESCIND TRANSFER OF DEED OR TITLE' which shall:

- (1) Be on a separate sheet of paper attached to the Notice of Transfer of Deed or Title;
- (2) Be easily detachable; and
- (3) Contain the following statement printed in at least fourteen point type:

'NOTICE OF RIGHT TO RESCIND TRANSFER OF DEED OR TITLE

[Date]

You may cancel or rescind the transfer of ownership of your property through the transfer of a deed or title before midnight of the third business day that begins the day after you sign the deed or title.

To rescind or cancel this transaction, mail or deliver a signed and dated copy of the Notice of Rescission, or any other written notice expressing a similar intent to [name of foreclosure purchaser] at [address of foreclosure purchaser].

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY FOR LEGAL ADVICE OR A HOUSING COUNSELOR APPROVED BY THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR OTHER OPTIONS WITH YOUR LENDER BEFORE SIGNING.

NOTICE OF RESCISSION

To: [Name of foreclosure purchaser]

[Address of foreclosure purchaser]

I hereby rescind the transfer of deed or title to my property. Please return all executed documents to me.

[Signature date] \_\_\_\_ [Homeowner's signature] \_\_\_\_'.

(d) The foreclosure purchaser shall provide the homeowner with a copy of the Notice of Right to Rescind Transfer of Deed or Title immediately on execution of any document that includes a foreclosure reconveyance.

(e) The time during which the homeowner may rescind the contract or transfer does not begin to run until the foreclosure purchaser has complied with this section.

(f) A foreclosure reconveyance may not be carried out using a power of attorney from the homeowner.

(g) A notice of rescission need not take the particular form specified in this subchapter or any form contained in any agreement with the foreclosure consultant or foreclosure purchaser and is effective, however expressed, if it indicates the intention of the homeowner to rescind the foreclosure reconveyance agreement.

(h) The right to rescind may not be conditioned on the repayment of any funds.

(i) Within ten days after receipt of a notice of rescission, the foreclosure purchaser shall return, without condition, any original deed, title, contract, and any other document signed by the homeowner.

(j) During the three day rescission period, a deed or other document affecting title to the homeowner's residence in foreclosure may not be recorded.

#### §2424B. Waiver of Rights.

Any provision in an agreement concerning a foreclosure reconveyance that attempts or purports to waive the homeowner's rights under this chapter, consent to jurisdiction for litigation or choice of law in a state other than this State, consent to a venue in a county other than the county in which the property is located or impose any costs or filing fees greater than the actual costs and fees, is void.

#### §2425B. Prohibited Acts.

A foreclosure purchaser may not:



(1) Enter into, or attempt to enter into, a foreclosure reconveyance with a homeowner unless:

- a. The foreclosure purchaser verifies and can demonstrate that the homeowner has or will have a reasonable ability to pay for the subsequent reconveyance of the property back to the homeowner on completion of the terms of a foreclosure reconveyance, or, if the foreclosure reconveyance provides for a lease with an option to repurchase the property, the homeowner has or will have a reasonable ability to make the lease payments and repurchase the property within the term of the option to repurchase;
- b. The foreclosure purchaser and the homeowner complete a settlement before any transfer of an interest in the property is effected; and
- c. The foreclosure purchaser complies with the requirements of the federal Home Ownership Equity Protection Act, 15 USC §1639, and its implementing regulations for any foreclosure reconveyance in which the homeowner obtains a vendee interest in a contract for deed;

(2) Fail to:

- a. Ensure that the title to the property has been reconveyed to the homeowner in a timely manner if this subchapter or the terms of a foreclosure reconveyance agreement require a reconveyance; or
- b. Make payment to the homeowner within ninety days of any resale of the property so that the homeowner receives cash payments or consideration in an amount equal to at least 82% of the net proceeds from any resale of the property should a property subject to a foreclosure reconveyance be sold within eighteen months after entering into a foreclosure reconveyance agreement;

(3) Enter into repurchase or lease terms as part of the foreclosure conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct;

(4) Represent, directly or indirectly, that:

- a. The foreclosure purchaser is acting as an advisor or a consultant, or in any other manner represent that the foreclosure purchaser is acting on behalf of the homeowner;
- b. The foreclosure purchaser has certification or licensure that the foreclosure purchaser does not have; or
- c. The foreclosure purchaser is assisting the homeowner to 'save the house' or use a substantially similar phrase;

(5) Make any other statements, directly or by implication, or engage in any other conduct that is false, deceptive, or misleading, or that has the likelihood to cause confusion or misunderstanding, including statements regarding:

- a. The value of the residence in foreclosure,
- b. The amount of proceeds the homeowner will receive after a foreclosure sale,
- c. Any contract term, or

d. The homeowner's rights or obligations incident to, or arising out of, the foreclosure reconveyance; or

(6) Until the homeowner's right to cancel the transaction has expired:

a. Record any document, including an instrument of conveyance, signed by the homeowner; or

b. Transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any third party.

#### §2426B. Presumptions, Accounting, Bona Fide Purchaser.

(a) For the purposes of subsection (1)a. of §2425B of this chapter, there is a rebuttable presumption that:

(1) A homeowner has a reasonable ability to pay for a subsequent reconveyance of the property if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed 60% of the homeowner's monthly gross income; and

(2) The foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the homeowner of assets liabilities, and income.

(a) The foreclosure purchaser shall make a detailed accounting of the basis for the amount of a payment made to the homeowner of a property resold within eighteen months after entering into a foreclosure reconveyance agreement in accordance with subsection (2)b. of §2425B of this chapter. The accounting shall include documentation of expenses and other consideration paid by the foreclosure purchaser and deducted from the resale price.

(b) A bona fide purchaser for value or bona fide lender for value who enters into a transaction with a homeowner or a foreclosure purchaser when a foreclosure consulting contract is in effect or during the period when a foreclosure reconveyance may be cancelled, without notice of those facts, receives good title to the property, free and clear of the right of the parties to the foreclosure consulting contract or the right of the homeowner to rescind the foreclosure reconveyance.

(c) This subchapter may not be construed to impose any duty on a purchaser, title insurer, or title insurance producer with respect to the application of the proceeds of a sale of property by a foreclosure purchaser.

#### SUBCHAPTER IV. ENFORCEMENT AND REMEDIES

##### §2427B. Enforcement.

(a) The Attorney General shall have the same authority to enforce and carry out this chapter as is granted by §2517 of Title 29 and by §§2511-2527 and §§2531-2536 of this title.

(b) If a court or tribunal of competent jurisdiction finds that any person has willfully violated this chapter, the Attorney General, upon petition to the court or tribunal, shall recover from the person, on behalf of the State, in addition to all costs, a civil penalty of not more than \$10,000 per violation pursuant to §2533 of this title. If the violation is against an elderly or disabled person an additional civil penalty of not more than \$10,000 per violation shall be recovered pursuant to §2581 of this title. Each day that a willful violation continues shall be considered a separate violation.

(c) For the purpose of this chapter, a willful violation occurs when the party committing the violation knew or should have known that the party's conduct was of the nature prohibited by this chapter.

#### §2428B. Remedies, Penalties, and Violation of Order or Injunction.

(a) A person engages in a deceptive trade practice and is subject to the remedies available in §2533 of this title when, in the course, of such person's business, vocation, or occupation, such person violates any provision of this chapter.

(b) Any homeowner who brings an action under this chapter may be awarded monetary damages by a court of competent jurisdiction.

(c) A person who violates any order or injunction issued pursuant to this chapter is subject to the provisions of §2598 of this title.

(d) A person who violates any provision of this chapter shall be guilty of a Class A misdemeanor.

#### §2429B. Remedies and Penalties Not Exclusive.

The remedies and penalties provided for in this chapter are not exclusive and shall be in addition to any other procedures, rights or remedies which exist with respect to any other provisions of law including but not limited to state and/or federal criminal prosecutions and/or actions brought by private parties.”

Section 2. Amend §2517(c) of Title 29 of the Delaware Code by adding to each of paragraphs (1) and (2) the phrase “Chapter 24B of Title 6,” after the existing phrase “Chapter 35 of Title 6,”.

Section 3. This Act shall take effect on January 1, 2009.

### **Florida State Statute, Violations involving homeowners during the course of residential foreclosure proceedings sec. 501.1377. F.S. 501.1377.**

Florida 2010 501.1377 Violations involving homeowners during the course of residential foreclosure proceedings.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that homeowners who are in default on their mortgages, in foreclosure or at risk of losing their homes due to nonpayment of taxes may be vulnerable to fraud, deception, and unfair dealings with foreclosure -rescue consultants or equity purchasers. The intent of this section is to provide a homeowner with information necessary to make an informed decision regarding the sale or transfer of his or her home to an equity purchaser. It is the further intent of this section to require that foreclosure -related rescue services agreements be expressed in writing in order to safeguard homeowners against deceit and financial hardship; to ensure, foster, and encourage fair dealing in the sale and purchase of homes in foreclosure or default; to prohibit representations that tend to mislead; to prohibit or restrict unfair contract terms; to provide a cooling-off period for homeowners who enter into contracts for services related to saving their homes from foreclosure or preserving their rights to possession of their homes; to afford homeowners a reasonable and meaningful opportunity to rescind sales to equity purchasers; and to preserve and protect home equity for the homeowners of this state.

(2) DEFINITIONS.—As used in this section, the term:

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

1. By a certificate of title from a foreclosure sale conducted under chapter 45;
2. At a sale of property authorized by statute;
3. By order or judgment of any court;
4. From a spouse, parent, grandparent, child, grandchild, or sibling of the person or the person’s spouse; or
5. As a deed in lieu of foreclosure, a workout agreement, a bankruptcy plan, or any other agreement between a foreclosing lender and a homeowner.

(b) “foreclosure -rescue consultant” means a person who directly or indirectly makes a solicitation, representation, or offer to a homeowner to provide or perform, in return for payment of money or other valuable consideration, foreclosure -related rescue services. The term does not apply to:

1. A person excluded under s. 501.212.
2. A person acting under the express authority or written approval of the United States Department of Housing and Urban Development or other department or agency of the United States or this state to provide foreclosure -related rescue services.

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

4. A person who holds or is owed an obligation secured by a lien on any residential real property in foreclosure if the person performs foreclosure -related rescue services in connection with this obligation or lien and the obligation or lien was not the result of or part of a proposed foreclosure reconveyance or foreclosure -rescue transaction.

5. A financial institution as defined in s. 655.005 and any parent or subsidiary of the financial institution or of the parent or subsidiary.

6. A licensed mortgage broker or mortgage lender that provides mortgage counseling or advice regarding residential real property in foreclosure, which counseling or advice is within the scope of services set forth in chapter 494 and is provided without payment of money or other consideration other than a loan origination fee.

7. An attorney licensed to practice law in this state who provides foreclosure rescue-related services as an ancillary matter to the attorney's representation of a homeowner as a client.

(c) "foreclosure -related rescue services" means any good or service related to, or promising assistance in connection with:

1. Stopping, avoiding, or delaying foreclosure proceedings concerning residential real property; or

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

(d) "foreclosure -rescue transaction" means a transaction:

1. By which residential real property in foreclosure is conveyed to an equity purchaser and the homeowner maintains a legal or equitable interest in the residential real property conveyed, including, without limitation, a lease option interest, an option to acquire the property, an interest as beneficiary or trustee to a land trust, or other interest in the property conveyed; and

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

(e) "Homeowner" means the record title owner of residential real property.

(f) "Residential real property" means real property consisting of one-family to four-family dwelling units.

(g) “Residential real property in foreclosure” means residential real property against which there is an outstanding notice of the pendency of foreclosure proceedings recorded pursuant to s. 48.23.

(3) PROHIBITED ACTS.—In the course of offering or providing foreclosure -related rescue services, a foreclosure -rescue consultant may not:

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

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

(4) FORECLOSURE-RELATED RESCUE SERVICES; WRITTEN AGREEMENT.—

(a) The written agreement for foreclosure -related rescue services must be printed in at least 12-point uppercase type and signed by both parties. The agreement must include the name and address of the person providing foreclosure -related rescue services, the exact nature and specific detail of each service to be provided, the total amount and terms of charges to be paid by the homeowner for the services, and the date of the agreement. The date of the agreement may not be earlier than the date the homeowner signed the agreement. The foreclosure -rescue consultant must give the homeowner a copy of the agreement to review not less than 1 business day before the homeowner is to sign the agreement.

(b) The homeowner has the right to cancel the written agreement without any penalty or obligation if the homeowner cancels the agreement within 3 business days after signing the written agreement. The right to cancel may not be waived by the homeowner or limited in any manner by the foreclosure -rescue consultant. If the homeowner cancels the agreement, any payments that have been given to the foreclosure -rescue consultant must be returned to the homeowner within 10 business days after receipt of the notice of cancellation.

(c) An agreement for foreclosure -related rescue services must contain, immediately above the signature line, a statement in at least 12-point uppercase type that substantially complies with the following:

HOMEOWNER’S RIGHT OF CANCELLATION

YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED RESCUE SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS DAYS FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY YOU.

THE FORECLOSURE-RESCUE CONSULTANT IS PROHIBITED BY LAW FROM ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT FROM

YOU UNTIL ALL PROMISED SERVICES ARE COMPLETE. IF FOR ANY REASON YOU HAVE PAID THE CONSULTANT BEFORE CANCELLATION, YOUR PAYMENT MUST BE RETURNED TO YOU NO LATER THAN 10 BUSINESS DAYS AFTER THE CONSULTANT RECEIVES YOUR CANCELLATION NOTICE.

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

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

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

(e) The foreclosure -rescue consultant must give the homeowner a copy of the signed agreement within 3 hours after the homeowner signs the agreement.

(5) FORECLOSURE-RESCUE TRANSACTIONS; WRITTEN AGREEMENT.—

(a)1. A foreclosure -rescue transaction must include a written agreement prepared in at least 12-point uppercase type that is completed, signed, and dated by the homeowner and the equity purchaser before executing any instrument from the homeowner to the equity purchaser quitclaiming, assigning, transferring, conveying, or encumbering an interest in the residential real property in foreclosure. The equity purchaser must give the homeowner a copy of the completed agreement within 3 hours after the homeowner signs the agreement. The agreement must contain the entire understanding of the parties and must include:

- a. The name, business address, and telephone number of the equity purchaser.
- b. The street address and full legal description of the property.
- c. Clear and conspicuous disclosure of any financial or legal obligations of the homeowner that will be assumed by the equity purchaser.
- d. The total consideration to be paid by the equity purchaser in connection with or incident to the acquisition of the property by the equity purchaser.
- e. The terms of payment or other consideration, including, but not limited to, any services that the equity purchaser represents will be performed for the homeowner before or after the sale.

f. The date and time when possession of the property is to be transferred to the equity purchaser.

2. A foreclosure -rescue transaction agreement must contain, above the signature line, a statement in at least 12-point uppercase type that substantially complies with the following:

I UNDERSTAND THAT UNDER THIS AGREEMENT I AM SELLING MY HOME TO THE OTHER UNDERSIGNED PARTY.

3. A foreclosure -rescue transaction agreement must state the specifications of any option or right to repurchase the residential real property in foreclosure, including the specific amounts of any escrow payments or deposit, down payment, purchase price, closing costs, commissions, or other fees or costs.

4. A foreclosure -rescue transaction agreement must comply with all applicable provisions of 15 U.S.C. ss. 1601 et seq. and related regulations.

(b) The homeowner may cancel the foreclosure -rescue transaction agreement without penalty if the homeowner notifies the equity purchaser of such cancellation no later than 5 p.m. on the 3rd business day after signing the written agreement. Any moneys paid by the equity purchaser to the homeowner or by the homeowner to the equity purchaser must be returned at cancellation. The right to cancel does not limit or otherwise affect the homeowner's right to cancel the transaction under any other law. The right to cancel may not be waived by the homeowner or limited in any way by the equity purchaser. The equity purchaser must give the homeowner, at the time the written agreement is signed, a notice of the homeowner's right to cancel the foreclosure -rescue transaction as set forth in this subsection. The notice, which must be set forth on a separate cover sheet to the written agreement that contains no other written or pictorial material, must be in at least 12-point uppercase type, double-spaced, and read as follows:

NOTICE TO THE HOMEOWNER/SELLER

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

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

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



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

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

I (we) hereby cancel this transaction.

Seller's Signature  
Printed Name of Seller  
Seller's Signature  
Printed Name of Seller  
Date

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

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

(e) If the homeowner has the right to repurchase the residential real property, the equity purchaser must verify and be able to demonstrate that the homeowner has or will have a reasonable ability to make the required payments to exercise the option to repurchase under the written agreement. For purposes of this subsection, there is a rebuttable presumption that the homeowner has a reasonable ability to make the payments required to repurchase the property if the 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 homeowner's monthly gross income.

(f) If the homeowner has the right to repurchase the residential real property, the price the homeowner pays may not be unconscionable, unfair, or commercially unreasonable. A rebuttable presumption, solely between the equity purchaser and the homeowner, arises that the foreclosure -rescue transaction was unconscionable if the homeowner's repurchase price is greater than 17 percent per annum more than the total amount paid by the equity purchaser to acquire, improve, maintain, and hold the property. Unless the repurchase agreement or a memorandum of the repurchase

agreement is recorded in accordance with s. 695.01, the presumption arising under this subsection shall not apply against creditors or subsequent purchasers for a valuable consideration and without notice.

(6) REBUTTABLE PRESUMPTION.—Any foreclosure -rescue transaction involving a lease option or other repurchase agreement creates a rebuttable presumption, solely between the equity purchaser and the homeowner, that the transaction is a loan transaction and the conveyance from the homeowner to the equity purchaser is a mortgage under s. 697.01. Unless the lease option or other repurchase agreement, or a memorandum of the lease option or other repurchase agreement, is recorded in accordance with s. 695.01, the presumption created under this subsection shall not apply against creditors or subsequent purchasers for a valuable consideration and without notice.

(7) VIOLATIONS.—A person who violates any provision of this section commits an unfair and deceptive trade practice as defined in part II of this chapter. Violators are subject to the penalties and remedies provided in part II of this chapter, including a monetary penalty not to exceed \$15,000 per violation.

Source:

[http://archive.flsenate.gov/Statutes/index.cfm?mode=View%20Statutes&SubMenu=1&pp\\_mode=Display\\_Statute&Search\\_String=Violations+involving+homeowners+during+the+course+of+residential+foreclosure+proceedings&URL=0500-0599/0501/Sections/0501.1377.html](http://archive.flsenate.gov/Statutes/index.cfm?mode=View%20Statutes&SubMenu=1&pp_mode=Display_Statute&Search_String=Violations+involving+homeowners+during+the+course+of+residential+foreclosure+proceedings&URL=0500-0599/0501/Sections/0501.1377.html)

**Hawaii Revised Statutes, Mortgage Rescue Fraud Prevention Act, sec 480E-480E11. HI Rev Stat § 480E.1-480E11.**

[§480E-1] Purpose.

The purpose of this chapter is to protect Hawaii consumers from persons who prey on homeowners who face property foreclosures, liens, or encumbrances. Consumers who face foreclosures, liens, or encumbrances are often in desperate financial situations that can have severe adverse consequences for individuals and families even if the consumers have significant equity in their residential real property. The consumers' desperation makes them vulnerable to persons who claim they can stop, prevent, or delay foreclosures, liens, or encumbrances. Persons who make these claims often use the consumers' desperation to foster unequal bargaining positions and withhold or misrepresent vital information and details. As a result, consumers may be convinced to give up their real property interests and valuable equity to these persons while receiving little in return. Requiring full and complete disclosure of vital information will better enable consumers to make informed decisions when dealing with persons claiming to be able to stop foreclosures, liens, or encumbrances. This [chapter] addresses possible misrepresentations by compelling persons who offer assistance to fully and completely describe their services in written contracts and gives the homeowners the right to cancel at any time before a distressed property consultant has performed all services called for in a contract. [L 2008, c 137, pt of §2]

§480E-2 Definitions.

As used in this chapter, unless the context otherwise requires:

"Consideration" means any payment or thing of value provided to an owner of a distressed property, including reasonable costs paid to independent third parties necessary to complete the distressed property conveyance or payment of money to satisfy a debt or legal obligation of an owner of the distressed property. "Consideration" shall not include any amounts paid or to be paid directly or indirectly to the distressed property purchaser, including amounts identified as "gift equity", "fees", "escrow", or "down payment".

"Distressed property" means any residential real property that:

- (1) Is in foreclosure or at risk of foreclosure because payment of any loan that is secured by the residential real property is more than sixty days delinquent;
- (2) Had a lien or encumbrance charged against it because of nonpayment of any taxes, lease assessments, association fees, or maintenance fees;
- (3) Is at risk of having a lien or encumbrance charged against it because the payments of any taxes, lease assessments, association fees, or maintenance fees are more than ninety days delinquent;
- (4) Secures a loan for which a notice of default has been given; or
- (5) Secures a loan that has been accelerated.

"Distressed property consultant" means any person who performs or makes any solicitation, representation, or offer to perform any of the following relating to a distressed property:

- (1) Stop or postpone the foreclosure sale or loss of any distressed property due to the nonpayment of any loan that is secured by the distressed property;
- (2) Stop or postpone the charging of any lien or encumbrance against any distressed property or eliminate any lien or encumbrance charged against any distressed property for the nonpayment of any taxes, lease assessments, association fees, or maintenance fees;
- (3) Obtain any forbearance from any beneficiary or mortgagee, or relief with respect to a tax sale of the property;
- (4) Assist the owner to exercise any cure of default arising under Hawaii law;
- (5) Obtain any extension of the period within which the owner may reinstate the owner's rights with respect to the property;
- (6) Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed property or contained in the mortgage;
- (7) Assist the owner in foreclosure, loan default, or post-tax sale redemption period to obtain a loan or advance of funds;
- (8) Avoid or ameliorate the impairment of the owner's credit resulting from the recording or filing of a notice of default or the conduct of a foreclosure sale or tax sale; or
- (9) Save the owner's residence from foreclosure or loss of home due to nonpayment of taxes.

"Distressed property consultant" shall not include any of the following:

- (1) A person or the person's authorized agent acting under the express authority or written approval of the federal Department of Housing and Urban Development;
- (2) A person who holds or is owed an obligation secured by a lien on any distressed property, or a person acting under the express authorization or written approval of such person, when the person performs services in connection with the obligation or lien, if the obligation or lien did not arise as the result of or as part of a proposed distressed property conveyance;
- (3) Banks, savings banks, savings and loan associations, credit unions, trust companies, depository and nondepository financial service loan companies, and insurance companies organized, chartered, or holding a certificate of authority to do business under the laws of this State or any other state, or under the laws of the United States;
- (4) Licensed attorneys engaged in the practice of law;
- (5) Certified public accountants licensed under chapter 466, persons holding a permit to practice public accountancy in the State of Hawaii, and persons holding a valid certified public accountant license issued under the laws of another state or territory who are lawfully practicing in the State of Hawaii with a temporary permit to practice pursuant to rules established by the board of public accountancy and who are subject to regulation by the board of public accountancy while engaged in the practice of public accountancy;
- (6) A federal Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons or entities, and any agent or employee of these persons or entities, while engaged in the business of these persons or entities;
- (7) A nonprofit organization that, pursuant to chapter 446, offers counseling or advice to an owner of a distressed property, if the nonprofit organization has no contract or agreement for services with lenders, distressed property purchasers, or any person who effects loans or distressed property purchases; or

[(8)] A person currently licensed as an active real estate broker or real estate salesperson in Hawaii pursuant to chapter 467, when acting in the capacity of a real estate broker or real estate salesperson in accordance with customary industry standards.

"Distressed property consultant contract" means any agreement or obligation between an owner or agent of an owner of a distressed property and a distressed property consultant.

"Distressed property conveyance" means the transfer of any interest in a distressed property effected directly or indirectly by or through a distressed property consultant.

"Distressed property conveyance contract" means any agreement or obligation affecting a distressed property conveyance.

"Distressed property lease" means any agreement or obligation regarding the lease or rental of a distressed property effected directly or indirectly by or through a distressed property consultant or distressed property purchaser.

"Distressed property purchaser" means any person who acquires any interest in a distressed property directly or indirectly through a distressed property conveyance or distressed property conveyance contract.

"Material fact" means a fact that, if disclosed, might have influenced the distressed property owner to not enter into the agreement or obligation.

"Person" means any individual, partnership, corporation, limited liability company, association, or other group or entity, however organized. [L 2008, c 137, pt of §2; am L 2009, c 66, §2 and c 73, §2]

[§480E-3] Distressed property consultant contract.

(a) A distressed property consultant contract shall be in writing and shall fully disclose all services to be performed by the distressed property consultant and all terms of any agreements between the distressed property consultant and all owners of the distressed property, including the total amount and terms of compensation to be directly or indirectly received by the distressed property consultant.

(b) A distressed property consultant contract shall contain on its first page in a type size no smaller than fourteen-point boldface type:

(1) A description of the distressed property;

(2) The name, street address, and telephone number of the distressed property consultant; and

(3) The name and address of the distressed property consultant to which notice of cancellation is to be delivered.

(c) A distressed property consultant contract shall be dated and signed by the distressed property consultant. If the distressed property consultant is a person other than an individual, the individual executing the distressed property consultant contract on behalf of the distressed property consultant shall identify the title and office held by the individual.

(d) A distressed property consultant contract shall be dated and signed by all owners of the distressed property.

(e) The distressed property consultant shall provide each distressed property owner with a copy of the distressed property consultant contract and attached notice of

cancellation immediately upon execution by all parties to the distressed property consultant contract. A distressed property consultant contract shall not be effective until all parties to the distressed property consultant contract have signed the contract. [L 2008, c 137, pt of §2]

[§480E-4] Right to cancel a distressed property consultant contract.

(a) A distressed property consultant contract shall contain, immediately before the space reserved for all the distressed property owners' signatures, the following notice of right to cancel a distressed property consultant contract in a type size no smaller than fourteen-point boldface type, completed with the name of the distressed property consultant:

"YOU, THE OWNER, MAY CANCEL THIS TRANSACTION AT ANY TIME BEFORE THE DISTRESSED PROPERTY CONSULTANT HAS FULLY PERFORMED EACH AND EVERY SERVICE THE DISTRESSED PROPERTY CONSULTANT CONTRACTED TO PERFORM OR REPRESENTED WOULD BE PERFORMED. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

(Name of the distressed property consultant) (or anyone working for or with the distressed property consultant) CANNOT:

(1) Take any money from you or ask you for money until (Name of the distressed property consultant) has completely finished doing everything (Name of the distressed property consultant) said he or she would do; or

(2) Ask you to sign or have you sign any lien, encumbrance, mortgage, assignment, or deed unless the lien, encumbrance, mortgage, assignment, or deed is fully described including all disclosures required by law."

(b) A distressed property consultant contract shall be accompanied by the following notice of cancellation form, in duplicate, attached to the contract and easily detachable, in a type size no smaller than fourteen-point boldface type, completed with the date the contract was last signed, the name of the distressed property consultant, and the address where the notice of cancellation is to be delivered:

"NOTICE OF CANCELLATION

(Enter date contract last signed)

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE THE DISTRESSED PROPERTY CONSULTANT HAS FULLY PERFORMED EACH AND EVERY SERVICE THE DISTRESSED PROPERTY CONSULTANT CONTRACTED TO PERFORM OR REPRESENTED WOULD BE PERFORMED.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS NOTICE OF CANCELLATION, OR ANY OTHER WRITTEN NOTICE OF CANCELLATION TO (Name of distressed property consultant) AT (Address where notice of cancellation is to be delivered).

I HEREBY CANCEL THIS TRANSACTION.

\_\_\_\_\_  
(Date)

---

(Owner's signature)"  
[L 2008, c 137, pt of §2]

[§480E-5] Cancellation of a distressed property consultant contract.

(a) In addition to any other legal right to rescind a contract, any distressed property owner has the right to cancel a distressed property consultant contract, without any penalty or obligation, at any time before the distressed property consultant has fully performed each and every service the distressed property consultant contracted to perform or represented would be performed.

(b) Cancellation occurs when any owner of a distressed property delivers, by any means, written notice of cancellation to the address specified in the distressed property consultant contract.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail with postage prepaid. Notice by certified mail, return receipt requested, addressed to the address specified in the distressed property consultant contract, shall be conclusive proof of notice of cancellation.

(d) Notice of cancellation given by any owner of a distressed property need not take the particular form as provided with the distressed property consultant contract and, however expressed, is effective if it indicates the intention of an owner not to be bound by the contract. [L 2008, c 137, pt of §2]

§480E-6 Distressed property conveyance contract.

[§480E-6] Distressed property conveyance contract.

(a) A distressed property conveyance contract shall be in writing and shall fully disclose all rights and obligations of the distressed property purchaser and all owners of the distressed property and all terms of any agreements between the distressed property purchaser and all owners of the distressed property.

(b) Every distressed property conveyance contract shall specifically include the following terms:

(1) The total consideration to be given by the distressed property purchaser or tax lien payor in connection with or incident to the distressed property conveyance;

(2) A complete description of the terms of payment or other consideration including any services of any nature that the distressed property purchaser represents will be performed for any owner of the distressed property before or after the distressed property conveyance;

(3) A complete description of the terms of any related agreement designed to allow any owner of the distressed property to remain in the distressed property, such as a rental agreement, repurchase agreement, contract for deed, or lease with option to buy;

(4) All notices as provided in this chapter;

(5) The following notice, in a type size no smaller than fourteen-point boldface type, completed with the name of the distressed property purchaser, shall appear immediately above the notice of right to cancel a distressed property conveyance contract required by section 480E-7(a):

"NOTICE REQUIRED BY HAWAII LAW

UNTIL YOUR RIGHT TO CANCEL THIS CONTRACT HAS ENDED, (Name of distressed property purchaser) OR ANYONE WORKING FOR (Name of distressed property purchaser) CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN ANY DEED OR ANY OTHER DOCUMENT. YOU ARE URGED TO HAVE THIS CONTRACT REVIEWED BY AN ATTORNEY OF YOUR CHOICE WITHIN FIFTEEN BUSINESS DAYS OF SIGNING IT."; and

(6) If title to the distressed property will be transferred in the conveyance transaction, the following notice, in a type size no smaller than fourteen-point boldface type, completed with the name of the distressed property purchaser, shall appear immediately below the notice required by paragraph (5):

"NOTICE REQUIRED BY HAWAII LAW

AS PART OF THIS TRANSACTION, YOU ARE GIVING UP TITLE TO YOUR HOME."

(c) A distressed property conveyance contract shall contain on its first page in a type size no smaller than fourteen-point boldface type:

(1) A description of the distressed property;

(2) The name, street address, and telephone number of the distressed property purchaser; and

(3) The name and address of the distressed property purchaser to which notice of cancellation is to be delivered.

(d) A distressed property conveyance contract shall be dated and signed by the distressed property purchaser. If the distressed property purchaser is a person other than an individual, the individual executing the distressed property conveyance contract on behalf of the distressed property purchaser shall identify the title and office held by the individual.

(e) A distressed property conveyance contract shall be dated and signed by all owners of the distressed property.

(f) The distressed property purchaser shall provide each distressed property owner with a copy of the distressed property conveyance contract and attached notice of cancellation form immediately upon execution by all parties to the distressed property conveyance contract. A distressed property conveyance contract shall not be effective until all parties to the distressed property conveyance contract have signed the contract.

(g) Pursuant to chapter 501 or 502, the distressed property purchaser shall record the distressed property conveyance contract no earlier than fifteen days after its execution but no later than twenty days after its execution; provided that the contract has not been canceled, or no later than fifteen days after the last day any distressed property owner



has the right to cure a default under state law, whichever is later. [L 2008, c 137, pt of §2]

[§480E-7] Right to cancel a distressed property conveyance contract.

(a) A distressed property conveyance contract shall contain, immediately before the space reserved for all the distressed property owners' signatures, the following notice of right to cancel a distressed property conveyance contract in a type size no smaller than fourteen-point boldface type, completed with the correct date and time of day on which the cancellation right ends:

"YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOUSE, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE (Date and time of day). SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

(b) A distressed property conveyance contract shall be accompanied by the following notice of cancellation form, in duplicate, attached to the contract and easily detachable, in a type size no smaller than fourteen-point boldface type, completed with the date the contract was last signed, the name of the distressed property purchaser, the address where notice of cancellation is to be delivered, and the correct date and time of day on which the cancellation right ends:

"NOTICE OF CANCELLATION

(Enter date contract last signed)

(Date)

YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOME, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE THE LATER OF MIDNIGHT OF THE FIFTEENTH BUSINESS DAY FOLLOWING THE DAY ON WHICH THE LAST PARTY TO A DISTRESSED PROPERTY CONVEYANCE CONTRACT SIGNS THE DISTRESSED PROPERTY CONVEYANCE CONTRACT OR 5:00 P.M. ON THE LAST DAY OF THE PERIOD DURING WHICH ANY OWNER OF A DISTRESSED PROPERTY HAS THE RIGHT TO CURE THE DEFAULT UNDER HAWAII LAW.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS NOTICE OF CANCELLATION, OR ANY OTHER WRITTEN NOTICE OF CANCELLATION, TO (Name of distressed property purchaser) AT (Address where notice of cancellation is to be delivered) NOT LATER THAN (Enter date and time of day).

I HEREBY CANCEL THIS TRANSACTION.

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(Seller's signature)"

[L 2008, c 137, pt of §2]

[§480E-8] Cancellation of a distressed property conveyance contract.

(a) In addition to any other legal right to rescind a contract, any distressed property owner has the right to cancel a distressed property conveyance contract, without any

penalty or obligation, at any time before the later of midnight of the fifteenth business day following the day on which the last party to a distressed property conveyance contract signs the distressed property conveyance contract or 5:00 p.m. on the last day of the period during which any owner of a distressed property has the right to cure a default under state law.

(b) The period of fifteen business days following the day on which the last party to a distressed property conveyance contract signs the contract during which any owner of the distressed property may cancel the contract shall not begin to run until all parties to the distressed property conveyance contract have executed the distressed property conveyance contract and the distressed property purchaser has complied with all the requirements of sections 480E-6, 480E-7, and this section.

(c) Cancellation occurs when any owner of a distressed property delivers, by any means, and within the time specified under subsection (a), written notice of cancellation to the address specified in the distressed property conveyance contract.

(d) Notice of cancellation, if given by mail, is effective when deposited in the mail with postage prepaid. Notice by certified mail, return receipt requested, addressed to the address specified in the distressed property conveyance contract, shall be conclusive proof of notice of cancellation.

(e) Notice of cancellation given by any owner of a distressed property need not take the particular form as provided with the distressed property conveyance contract and, however expressed, is effective if it indicates the intention of an owner not to be bound by the contract.

(f) Within fifteen days following receipt of a notice of cancellation given in accordance with this section, the distressed property purchaser shall return, without condition, any and all original contracts and documents signed by any owner of the distressed property. [L 2008, c 137, pt of §2]

[§480E-9] Distressed property lease.

(a) A distressed property lease shall be in writing and shall fully disclose:

(1) All rights and obligations of the distressed property lessor and distressed property lessee;

(2) The exact terms of the agreement between the distressed property lessor and distressed property lessee;

(3) The exact period of time the distressed property lease is to be in effect; and

(4) The total amount and terms of compensation to be directly or indirectly received by the distressed property lessor.

(b) Distressed property lessees shall be afforded all rights under the landlord-tenant law of the State. No distressed property lease shall provide a distressed property lessee with rights less than those provided by the State's landlord-tenant law as set forth in chapters 521 and 666.

(c) The first page of a distressed property lease shall contain in a type size no smaller than fourteen-point boldface type:

- (1) A description of the distressed property;
- (2) The name, street address, and telephone number of the distressed property lessor; and
- (3) The name and address of the distressed property lessor to which lease or rental payments, correspondence, and notices are to be mailed.

(d) A distressed property lease shall be dated and signed by the distressed property lessor. If the distressed property lessor is a person other than an individual, the individual executing the distressed property lease on behalf of the distressed property lessor shall identify the title and office held by the individual.

(e) A distressed property lease shall be dated and signed by all lessees of the distressed property.

(f) The distressed property lessor shall provide each distressed property lessee with a copy of the distressed property lease immediately upon execution by all parties to the distressed property lease. A distressed property lease shall not be effective until all parties to the distressed property lease have signed the lease. [L 2008, c 137, pt of §2]

#### [§480E-10] Prohibitions.

(a) A distressed property consultant shall not:

- (1) Misrepresent or conceal any material fact;
- (2) Induce or attempt to induce a distressed property owner to waive any provision of this chapter;
- (3) Make any promise or guarantee not fully disclosed in the distressed property consultant contract;
- (4) Engage or attempt to engage in any activity or act concerning the distressed property not fully disclosed in the distressed property consultant contract;
- (5) Induce or attempt to induce a distressed property owner to engage in any activity or act not fully disclosed in the distressed property consultant contract;
- (6) Take, ask for, claim, demand, charge, collect, or receive any compensation until after the distressed property consultant has fully performed each service the distressed property consultant contracted to perform or represented would be performed;
- (7) Take, ask for, claim, demand, charge, collect, or receive for any reason, any fee, interest, or any other compensation that exceeds the two most recent monthly mortgage installments of principal and interest due on the loan first secured by the distressed property or the most recent annual real property tax charged against the distressed property, whichever is less;
- (8) Take or ask for a wage assignment, a lien of any type on real or personal property, or other security to secure the payment of compensation. This type of security is void and not enforceable;

(9) Receive any consideration from any third party in connection with services rendered to a distressed property owner unless the consideration is fully disclosed in the distressed property consultant contract;

(10) Acquire any interest, directly or indirectly, or by means of a subsidiary or affiliate, in a distressed property from a distressed property owner with whom the distressed property consultant has contracted;

(11) Require or ask a distressed property owner to sign any lien, encumbrance, mortgage, assignment, or deed unless the lien, encumbrance, mortgage, assignment, or deed is fully described in the distressed property consultant contract, including all disclosures required by this chapter; or

(12) Take any power of attorney from a distressed property owner for any purpose, except to inspect documents concerning the distressed property as allowed by law.

(b) A distressed property purchaser shall not:

(1) Misrepresent or conceal any material fact;

(2) Induce or attempt to induce a distressed property owner to waive this chapter;

(3) Make any promise or guarantee not fully disclosed in the distressed property conveyance [contract]1;

(4) Engage or attempt to engage in any activity or act concerning the distressed property not fully disclosed in the distressed property conveyance contract;

(5) Induce or attempt to induce a distressed property owner to engage in any activity or act not fully disclosed in the distressed property conveyance contract;

(6) Enter into or attempt to enter into a distressed property conveyance unless the distressed property purchaser verifies and can demonstrate that an owner of the distressed property has a reasonable ability to pay any amounts due to reacquire an interest in the distressed property or to make monthly or any other payments due under a distressed property conveyance contract or distressed property lease, if the distressed property purchaser allows any owner of a distressed property to remain in, occupy, use, or repurchase the distressed property;

(7) Fail to make a payment to the owner of the distressed property at the time the title is conveyed so that the owner of the distressed property has received consideration in an amount of at least eighty-two per cent of the property's fair market value, or, in the alternative, fail to pay the owner of the distressed property no more than the costs necessary to extinguish all of the existing obligations on the distressed property, as set forth in this chapter; provided that the owner's costs to repurchase the distressed property pursuant to the terms of the distressed property conveyance contract do not exceed one hundred twenty-five per cent of the distressed property purchaser's costs to purchase the property. If an owner is unable to repurchase the property pursuant to the terms of the distressed property conveyance contract, the distressed property purchaser shall not fail to make a payment to the owner of the distressed property so that the owner of the distressed property has received consideration in an amount of at least eighty-two per cent of the property's fair market value at the time of conveyance or at the expiration of the owner's option to repurchase;

(8) Enter into any repurchase or lease agreement as part of a distressed property conveyance contract or subsequent conveyance of an interest in the distressed property

back to a distressed property owner that is unfair or commercially unreasonable or engage in any other unfair conduct;

(9) Represent, directly or indirectly, that the distressed property purchaser is acting as an advisor or a consultant or is acting on behalf of or assisting an owner of a distressed property to "remain in the house", "save the house", "buy time", or "stop the foreclosure" or is doing anything other than purchasing the distressed property;

(10) Misrepresent the distressed property purchaser's status as to licensure or certification;

(11) Do any of the following until after the time during which an owner of a distressed property may cancel the distressed property conveyance contract:

(A) Accept from an owner of the distressed property execution of any instrument of conveyance of any interest in the distressed property;

(B) Execute an instrument of conveyance of any interest in the distressed property; or

(C) Pursuant to chapter 501 or 502, record any document signed by an owner of a distressed property, including any instrument of conveyance;

(12) Fail to re-convey title in a distressed property to the distressed property owner or owners when the terms of the distressed property conveyance contract have been fulfilled if the distressed property consultant or distressed property purchaser contracted or represented that title in the distressed property would be re-conveyed to the distressed property owner or owners when the terms of the distressed property conveyance contract have been fulfilled;

(13) Induce or attempt to induce an owner of the distressed property to execute a quitclaim deed concerning a distressed property;

(14) Enter into a distressed property conveyance contract where any party to the contract is represented by power of attorney;

(15) Immediately following the conveyance of the distressed property, fail to extinguish all liens encumbering the distressed property at the time of the distressed property conveyance or fail to assume all liability with respect to all liens encumbering the distressed property at the time of the distressed property conveyance, which assumption shall be accomplished without violations of the terms and conditions of the lien or liens being assumed. Nothing herein shall preclude a lender from enforcing any provision in a contract that is not otherwise prohibited by law;

(16) Fail to complete a distressed property conveyance through:

(A) An escrow depository licensed by the department of commerce and consumer affairs;

(B) A bank, trust company, or savings and loan association authorized under any law of this State or of the United States to do business in the State;

(C) A person licensed as a real estate broker in this State who is the broker for a party to the escrow; provided that the person does not charge any escrow fee; or

(D) A person licensed to practice law in this State who, in escrow, is not acting as the employee of a corporation; provided that the person does not charge any escrow fee; or

(17) Cause the property to be conveyed or encumbered without the knowledge or permission of all owners of a distressed property or in any way frustrate the ability of a distressed property owner to reacquire the distressed property.

(c) There shall be a rebuttable presumption that an appraisal by a person licensed or certified as a real property appraiser by the State or the federal government is an accurate determination of the fair market value of the property.

(d) An evaluation of "reasonable ability to pay" under this chapter shall include debt to income ratio, fair market value of the distressed property, and the distressed property owner's payment history. [L 2008, c 137, pt of §2]

§480E-11] Violation, penalties.

(a) Any person who violates any provision of this chapter shall be deemed to have engaged in an unfair or deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2.

(b) The penalties provided in this section shall be cumulative to the remedies or penalties available under all other laws of this State. [L 2008, c 137, pt of §2]

**Idaho Code, Consumer Foreclosure Protection Act, sec. 45.1601-1605. I.C. §§ 1601-1605.**

45-1601. LEGISLATIVE FINDINGS. The legislature finds that some persons and businesses are engaging in patterns of conduct that defraud innocent homeowners of their title, equity interest, or other value in residential dwellings under the guise of stopping or postponing a foreclosure sale. The legislature also finds this activity to be contrary to the public policy of this state and therefore establishes notice requirements governing contracts or agreements entered into during the foreclosure period. The legislature further finds that the provisions of this chapter shall be construed in such a manner that it does not inhibit transactions with legitimate lenders and investors.

45-1602. CONTRACT NOTICE.

(1) During the foreclosure period described in section 45-1506, Idaho Code, any contract or agreement with the owner or owners of record that involves the transfer of any interest in residential real property, as defined in section 45-525(5)(b), Idaho Code, subject to foreclosure must be in writing and must be accompanied by and affixed to the following notice in twelve (12) point boldface type and on a separate sheet of paper no smaller than eight and one-half (8 1/2) inches by eleven (11) inches:

"NOTICE REQUIRED BY IDAHO LAW

Mortgage foreclosure is a legal proceeding where a lender terminates a borrower's interest in property to satisfy unpaid debt secured by the property. This can mean that when a homeowner gets behind on his or her mortgage payments, the lender forces a sale of the home on which the mortgage loan is based. Some individuals or businesses may say they can "save" your home from foreclosure. You should be cautious about such claims. It is important that you understand all the terms of a plan to "rescue" you from mortgage foreclosure and how it will affect you. It may result in your losing valuable equity that you may have in your home. If possible, you should consult with an attorney or financial professional to find out what other options you may have. Do not delay seeking advice, because the longer you wait, the fewer options you may have.

You may find helpful information online. One excellent source is the Department of Housing and Urban Development (HUD) website which can be found at "<http://www.hud.gov/foreclosure/index.cfm>". HUD also maintains on its website a list of approved housing counselors who can provide free information to assist homeowners with financial problems. Another good source of information is found at the Office of the Attorney General's website at "<http://www2.state.id.us/ag/>".

Under Idaho law, you have five (5) days to rescind or undo certain contracts or agreements that relate to transferring interests in property or money in a foreclosure situation. An attorney or financial professional can tell you more about this option."

(2) If during the foreclosure period described in section 45-1506, Idaho Code, any contract or agreement that involves the transfer of any interest in residential real property, as defined in section 45-525(5)(b), Idaho Code, was solicited, negotiated, or represented to the consumer in the Spanish language, the written notice to be provided

to the consumer and set forth in this section shall be in the Spanish language on a form to be prepared and made available by the office of the attorney general.

#### 45-1603. RIGHT OF RESCISSION OF CONTRACT.

(1) In addition to any other legal right to cancel or rescind a contract, any person whose property is in foreclosure as described in section 45-1505, Idaho Code, has the right to cancel or rescind any and all contracts or agreements relating to such property entered into during the foreclosure period within five (5) business days of entering into such contract or agreement. Neither funds nor an interest in the property shall be transferred or transferable until the five (5) days have passed.

(2) Cancellation occurs when such person gives written notice of cancellation to all other parties to the contract. Notice of cancellation need not take any particular form and, however expressed, is effective if it indicates the intention not to be bound by the contract.

(3) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. Notice by certified mail, return receipt requested, addressed to the address specified in the contract or agreement, shall be conclusive proof of notice of service.

#### 45-1604. EXCLUSIONS. The provisions of this chapter shall not apply to:

(1) Regulated lenders, as defined in section 28-41-301, Idaho Code;

(2) Any person licensed or chartered under the laws of any state or of the United States as a bank, trust company, savings and loan association, credit union, or industrial loan company. The terms "bank," "trust company," "savings and loan association," "credit union" and "industrial loan company" shall include affiliates or wholly owned subsidiaries of such organizations, provided that the affiliate or subsidiary is regularly examined by the chartering state or federal agency for consumer compliance purposes;

(3) Mortgage lenders and mortgage brokers licensed under the Idaho residential mortgage practices act, sections 26-3101 et seq., Idaho Code;

(4) Employees and agents of the organizations specified in subsections (1), (2) and (3) of this section, when acting within the scope of such employment or agency; and

(5) Family member or members of the owner or owners of record of any interest in residential real property subject to foreclosure. For purposes of this chapter, "family member or members" means a natural person or the spouse of a natural person who is related to such owner or owners of record by blood, adoption or marriage within the second degree of consanguinity or a grandchild or the spouse of a grandchild.

45-1605. PENALTIES. In addition to any other penalty provided by law, any person who violates the provisions of this chapter shall be liable for penalties and damages in accordance with chapter 6, title 48, Idaho Code.



Illinois Compiled Statutes, Mortgage Rescue Fraud Act, sec 940-940/70. 765 ILCS §940-940/70.

765 ILCS 940/1

Sec. 1. Short title. This Act may be cited as the Mortgage Rescue Fraud Act

765 ILCS 940/5

Sec. 5. Definitions. As used in this Act:

"Distressed property" means residential real property consisting of one to 6 family dwelling units that is in foreclosure or at risk of loss due to nonpayment of taxes, or whose owner is more than 30 days delinquent on any loan that is secured by the property.

"Distressed property consultant" means any person who, directly or indirectly, for compensation from the owner, makes any solicitation, representation, or offer to perform or who, for compensation from the owner, performs any service that the person represents will in any manner do any of the following:

- (1) stop or postpone the foreclosure sale or stop or postpone the loss of the home due to nonpayment of taxes;
- (2) obtain any forbearance from any beneficiary or mortgagee, or relief with respect to a tax sale of the property;
- (3) assist the owner to exercise any right of reinstatement or right of redemption;
- (4) obtain any extension of the period within which the owner may reinstate the owner's rights with respect to the property;
- (5) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed property or contained in the mortgage;
- (6) assist the owner in foreclosure, loan default, or post-tax sale redemption period to obtain a loan or advance of funds;
- (7) avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale or tax sale; or
- (8) save the owner's residence from foreclosure or save the owner from loss of home due to nonpayment of taxes.

A "distressed property consultant" does not include any of the following:

- (1) a person or the person's authorized agent acting under the express authority or written approval of the Department of Housing and Urban Development;
- (2) a person who holds or is owed an obligation secured by a lien on any distressed property, or a person acting under the express authorization or written approval of such person, when the person performs services in connection with the obligation or lien, if the obligation or lien did not arise as the result of or as part of a proposed distressed property conveyance;
- (3) banks, savings banks, savings and loan associations, credit unions, and insurance companies organized, chartered, or holding a certificate of authority to do business under the laws of this State or any other state or under the laws of the United States;
- (4) attorneys licensed in Illinois engaged in the practice of law;

(5) a Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons or entities, and any agent or employee of these persons or entities, while engaged in the business of these persons or entities;

(6) a 501(c)(3) nonprofit agency or organization, doing business for no less than 5 years, that offers counseling or advice to an owner of a distressed property, if they do not contract for services with for-profit lenders or distressed property purchasers, or any person who structures or plans such a transaction;

(7) (blank);

(8) licensees of the Consumer Installment Loan Act who are authorized to make loans secured by real property; or

(9) licensees of the Real Estate License Act of 2000 when providing licensed activities.

"Distressed property purchaser" means any person who acquires any interest in fee in a distressed property or a beneficial interest in a trust holding title to a distressed property while allowing the owner to possess, occupy, or retain any present or future interest in fee in the property, or any person who participates in a joint venture or joint enterprise involving a distressed property conveyance. "Distressed property purchaser" does not mean any person who acquires distressed property at a short sale or any person acting in participation with any person who acquires distressed property at a short sale, if that person does not promise to convey an interest in fee back to the owner or does not give the owner an option to purchase the property at a later date.

"Distressed property conveyance" means a transaction in which an owner of a distressed property transfers an interest in fee in the distressed property or in which the holder of all or some part of the beneficial interest in a trust holding title to a distressed property transfers that interest; the acquirer of the property allows the owner of the distressed property to occupy the property; and the acquirer of the property or a person acting in participation with the acquirer of the property conveys or promises to convey an interest in fee back to the owner or gives the owner an option to purchase the property at a later date.

"Person" means any individual, partnership, corporation, limited liability company, association, or other group or entity, however organized.

"Service" means, without limitation, any of the following:

(1) debt, budget, or financial counseling of any type;

(2) receiving money for the purpose of distributing

it to creditors in payment or partial payment of any obligation secured by a lien on a distressed property;

(3) contacting creditors on behalf of an owner of a residence that is distressed property;

(4) arranging or attempting to arrange for an extension of the period within which the owner of a distressed property may cure the owner's default and reinstate his or her obligation;

(5) arranging or attempting to arrange for any delay or postponement of the time of sale of the distressed property;

(6) advising the filing of any document or assisting in any manner in the preparation of any document for filing with any court; or

(7) giving any advice, explanation, or instruction to an owner of a distressed property that in any manner relates to the cure of a default or forfeiture or to the postponement or avoidance of sale of the distressed property.

(765 ILCS 940/7)

Sec. 7. Residential Mortgage License Act of 1987 licensees. Licensees of the Residential Mortgage License Act of 1987 are exempt from the requirements of Sections 10, 15, 20, 50(a)(4), 50(a)(5), 50(a)(6), and 50(a)(7). Licensees are also exempt from the requirements of Section 50(a)(2) and Section 70 for any transaction resulting in the origination of a new mortgage loan extinguishing the existing mortgage loan.

765 ILCS 940/10

Sec. 10. Distressed property consultant contract terms.

(a) A distressed property consultant contract must be in writing and must fully disclose the exact nature of the distressed property consultant's services and the total amount and terms of compensation.

(b) The following notice, printed in at least 12-point boldface type and completed with the name of the distressed property consultant, must be printed immediately above the statement required by subsection (c) of this Section:

"NOTICE REQUIRED BY ILLINOIS LAW

.....(Name) or anyone working

for him or her CANNOT:

(1) Take any money from you or ask you for money

until ..... (Name) has completely finished doing everything he or she said he or she would do; or

(2) Ask you to sign or have you sign any lien, mortgage, or deed."

(c) A distressed property consultant contract must be written in the same language as principally used by the distressed property consultant to describe his or her services or to negotiate the contract, must be dated and signed by the owner, and must contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least 12-point boldface type, as follows:

"You, the owner, may cancel this transaction at any time until after the distressed property consultant has fully performed each and every service the distressed property consultant contracted to perform or represented he or she would perform. See the attached notice of cancellation form for an explanation of this right."

(d) A distressed property contract must contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) the name and address of the distressed property consultant to which the notice of cancellation is to be mailed; and

(2) the date the owner signed the contract.

(e) A distressed property consultant contract must be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which must be attached to

the contract, must be easily detachable, and must contain, in at least 12-point boldface type, the following statement written in the same language as used in the contract:  
"NOTICE OF CANCELLATION

.....  
(Enter date of transaction)

You may cancel this transaction, without any penalty or obligation, at any time until after the distressed property consultant has fully performed each and every service the distressed property consultant contracted to perform or represented he or she would perform.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice to:

.....(Name of distressed property consultant) at .....(Address of distressed property consultant's place of business)

I hereby cancel this transaction on .....(Date) .....(Owner's signature)".

(f) The distressed property consultant shall provide the owner with a copy of a distressed property consultant contract and the attached notice of cancellation immediately upon execution of the contract.

(765 ILCS 940/15)

Sec. 15. Rescission of distressed property consultant contract.

(a) In addition to any other legal right to rescind a contract, an owner has the right to cancel a distressed property consultant contract at any time until after the distressed property consultant has fully performed each service the distressed property consultant contracted to perform or represented he or she would perform.

(b) Cancellation occurs when the owner gives written notice of cancellation to the distressed property consultant at the address specified in the distressed property consultant contract.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. Notice by certified mail, return receipt requested, addressed to the address specified in the distressed property consultant contract, shall be conclusive proof of notice of service.

(d) Notice of cancellation given by the owner need not take the particular form as provided with the distressed property consultant contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

(Source: P.A. 94-822, eff. 1-1-07.)

(765 ILCS 940/20)

Sec. 20. Waiver of a distressed property consultant contract.

(a) Any waiver by an owner of the provisions of Section 10 or 15 is void and unenforceable as contrary to public policy.

(b) Any attempt by a distressed property consultant to induce an owner to waive the owner's rights is a violation of the Act.

(765 ILCS 940/25)

Sec. 25. Distressed property conveyance contract. A distressed property purchaser shall enter into every distressed property conveyance in the form of a written contract. Every distressed property conveyance contract must be written in letters of a size equal to at least 12-point boldface type, in the same language principally used by the owner of the distressed property to negotiate the sale of the distressed property, must be fully completed, signed, and dated by the owner of the distressed property and the distressed property purchaser, and must be witnessed and acknowledged by a notary public, before the execution of any instrument of conveyance of the distressed property. (Source: P.A. 94-822, eff. 1-1-07.)

(765 ILCS 940/30)

Sec. 30. Distressed property conveyance contract terms. Every contract required by Section 25 must contain the entire agreement of the parties, be fully assignable, and survive delivery of any instrument of conveyance of the distressed property. Every lease entered into pursuant to a contract required by Section 25 is terminable at will by the distressed property owner, without liability. Every contract required by Section 25 must include the following terms:

- (1) the name, business address, and the telephone number of the distressed property purchaser;
- (2) the address of the distressed property;
- (3) the total consideration to be given by the distressed property purchaser or tax lien payor in connection with or incident to the sale;
- (4) a complete description of the terms of payment or other consideration including, but not limited to, any services of any nature that the distressed property purchaser represents he or she will perform for the owner of the distressed property before or after the sale;
- (5) a complete description of the terms of any related agreement designed to allow the owner of the distressed property to remain in the home such as a rental agreement, repurchase agreement, contract for deed, or lease with option to buy;
- (6) a notice of cancellation as provided in this Section;
- (7) the following notice in at least 12-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, and completed with the name of the distressed property purchaser, immediately above the statement required by this Section:

"NOTICE REQUIRED BY ILLINOIS LAW  
Until your right to cancel this contract has ended,

.....(Name) or anyone working for .....(Name) CANNOT ask you to sign or have you sign any deed or any other document. You are urged to have this contract reviewed by an attorney of your choice within 5 business days of signing it."; and

- (8) if title to the distressed property will be transferred in the conveyance transaction, the following notice in at least 14-point boldface type if the contract is printed, or in capital letters if the contract is typed, and completed with the name of the distressed property purchaser, immediately above the statement required by this Section:

"NOTICE REQUIRED BY ILLINOIS LAW

As part of this transaction, you are giving up title  
to your home."

(765 ILCS 940/35)

Sec. 35. Cancellation of a distressed property conveyance contract.

(a) In addition to any other right of rescission, the owner of the distressed property has the right to cancel any contract with a distressed property purchaser until midnight of the fifth business day following the day on which the owner of the distressed property signs a contract that complies with Sections 25 and 30 or until 8:00 a.m. on the last day of the period during which the owner of the distressed property has a right of redemption under the Illinois Mortgage Foreclosure Law or the Property Tax Code, whichever occurs first.

(b) Cancellation occurs when the owner of the distressed property delivers, by any means, written notice of cancellation to the address specified in the distressed property conveyance contract.

(c) A notice of cancellation given by the owner of the distressed property need not take the particular form as provided with the distressed property conveyance contract.

(d) Within 10 days following receipt of a notice of cancellation given in accordance with this Section, the distressed property purchaser shall return, without condition, any original contract and any other documents signed by the owner of the distressed property.

(765 ILCS 940/40)

Sec. 40. Notice of cancellation of a distressed property conveyance contract.

(a) The contract must contain in immediate proximity to the space reserved for the owner of the distressed property's signature a conspicuous statement in a size equal to at least 12-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, as follows:

"You may cancel this contract for the sale of your

house, without any penalty or obligation, at any time before .....(Date and time of day). See the attached notice of cancellation form for an explanation of this right."

The distressed property purchaser shall accurately enter the date and time of day on which the cancellation right ends.

(b) The contract must be accompanied by a completed form in duplicate, captioned

"NOTICE OF CANCELLATION" in a size equal to a 12-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, followed by a space in which the distressed property purchaser shall enter the date on which the owner of the distressed property executes any contract. This form must be attached to the contract, must be easily detachable, and must contain in at least 12-point type, if the contract is printed, or in capital letters, if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....  
(Enter date contract signed)

You may cancel this contract for the sale of your home, without any penalty or obligation, at any time before .....(enter date and time of day). To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice to .....(Name of purchaser) at ..... (Street address of purchaser's place of business) NOT LATER THAN ..... (Enter date and time of day).

I hereby cancel this transaction on

..... (Date) ..... (Seller's signature)".

(c) The distressed property purchaser shall provide the owner of the distressed property with a copy of the contract and the attached notice of cancellation immediately at the time the contract is executed by all parties.

(d) The distressed property purchaser shall record the contract with the recorder of deeds in the county where the distressed property is located within 10 days of its execution, provided the contract has not been canceled.

(e) The 5 business days during which the owner of the distressed property may cancel the contract shall not begin to run until all parties to the contract have executed the contract and the distressed property purchaser has complied with all the requirements of this Section.

(765 ILCS 940/45)

Sec. 45. Waiver of a distressed property conveyance contract. Any waiver of the provisions of Sections 35 and 40 are void and unenforceable as contrary to public policy, except that a consumer may waive the 5-day right to cancel provided in Section 35 if the property is subject to a foreclosure sale within the 5 business days and the owner of the distressed property agrees to waive his or her right to cancel in a handwritten statement that is signed by all parties holding title to the distressed property.

(765 ILCS 940/50)

Sec. 50. Violations.

(a) It is a violation for a distressed property consultant to:

(1) claim, demand, charge, collect, or receive any compensation until after the distressed property consultant has fully performed each service the distressed property consultant contracted to perform or represented he or she would perform;

(2) claim, demand, charge, collect, or receive any fee, interest, or any other compensation that does not comport with Section 70;

(3) take a wage assignment, a lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security is void and unenforceable;

(4) receive any consideration from any third party in connection with services rendered to an owner 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 distressed property from an owner with whom the distressed property consultant has contracted;

(6) take any power of attorney from an owner for any purpose, except to inspect documents as provided by law; or

(7) induce or attempt to induce an owner to enter a contract that does not comply in all respects with Sections 10 and 15 of this Act.

(b) A distressed property purchaser, in the course of a distressed property conveyance, shall not:

(1) enter into, or attempt to enter into, a distressed property conveyance unless the distressed property purchaser verifies and can demonstrate that the owner of the distressed property has a reasonable ability to pay for the subsequent conveyance of an interest back to the owner of the distressed property and to make monthly or any other required payments due prior to that time;

(2) fail to make a payment to the owner of the distressed property at the time the title is conveyed so that the owner of the distressed property has received consideration in an amount of at least 82% of the property's fair market value, or, in the alternative, fail to pay the owner of the distressed property no more than the costs necessary to extinguish all of the existing obligations on the distressed property, as set forth in subdivision (b)(10) of Section 45, provided that the owner's costs to repurchase the distressed property pursuant to the terms of the distressed property conveyance contract do not exceed 125% of the distressed property purchaser's costs to purchase the property. If an owner is unable to repurchase the property pursuant to the terms of the distressed property conveyance contract, the distressed property purchaser shall not fail to make a payment to the owner of the distressed property so that the owner of the distressed property has received consideration in an amount of at least 82% of the property's fair market value at the time of conveyance or at the expiration of the owner's option to repurchase.

(3) enter into repurchase or lease terms as part of the subsequent conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct;

(4) represent, directly or indirectly, that the distressed property purchaser is acting as an advisor or a consultant, or in any other manner represent that the distressed property purchaser is acting on behalf of the homeowner, or the distressed property purchaser is assisting the owner of the distressed property to "save the house", "buy time", or do anything couched in substantially similar language;

(5) misrepresent the distressed property purchaser's status as to licensure or certification;

(6) do any of the following until after the time during which the owner of a distressed property may cancel the transaction:

(A) accept from the owner of the distressed property an execution of any instrument of conveyance of any interest in the distressed property;

(B) induce the owner of the distressed property to execute an instrument of conveyance of any interest in the distressed property; or

(C) record with the county recorder of deeds any document signed by the owner of the distressed property, including but not limited to any instrument of conveyance;

(7) fail to reconvey title to the distressed property when the terms of the conveyance contract have been fulfilled;

(8) induce the owner of the distressed property to execute a quit claim deed when entering into a distressed property conveyance;



(9) enter into a distressed property conveyance where any party to the transaction is represented by power of attorney;

(10) fail to extinguish all liens encumbering the distressed property, immediately following the conveyance of the distressed property, or fail to assume all liability with respect to the lien in foreclosure and prior liens that will not be extinguished by such foreclosure, which assumption shall be accomplished without violations of the terms and conditions of the lien being assumed. Nothing herein shall preclude a lender from enforcing any provision in a contract that is not otherwise prohibited by law;

(11) fail to complete a distressed property conveyance before a notary in the offices of a title company licensed by the Department of Financial and Professional Regulation, before an agent of such a title company, a notary in the office of a bank, or a licensed attorney where the notary is employed; or

(12) cause the property to be conveyed or encumbered without the knowledge or permission of the distressed property owner, or in any way frustrate the ability of the distressed property owner to complete the conveyance back to the distressed property owner.

(c) There is a rebuttable presumption that an appraisal by a person licensed or certified by an agency of this State or the federal government is an accurate determination of the fair market value of the property.

(d) "Consideration" in item (2) of subsection (b) means any payment or thing of value provided to the owner of the distressed property, including reasonable costs paid to independent third parties necessary to complete the distressed property conveyance or payment of money to satisfy a debt or legal obligation of the owner of the distressed property.

"Consideration" shall not include amounts imputed as a downpayment or fee to the distressed property purchaser, or a person acting in participation with the distressed property purchaser.

(e) An evaluation of "reasonable ability to pay" under subsection (b)(1) of this Section 50 shall include debt to income ratio, fair market value of the distressed property, and the distressed property owner's payment history. There is a rebuttable presumption that the distressed property purchaser has not verified reasonable payment ability if the distressed property purchaser has not obtained documents of assets, liabilities, and income, other than a statement by the owner of the distressed property.

(765 ILCS 940/55)

Sec. 55. Civil remedies.

(a) A violation of any of the provisions of this Act constitutes an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act. All remedies, penalties, and authority granted to the Attorney General or State's Attorney by the Consumer Fraud and Deceptive Business Practices Act shall be available to him or her for the enforcement of this Act.

(b) A consumer who suffers loss by reason of any violation of any provision of this Act may bring a civil action in accordance with the Consumer Fraud and Deceptive Business Practices Act to enforce that provision. All remedies and rights granted to a consumer by the Consumer Fraud and Deceptive Business Practices Act shall be available to the consumer bringing such an action. The remedies and rights provided for

in this Act are not exclusive, but cumulative, and all other applicable claims, including, but not limited to, those brought under the doctrine of equitable mortgage, are specifically preserved.

(765 ILCS 940/60)

Sec. 60. Criminal mortgage rescue fraud. A person commits the offense of criminal mortgage rescue fraud when he or she intentionally violates any provision enumerated in Section 50 of this Act.

(765 ILCS 940/65)

Sec. 65. Criminal penalties. A person who commits the offense of criminal mortgage rescue fraud is guilty of a Class 2 felony.

(765 ILCS 940/70)

Sec. 70. Distressed property consultant compensation. In transactions that reduce the existing payment on a homeowner's mortgage loan for a period of no less than 5 years, a distressed property consultant shall not claim, demand, charge, collect, or receive any fee, interest, or any other compensation that exceeds the lesser of the homeowner's:

- (1) existing monthly principal and interest mortgage payment; or
- (2) total net savings derived from the lowered monthly principal and interest mortgage payment over the succeeding 12 months. For all other transactions, a distressed property consultant shall not claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason that exceeds 50% of the owner's existing monthly principal and interest mortgage payments.

**Indiana Code, Mortgage Rescue Protection Fraud, sec. 24-5.5.1- IC 24-5.5.6.6.  
I.C.§§ 24-5.5.1- IC 24-5.5.6.6**

24-5.5-1-1: Application of article

Sec. 1. This article does not apply to the following:

(1) A person organized or chartered under the laws of this state, any other state, or the United States that relate to a bank, a trust company, a savings association, a savings bank, a credit union, or an industrial loan and investment company.

(2) The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a Federal Home Loan Bank.

(3) A department or agency of the United States or of Indiana.

(4) A person that is servicing or enforcing a loan that it owns.

(5) A person that is servicing a loan:

(A) for a person described in subdivisions (1) through (4); or

(B) insured by the Department of Housing and Urban Development or guaranteed by the Veterans Administration.

(6) An attorney licensed to practice law in Indiana who is representing a mortgagor

IC 24-5.5-2-1:Application of definitions

Sec. 1. The definitions in this chapter apply throughout this article.

IC 24-5.5-2-2

"Foreclosure consultant"

Sec. 2. "Foreclosure consultant" means a person who, directly or indirectly, makes a solicitation, a representation, or an offer to a homeowner to perform, with or without compensation, any service that the person represents will:

(1) prevent or postpone the initiation of a foreclosure proceeding, or reverse the effect of a foreclosure proceeding;

(2) allow the homeowner to become a lessee or renter in the homeowner's residence during or after a foreclosure proceeding;or

(3) allow the homeowner to have an option to repurchase the homeowner's residence after a foreclosure proceeding.

IC 24-5.5-2-3

"Foreclosure purchaser"

Sec. 3. "Foreclosure purchaser" means a person who purchases real property in a foreclosure proceeding.

IC 24-5.5-2-4 "Foreclosure reconveyance"

Sec. 4. "Foreclosure reconveyance" means a transaction involving:

(1) the transfer of interest in real property by a homeowner to a person during or incident to a proposed foreclosure proceeding, either by:

(A) transfer of interest from the homeowner to the person; or

(B) creation of a mortgage, trust, or other lien or encumbrance during the foreclosure process; that allows the person to obtain legal or equitable title to all or part of the real property; and

(2) the subsequent conveyance, or promise of subsequent conveyance, of interest back to the homeowner by the person or the person's agent that allows the homeowner to possess the real property following the completion of the foreclosure proceeding.

IC 24-5.5-3:Repealed

IC 24-5.5-4

Chapter 4. Rescission of Contracts With Foreclosure Consultants and Foreclosure Reconveyance Agreements

IC 24-5.5-4-1: Homeowner's right to rescind foreclosure consultant contract and foreclosure reconveyance agreement; timing

Sec. 1. In addition to any other right under law to cancel or rescind a contract, a homeowner may rescind a:

(1) contract with a foreclosure consultant at any time before midnight of the seventh business day after the date the contract is signed; and

(2) foreclosure reconveyance agreement at any time before midnight of the seventh business day after the homeowner's transfer of the interest in the real property that is the subject of the agreement, as described in IC 24-5.5-2-4(1).

#### IC 24-5.5-4-2: Notice of rescission of foreclosure consultant contract

Sec. 2. A homeowner effectively rescinds a contract with a foreclosure consultant if the homeowner gives written notice of a rescission to the foreclosure consultant by one (1) of the following:

- (1) Mailing the rescission to the address specified in the contract.
- (2) Sending the rescission through any facsimile or electronic mail address identified in the contract or other material provided to the homeowner by the foreclosure consultant.

#### IC 24-5.5-4-3: Notice sent by mail; time of effectiveness; inconsistent rescission requirements

Sec. 3. (a) If a notice of rescission under this chapter is sent by mail, the rescission is effective three (3) days after the notice is deposited in the U.S. mail, properly addressed, with postage prepaid.

(b) A homeowner is not required to give notice of rescission in the form required under the contract if the form under the contract is inconsistent with the requirements under this chapter.

#### IC 24-5.5-4-4: Homeowner's duty to repay amounts advanced before rescission

Sec. 4. (a) If a homeowner rescinds a contract with a foreclosure consultant or a foreclosure reconveyance agreement, the homeowner shall, not later than thirty (30) days after the date of rescission, repay any amounts paid or advanced by:

- (1) the foreclosure consultant or the foreclosure consultant's agent under the terms of the foreclosure consulting contract; or
  - (2) a person under a foreclosure reconveyance agreement.
- (b) A rescission by a homeowner under this chapter is void if the payments required under this section are not made within the time set forth in subsection (a).

#### IC 24-5.5-4-5: Foreclosure consultant's duty to return payments made by homeowner

Sec. 5. If a homeowner rescinds a contract with a foreclosure consultant, not less than ten (10) days following the effective date of the rescission, the consultant shall return to the homeowner any payments made by the homeowner, less any amounts for actual services rendered.

IC 24-5.5-5, Chapter 5. Limitations on Foreclosure Consultants and Foreclosure Reconveyances

IC 24-5.5-5-1: Rebuttable presumptions; homeowner's ability to pay upon reconveyance

Sec. 1. For purposes of this chapter, there is a rebuttable presumption that:

(1) a homeowner has a reasonable ability to pay for a subsequent reconveyance of real property if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed sixty percent (60%) of the homeowner's monthly gross income; and

(2) the foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the homeowner of assets, liability, and income.

IC 24-5.5-5-2: Foreclosure consultants; prohibited acts

Sec. 2. In addition to any prohibitions that apply under

IC 24-5-15-1 through IC 24-5-15-8, a foreclosure consultant may not:

(1) enter into or attempt to enter into a foreclosure consultant contract with a homeowner unless the foreclosure consultant first provides the homeowner written notice of the homeowner's rights under this article;

(2) demand or receive compensation until after the foreclosure consultant has fully performed all services the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform, unless the foreclosure consultant complies with the security requirements under IC 24-5-15-8;

(3) demand or receive a fee, interest, or any other compensation that exceeds eight percent (8%) per year of the amount of any loan that the foreclosure consultant makes to the homeowner;

(4) take a wage assignment, a lien of any type on real or personal property, or any other security to secure the payment of compensation;

(5) receive consideration from a third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner;

(6) acquire any interest, directly or indirectly, in residential real property in foreclosure from a homeowner with whom the foreclosure consultant has contracted;

(7) except to inspect documents as provided by law, take any power of attorney from a homeowner for any purpose;(8) execute any contract or agreement with a homeowner or receive money or other valuable consideration from a homeowner without providing the homeowner with the written statement required by IC 24-5-15-6; or

(9) fail to provide a homeowner with a written contract that includes the notice of cancellation required by IC 24-5-15-7.

#### IC 24-5.5-5-3: Foreclosure purchasers; prohibited acts

Sec. 3. A foreclosure purchaser may not enter into or attempt to enter into a foreclosure reconveyance agreement with a homeowner unless the:

(1) foreclosure purchaser verifies and demonstrates that the homeowner has or will have a reasonable ability to:

(A) pay for the subsequent reconveyance of the property back to the homeowner on completion of the terms of the foreclosure conveyance; or

(B) if the foreclosure conveyance provides for a lease with an option to repurchase the real property, make the lease payment and repurchase the real property within the period of the option to repurchase;

(2) foreclosure purchaser provides the homeowner written notice of the homeowner's rights under this article;

(3) foreclosure purchaser and the homeowner complete a formal settlement before any transfer of interest in the affected property; and

(4) foreclosure purchaser complies with the security requirements under IC 24-5-15-8.

#### IC 24-5.5-5-4: Foreclosure purchasers; duties to homeowners

Sec. 4. A foreclosure purchaser shall:

(1) ensure that title to real property has been reconveyed to the homeowner in a timely manner if the terms of a foreclosure reconveyance agreement require a reconveyance; or

(2) if the real property subject to a foreclosure reconveyance agreement is sold within eighteen (18) months after entering into the foreclosure reconveyance agreement, make payment to the homeowner not later than ninety (90) days after the resale of the real property in an amount equal to at least sixty-six percent (66%) of the net proceeds from the resale of the property.

IC 24-5.5-5-5: Foreclosure purchasers; unfair conduct; prohibited representations and acts

Sec. 5. A foreclosure purchaser may not:

(1) enter into repurchase or lease terms as part of the foreclosure reconveyance that are unfair or commercially unreasonable or engage in any other unfair conduct;

(2) represent, directly or indirectly, that the:

(A) foreclosure purchaser is acting:

(i) as an adviser or a consultant; or

(ii) in any other manner on behalf of the homeowner;

(B) foreclosure purchaser is assisting the homeowner to save the residence; or

(C) foreclosure purchaser is assisting the homeowner in preventing a foreclosure if the result of the transaction is that the homeowner will not complete a redemption of the property; or

(3) until the homeowner's right to rescind or cancel the foreclosure reconveyance agreement has expired:

(A) record any document, including an instrument or conveyance, signed by the homeowner; or

(B) transfer to a third party or encumber, or purport to transfer to a third party or encumber, any interest in the residential real property in foreclosure.

IC 24-5.5-5-6: Foreclosure purchasers; accounting to homeowner after resale of property

Sec. 6. A foreclosure purchaser shall make a detailed accounting of the basis for the amount of payment made to a homeowner of real property resold within eighteen (18) months after entering into a foreclosure reconveyance agreement on a form prescribed by the attorney general.

IC 24-5.5-5-7.2: Duty to retain records for three years



Sec. 7.2. A foreclosure consultant shall retain all records and documents, including the foreclosure consultant contract, related to services performed on behalf of a homeowner for at least three (3) years after the termination or conclusion of the foreclosure consultant contract entered into by the foreclosure consultant and the homeowner.

#### IC 24-5.5-5-8: Foreclosure consultant representations

Sec. 8. A foreclosure consultant may not represent to a homeowner that the foreclosure consultant is endorsed, sponsored, or affiliated with any governmental or government sponsored agency or program.

#### IC 24-5.5-6

### Chapter 6. Enforcement

#### IC 24-5.5-6-1: Violations; deceptive act; Class A misdemeanor

Sec. 1. A person who knowingly or intentionally violates this article commits:

- (1) a Class A misdemeanor;
- (2) a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4 and is subject to the penalties and remedies available to the attorney general under IC 24-5-0.5; and
- (3) a deceptive act that is actionable by the attorney general under IC 24-9-8-2 and is subject to the penalties and remedies available to the attorney general under IC 24-9.

#### IC 24-5.5-6-2: Homeowner's cause of action; damages; attorney's fees

Sec. 2. (a) A homeowner may bring an action against a person for damages incurred as a result of a violation of this article.

(b) A homeowner who:

- (1) brings an action under this section; and
- (2) is awarded damages; may seek reasonable attorney's fees.

#### IC 24-5.5-6-3: Attorney's fees; treble damages

Sec. 3. (a) A court may award attorney's fees under section 2(b) of this chapter.

(b) If the court finds that a person willfully or knowingly violated this article, the court may award damages equal to three (3) times the amount of actual damages.

IC 24-5.5-6-4: Indiana housing and community development authority; list of nonprofit organizations

Sec. 4. (a) The Indiana housing and community development authority shall maintain a list of nonprofit organizations that:

(1) offer counseling or advice to homeowners in foreclosure or loan defaults; and

(2) do not contract for services with for-profit lenders or foreclosure purchasers.

(b) The Indiana housing and community development authority shall provide names and telephone numbers of the organizations described in subsection (a) to a homeowner upon request.

IC 24-5.5-6-5: Attorney general's authority to adopt rules

Sec. 5. The attorney general may adopt rules under IC 4-22-2 necessary to implement this article.

IC 24-5.5-6-6: Credit services organizations statute not preempted

**Iowa Code, An Act relation to foreclosure consultants and foreclosure reconveyances, providing for criminal and civil penalties, sec. 714E E. 1-714E.9. IA Code §§ 714E.1-714E.9.**

714E.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “Business day” means any calendar day except Saturday, Sunday, or a public holiday including a holiday observed on a Monday.

2. “Contract” means an agreement, or a term in an agreement, between a foreclosure consultant and an owner for the rendition of a service.

3. a. “Foreclosure consultant” means a person who, directly or indirectly, makes a solicitation, representation, or offer to an owner to perform for compensation or who, for compensation, performs a service which the person in any manner represents will do any of the following:

(1) Stop or postpone a foreclosure, foreclosure sale, forfeiture, sheriff’s sale, or tax sale.

(2) Obtain a forbearance, modification, or repayment plan for a beneficiary or mortgagee.

(3) Assist the owner to exercise the right of redemption, cure the mortgage default, cure the real estate contract default, or redeem the property from a tax sale.

(4) Obtain an extension of the period within which the owner may reinstate the owner’s obligation.

(5) Obtain a waiver of an acceleration clause contained in a promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage.

(6) Assist the owner in foreclosure, foreclosure sale, forfeiture, sheriff’s sale, tax sale, or loan default to obtain a loan or advance of funds.

(7) Avoid or ameliorate the impairment of the owner’s credit resulting from the recording of a notice of default or the conduct of a foreclosure sale or a forfeiture of a real estate contract.

(8) Save the owner’s residence from foreclosure, foreclosure sale, forfeiture, sheriff’s sale, or tax sale.

(9) Negotiate or obtain a mortgage loan or real estate contract modification, forbearance, repayment plan, or other loss mitigation for the consumer.

b. "Foreclosure consultant" does not include any of the following:

(1) A person licensed to practice law in this state when the person renders service in the course of the person's practice as an attorney at law.

(2) A person licensed to engage in the business of debt management under chapter 533A, when the person is engaged in the business of debt management.

(3) A person licensed as a real estate broker or salesperson under chapter 543B, when the person engages in acts whose performance requires licensure under that chapter unless the person is engaged in offering services designed to, or purportedly designed to, enable the owner to retain possession of the residence in foreclosure.

(4) A person licensed as an accountant under chapter 542 when the person is acting in any capacity for which the person is licensed under those provisions.

(5) A person or the person's authorized agent acting under the express authority or written approval of the United States department of housing and urban development or other department or agency of the United States or this state to provide services.

(6) 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 the obligation or lien if the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance.

(7) A person or entity doing business under any law of this state, or of the United States, relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee approved by the United States department of housing and urban development, and a subsidiary or affiliate of these persons or entities, and an agent or employee of these persons or entities while engaged in the business of such persons or entities.

(8) A person licensed as a mortgage broker or mortgage banker pursuant to chapter 535B, when acting under the authority of that license.

(9) A person registered as a mortgage broker or mortgage banker or originator pursuant to chapter 535B, when acting under the authority of that registration.

(10) A nonprofit agency or organization that offers counseling or advice to an owner of a residence in foreclosure or loan default if the nonprofit agency or organization does not contract for services with for-profit lenders or foreclosure purchasers.

(11) A judgment creditor of the owner, to the extent that the judgment creditor's claim accrued prior to the personal service of the foreclosure notice required by section 654.2D, but excluding a person who purchased the claim after such personal service.

(12) A foreclosure purchaser as defined in section 714F.1.

4. "Foreclosure reconveyance" means a transaction involving all of the following:

a. The transfer of title to real property by an owner during a foreclosure proceeding, forfeiture proceeding, or tax sale, either by transfer of interest from the owner or by creation of a mortgage or other lien or encumbrance during the foreclosure, forfeiture, or tax sale process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder.

b. The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the owner by the acquirer or a person acting in participation with the acquirer that allows the owner to possess either the residence in foreclosure or any other real property, which interest includes but is not limited to an interest in a contract for deed, purchase agreement, option to purchase, or lease.

5. "Owner" means the record owner or holder of an equitable interest through contract of the residence in foreclosure at the time the notice of pendency was recorded, or at the time the default notice was served.

6. "Person" means the same as defined in section 4.1.

7. "Residence in foreclosure" or "affected residence" means residential real property consisting of one to four family dwelling units, one of which the owner occupies as the owner's principal place of residence, where a delinquency or default on any loan payment or debt is secured by or attached to the residential real property including but not limited to contract for deed payments, real estate contracts, or real estate taxes.

8. "Service" includes but is not limited to any of the following:

a. Debt, budget, or financial counseling of any type.

b. Receiving money for the purpose of distributing the money to creditors in payment or partial payment of an obligation secured by a lien on a residence in foreclosure.

c. Contacting creditors on behalf of an owner of a residence in foreclosure.

d. Arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure, forfeiture, or tax sale may cure the owner's default and reinstate the owner's obligation.

e. Arranging or attempting to arrange for a delay or postponement of the time of sale of the residence in foreclosure, forfeiture, or tax sale.

f. Advising the filing of a document or assisting in any manner in the preparation of a document for filing with a bankruptcy court.

g. Giving advice, explanation, or instruction to an owner of a residence in foreclosure, forfeiture, or tax sale which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the affected residence, the full satisfaction of that obligation, or the postponement or avoidance of a sale or loss of the affected residence, pursuant to a power of sale contained in a mortgage.

714E.2 Foreclosure consultant contract.

1. A foreclosure consultant contract 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.

2. The following notice, printed in at least fourteen point boldface type and completed with the name of the foreclosure consultant, must be printed immediately above the notice of cancellation statement required pursuant to section 714E.3:

**NOTICE REQUIRED BY IOWA LAW**

..... (name) or anyone working for

..... (name) CANNOT:

(1) Take any money from you or ask you for money until

..... (name) has completely finished doing everything

..... (name) said ..... (name) would do; and

(2) Ask you to sign or have you sign any lien, mortgage, or real estate contract.

3. The contract must be written in the same language as principally used by the foreclosure consultant to describe the foreclosure consultant's services and to negotiate the contract with the consumer. The contract must be dated and signed by the owner, and must contain in immediate proximity to the space reserved in the contract for the owner's signature, a conspicuous statement in a size equal to at least ten point boldface type, as follows:

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.

4. The foreclosure consultant shall provide the owner immediately upon execution of the contract with a copy of the contract along with the notice of cancellation required in section 714E.3.

5. The three business days during which the owner may cancel the contract shall not begin to run until the foreclosure consultant has complied with this section and with section 714E.3.

#### 714E.3 Cancellation of foreclosure consultant contract.

1. In addition to any other right under law to rescind a contract, an owner has the right to cancel such a contract until midnight of the third business day after the day on which the owner signs a contract which complies with section 714E.2.

2. Cancellation occurs when the owner gives written notice of cancellation to the foreclosure consultant at the address specified in the contract.

3. Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

4. Notice of cancellation given by the owner need not take the particular form as provided in the contract and, however expressed, is effective if the notice of cancellation indicates the intention of the owner not to be bound by the contract.

5. The notice of cancellation must contain, and the contract must contain on the first page, in a type size no smaller than that generally used in the body of the document, all of the following:

a. The real name and physical address of the foreclosure consultant to which the notice of cancellation is to be mailed or otherwise delivered. A post office box does not constitute a physical address. A post office box may be designated for delivery by mail only if it is accompanied by a physical address at which the notice could be delivered by a method other than mail. An electronic mail address may be included, in addition to the physical address.

b. The date the owner signed the contract.

6. Cancellation occurs when the owner delivers, by any means, written notice of cancellation to the address specified in the contract. If cancellation is mailed, delivery is effective upon mailing. If electronically mailed, cancellation is effective upon transmission. The contract must be accompanied by a completed form in duplicate, captioned "notice of cancellation", which must be attached to the contract, must be easily detachable, and must contain in at least ten point type the following statement written in the same language as used in the contract:

#### NOTICE OF CANCELLATION

.....

(enter date of transaction)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date. To cancel this transaction, you may use any of the following methods: (1) mail or otherwise deliver a signed and dated copy of this cancellation notice, or any other written notice of cancellation;

or (2) e-mail a notice of cancellation to .....  
(name of foreclosure consultant) at .....  
(physical address of foreclosure consultant's place of business)  
..... (e-mail address of foreclosure consultant's  
place of business)

Not later than midnight of ..... (date).

I hereby cancel this transaction.

.....  
(date)

.....  
(owner's signature)

7. The three business days during which the owner may cancel the contract shall not begin to run until the foreclosure consultant has complied with the requirements of this section and with section 714E.2.

#### 714E.4 Violations.

It is a violation of this chapter for a foreclosure consultant to do any of the following:

1. Claim, demand, charge, collect, or receive compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented the foreclosure consultant would perform.

2. Claim, demand, charge, collect, or receive a fee, interest, or other compensation for any reason which exceeds eight percent per annum of the amount of any loan which the foreclosure consultant may make to the owner. Such a loan must not, as provided in subsection 3, be secured by the residence in foreclosure or any other real or personal property.

3. Take a wage assignment, a lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security is void and unenforceable.

4. Receive consideration from any third party in connection with services rendered to an owner unless the consideration is first fully disclosed to the owner.

5. Acquire an interest, directly or indirectly, or by means of a subsidiary or affiliate in a residence in foreclosure from an owner with whom the foreclosure consultant has contracted.



6. Take a power of attorney from an owner for any purpose, except to inspect documents as provided by law.
7. Induce or attempt to induce an owner to enter into a contract which does not comply in all respects with the requirements of this chapter.
8. Claim, demand, charge, collect, or receive a fee, interest, or other compensation for promising to negotiate a mortgage loan or real estate contract modification, forbearance, repayment plan, or other loss mitigation for the consumer and fail to successfully negotiate such a modification, forbearance, repayment plan, or other loss mitigation.
9. Prohibit the borrower from contacting any lender, servicer, government entity, attorney, counselor, individual, or company that may seek to help the consumer. Any such provision is void and unenforceable.

#### 714E.5 Waiver not allowed.

A waiver by an owner of the provisions of this chapter is void and unenforceable as contrary to public policy. An attempt by a foreclosure consultant to induce an owner to waive the owner's rights is a violation of this chapter.

#### 714E.6 Remedies.

1. A violation of this chapter is an unlawful practice pursuant to section 714.16, and all remedies of section 714.16 are available for such an action. A private cause of action brought under this chapter by an owner is in the public interest. An owner may bring an action against a foreclosure consultant for a violation of this chapter. If the court finds that the foreclosure consultant violated this chapter, the court shall award the owner actual damages, appropriate equitable relief, and the costs of the action, and shall award reasonable fees to the owner's attorney.
2. The rights and remedies provided in subsection 1 are cumulative to, and not a limitation of, any other rights and remedies provided by law. Any action brought by a person other than the attorney general pursuant to this section must be commenced within four years from the date of the alleged violation.
3. The court may award exemplary damages up to one and one-half times the compensation, fees, and interest charged by the foreclosure consultant if the court finds that the foreclosure consultant violated the provisions of section 714E.4, subsection 1, 2, or 4, and the foreclosure consultant acted in bad faith.
4. Notwithstanding any other provision of this section, an action shall not be brought on the basis of a violation of this chapter, except by an owner against whom the violation was committed or by the attorney general. This limitation does not apply to

administrative action by either the attorney general or the superintendent of the banking division of the department of commerce.

#### 714E.7 Criminal penalty.

A person who commits any violation described in section 714E.4 commits a serious misdemeanor. Prosecution or conviction for a violation described in section 714E.4 shall not bar prosecution or conviction for any other offenses. These penalties are cumulative to any other remedies or penalties provided.

#### 714E.8 Provisions severable.

If any provision of sections 714E.2 through 714E.7 and 714E.9 or the application of any of these provisions to any person or circumstance is held to be unconstitutional and void, the remainder of sections 714E.2 through 714E.7 and 714E.9 remains valid.

#### 714E.9 Arbitration prohibited.

A provision in a contract which attempts or purports to require arbitration of a dispute arising under sections 714E.2 through 714E.5 is void at the option of the owner.

Source: <http://coolice.legis.iowa.gov/Cool-ICE/default.asp?Category=BillInfo&Service=Billbook&ga=82&hbill=HF2653>

**Maine Revised Statutes, Foreclosure Purchasers, sec. 80-B §§6191 - §6200. M.R.S. §§6191-§6200.**

§6191. Short title

This chapter may be known and cited as "the Foreclosure Purchasers Act."

§6192. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Administrator. "Administrator" means the Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation, except that "administrator" means the Superintendent of Financial Institutions with regard to a supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A.

2. Bona fide purchaser. "Bona fide purchaser" means any person acting in good faith who:

A. Purchases property from a foreclosure purchaser for consideration or makes a mortgage loan to a foreclosure purchaser or a subsequent bona fide purchaser as long as the person had no notice of:

(1) The foreclosed homeowner's continuing right to possess the property;

(2) The foreclosed homeowner's continuing legal or equitable interest in the property, including, but not limited to, the right to repurchase, or of any facts that may create an equitable mortgage; or

(3) Any violations of this chapter;

B. Purchases property at a foreclosure sale; or

C. Accepts a deed in lieu of foreclosure.

3. Consideration. "Consideration" means any payment or thing of value provided to the foreclosed homeowner, including payment of or forgiveness of unpaid rent or contract for deed, land installment contract or bond for deed payments owed by the foreclosed homeowner prior to the date of eviction or voluntary relinquishment of the property, reasonable costs paid to 3rd parties necessary to complete the foreclosure reconveyance transaction, payment of money to satisfy a debt or legal obligation of the foreclosed homeowner or the reasonable cost of repairs for damage to the dwelling caused by the foreclosed homeowner. "Consideration" does not include amounts imputed as a down payment or fee to the foreclosure purchaser or a person acting in participation with the foreclosure purchaser incident to a contract for deed, land installment contract, bond for deed, lease or option to purchase entered into as part of the foreclosure reconveyance, except for reasonable costs paid to 3rd parties necessary to complete the foreclosure reconveyance.

4. Foreclosed homeowner. "Foreclosed homeowner" means an owner of residential real property, including a condominium, that is the primary residence of the owner and whose mortgage on the real property is or was in foreclosure.

5. Foreclosure purchaser. "Foreclosure purchaser" means a person acting as the acquirer in a foreclosure reconveyance. "Foreclosure purchaser" also includes a person acting in a joint venture or joint enterprise with one or more acquirers in a foreclosure reconveyance. "Foreclosure purchaser" does not include:

A. A bona fide purchaser; or

B. A natural person who is not in the business of foreclosure purchasing and has a prior personal relationship with the foreclosed homeowner.

6. Foreclosure reconveyance. "Foreclosure reconveyance" means a transaction involving:

A. The transfer of title to a residence in foreclosure, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and

B. The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess either the residence in foreclosure or other real property. For the purposes of this paragraph, "interest" includes, but is not limited to, an interest in a contract for deed, a land installment contract, a bond for deed, a purchase agreement, an option to purchase or a lease.

"Foreclosure reconveyance" does not include a supervised loan subject to Title 9-A, Article 8-A or the federal Truth in Lending Act made by a supervised lender or supervised financial organization to refinance any existing mortgage.

7. Resale. "Resale" means a bona fide market sale of a property subject to a foreclosure reconveyance by a foreclosure purchaser to an unaffiliated 3rd party.

8. Resale price. "Resale price" means the gross sale price of a property upon resale.

9. Residence in foreclosure. "Residence in foreclosure" means residential real property consisting of one- to 4-family dwelling units, one of which the owner occupies as the owner's principal place of residence, when there is a delinquency or default on any loan payment or debt secured by or attached to the residential real property, including, but not limited to, a contract for deed, land installment contract or bond for deed, land installment contract or bond for deed payments.

#### §6193. License required

A foreclosure purchaser may not engage in the business of foreclosure purchasing in this State without first obtaining a license from the administrator, except that a supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A is not required to be licensed. The requirements for obtaining a license under this chapter must be substantially similar to the requirements for a supervised lender license as provided in Title 9-A, section 2-301.

#### §6194. Contract requirements

1. Written contract required. A foreclosure purchaser shall enter into a foreclosure reconveyance in the form of a written contract. The contract must be written in at least 12-point boldface type in the same language principally used by the foreclosure purchaser and foreclosed homeowner to negotiate the sale of the residence in foreclosure and must be fully completed and signed and dated by the foreclosed homeowner and foreclosure purchaser before the execution of any instrument of conveyance of the residence in foreclosure.

2. Contract terms. A contract required by this section must contain the entire agreement of the parties and must include:

- A. The name, business address and telephone number of the foreclosure purchaser;
- B. The address of the residence in foreclosure;
- C. The total consideration to be given by the foreclosure purchaser in connection with or incident to the sale;
- D. A complete description of the terms of payment or other consideration, including, but not limited to, any services of any nature that the foreclosure purchaser will perform for the foreclosed homeowner before or after the sale;
- E. The time at which possession is to be transferred to the foreclosure purchaser;
- F. A complete description of the terms of any related agreement designed to allow the foreclosed homeowner to remain in the home, such as a rental agreement, repurchase agreement, contract for deed, land installment contract or bond for deed or lease with option to buy;
- G. A notice of cancellation as provided in section 6195, subsection 3;
- H. The following notice in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed:

**"NOTICE REQUIRED BY MAINE LAW**

**YOU ARE TRANSFERRING TITLE TO YOUR HOUSE. IF YOU DO NOT FULFILL ALL OF THE TERMS OF THIS CONTRACT, YOU WILL LOSE OWNERSHIP AND POSSESSION OF YOUR HOUSE."**; and

- I. The following notice in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, and completed with the name of the foreclosure purchaser, immediately above the statement required by section 6195, subsection 2:

**"NOTICE REQUIRED BY MAINE LAW**

Until your right to cancel this contract has ended, ..... (Name) or anyone working for ..... (Name) CANNOT ask you to sign or have you sign any deed or any other document."

3. Effect of contract. The contract required by this section survives delivery of any instrument of conveyance of the residence in foreclosure and has no effect on persons other than the parties to the contract.

4. Advance disclosure of contract. The contract required by this section must be given to the foreclosed homeowner at least 3 business days prior to the consummation of the foreclosure reconveyance.

5. Filing with register of deeds. The foreclosure purchaser shall file a memorandum of the contract required by this section with the register of deeds in the county in which the residence in foreclosure is located.

### §6195. Cancellation

1. Cancellation. In addition to any other right of rescission, a foreclosed homeowner has the right to cancel a contract with a foreclosure purchaser until midnight of the 5th business day following the day on which the foreclosed homeowner signs a contract that complies with this chapter or until 8:00 a.m. on the last day of the period during which the foreclosed homeowner has a right of redemption, whichever occurs first. Cancellation occurs when the foreclosed homeowner delivers, by any means, written notice of cancellation to the address provided in subsection 3. If cancellation is mailed, delivery is effective upon mailing. If sent via e-mail, delivery is effective upon transmission. A notice of cancellation given by the foreclosed homeowner need not take

the particular form as specified in the contract. Within 10 days following receipt of a notice of cancellation given in accordance with this section, the foreclosure purchaser shall return without condition any original contract and any other documents signed by the foreclosed homeowner.

2. Notice of cancellation in contract. A contract must contain in the space reserved for the foreclosed homeowner's signature a conspicuous statement in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, as follows:

**"NOTICE REQUIRED BY MAINE LAW**

"You may cancel this contract for the sale of your house without any penalty or obligation at any time before ..... (Date and time of day)

See the attached notice of cancellation form for an explanation of this right."

The foreclosure purchaser shall accurately enter the date and time of day on which the cancellation right ends.

3. Separate notice of cancellation. The foreclosure purchaser shall provide the foreclosed homeowner with a copy of the contract and the attached notice of cancellation at the time the contract is executed by all parties. The contract must be accompanied by a completed form in duplicate, captioned "notice of cancellation" in 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, followed by a space in which the foreclosure purchaser shall enter the date on which the foreclosed homeowner executes the contract. This form must be attached to the contract, must be easily detachable and must contain in at least 12-point type, if the contract is printed, or in capital letters, if the contract is typed, the following statement written in the same language as used in the contract:

**"NOTICE OF CANCELLATION..... (Enter date contract signed)**

You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before..... (Enter date)

To cancel this transaction, you may use any of the following methods: (1) mail or otherwise deliver a signed and dated copy of this cancellation notice; or (2) send via e-mail a notice of cancellation to..... (Name of purchaser) at ..... (Physical address of purchaser's place of business)..... (E-mail address of foreclosure consultant's place of business) NOT LATER THAN ..... (Enter date).

I hereby cancel this transaction ..... (Date)

..... (Seller's signature)"

At a minimum, the contract and the notice of cancellation must contain a physical address to which notice of cancellation may be mailed or otherwise delivered. A post office box does not constitute a physical address. A post office box may be designated for delivery by mail only if it is accompanied by a physical address at which the notice could be delivered by a method other than mail. An e-mail address may be provided in addition to the physical address.

4. Determination of cancellation period. The 5 business days during which the foreclosed homeowner may cancel the contract pursuant to subsection 1 does not begin to run until all parties to the contract have executed the contract and the foreclosure purchaser has complied with this section.

Any waiver of the provisions of this chapter is void and unenforceable as contrary to public policy, except that a foreclosed homeowner may waive the 5-day right to cancel provided in section 6195 if the property is subject to a foreclosure sale within the 5 business days and the foreclosed homeowner agrees to waive the right to cancel in a handwritten statement signed by all parties holding title to the foreclosed property.

#### §6197. Liability

Any provision in a contract entered into on or after the effective date of this chapter that attempts or purports to require arbitration of any dispute arising under this chapter is void at the option of the foreclosed homeowner.

#### §6198. Prohibited practices

1. Permitted foreclosure reconveyance. A foreclosure purchaser may not enter into or attempt to enter into a foreclosure reconveyance with a foreclosed homeowner unless:

A. The foreclosure purchaser verifies and can demonstrate that the foreclosed homeowner has a reasonable ability to pay for the subsequent conveyance of an interest back to the foreclosed homeowner. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to make the lease payments and purchase the property within the term of the option to purchase. There is a rebuttable presumption that a homeowner is reasonably able to pay for the subsequent conveyance if the owner's payments on a monthly basis for primary housing expenses and regular principal and interest payments on other personal debt do not exceed 60% of the owner's monthly gross income. For the purposes of this section, "primary housing expenses" means the sum of payments for regular principal, interest, rent, utilities, hazard 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;

B. The foreclosure purchaser and the foreclosed homeowner complete a closing for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed or mortgage from a foreclosed homeowner. For purposes of this section, "closing" means an in-person meeting to complete final documents incident to the sale of the real property or creation of a mortgage on the real property conducted by a closing agent who is not employed by or an affiliate of the foreclosure purchaser or employed by such an affiliate and who does not have a business or personal relationship with the foreclosure purchaser other than the provision of real estate settlement services;

C. The foreclosure purchaser obtains the written consent of the foreclosed homeowner to a grant by the foreclosure purchaser of any interest in the property during such times as the foreclosed homeowner maintains any interest in the property;

D. The foreclosure purchaser obtains certification from a counselor with a 3rd-party, nonprofit organization approved by the administrator that the foreclosed homeowner has received counseling on the advisability of the foreclosure reconveyance; and

E. The foreclosure purchaser complies with the requirements for disclosure, loan terms and conduct in Title 9-A, Article 8-A for any foreclosure reconveyance in which the foreclosed homeowner obtains a vendee interest in a contract for deed, land installment

contract or bond for deed, regardless of whether the terms of the contract for deed, land installment contract or bond for deed meet the annual percentage rate or points and fees requirements for a covered loan.

2. Failure to ensure reconveyance or to pay consideration. A foreclosure purchaser may not fail to either:

A. Ensure that title to the residence in foreclosure has been reconveyed to the foreclosed homeowner; or

B. Make a payment to the foreclosed homeowner in an amount of at least 82% of the fair market value of the property less any payments related to the discharge of an existing mortgage within 150 days of either the eviction or voluntary relinquishment of possession of the residence in foreclosure by the foreclosed homeowner. The foreclosure purchaser shall make a detailed accounting of the basis for the payment amount, including providing written documentation of expenses, within this 150-day period. Expenses may include any payments related to the discharge of an existing mortgage made by the foreclosure purchaser to 3rd parties on behalf of the foreclosed homeowner. The accounting must be on a form prescribed by the administrator. For purposes of this paragraph:

(1) 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; and

(2) The time for determining the fair market value amount in the foreclosure reconveyance contract must be either at the time of the execution of the foreclosure reconveyance contract or at resale. If the contract states that the fair market value must be determined at the time of resale, the fair market value must be the resale price if it is sold within 120 days of the eviction or voluntary relinquishment of the property by the foreclosed homeowner. If the contract states that the fair market value is determined at the time of resale, and the resale is not completed within 120 days of the eviction or voluntary relinquishment of the property by the foreclosed homeowner, the fair market value must be determined by an appraisal conducted during this 120-day period and payment, if required, must be made to the homeowner, but the fair market value must be recalculated as the resale price on resale and an additional payment amount, if appropriate based on the resale price, must be made to the foreclosed homeowner within 15 days of resale and a detailed accounting of the basis for the payment amount or a detailed accounting of the reasons for failure to make additional payment must be made within 15 days of resale, including providing written documentation of expenses. The accounting must be on a form prescribed by the administrator.

3. Unfair or commercially unreasonable terms. A foreclosure purchaser may not enter into repurchase or lease terms as part of the subsequent foreclosure reconveyance that are unfair or commercially unreasonable or engage in any other unfair conduct.

4. Misrepresentation. A foreclosure purchaser may not represent, directly or indirectly, that:

A. The foreclosure purchaser is acting as an advisor or a consultant, or in any other manner represent that the foreclosure purchaser is acting on behalf of the foreclosed homeowner;



B. The foreclosure purchaser has certification or licensure that the foreclosure purchaser does not have, or that the foreclosure purchaser is not a member of a licensed profession if that is untrue;

C. The foreclosure purchaser is assisting the foreclosed homeowner in retaining ownership to the residence in foreclosure; or

D. The foreclosure purchaser is assisting the foreclosed homeowner in preventing a completed foreclosure if the result of the transaction is that the foreclosed homeowner will not complete a redemption of the property.

5. False, deceptive or misleading statements. A foreclosure purchaser may not make any statements, directly or by implication, or engage in any other conduct that is false, deceptive or misleading or that has the likelihood to cause confusion or misunderstanding, including, but not limited to, statements regarding the value of the residence in foreclosure, the amount of proceeds the foreclosed homeowner may receive after a foreclosure sale, any contract term or the foreclosed homeowner's rights or obligations incident to or arising out of the foreclosure reconveyance.

6. Door-to-door solicitation prohibited. A foreclosure purchaser may not solicit a foreclosure reconveyance door-to-door prior to receiving an invitation from a foreclosed homeowner.

7. Other actions. Until the time during which the foreclosed homeowner may cancel the transaction has fully elapsed, a foreclosure purchaser may not:

A. Accept from any foreclosed homeowner an execution of or induce any foreclosed homeowner to execute any instrument of conveyance of any interest in the residence in foreclosure;

B. Record or file with the county register of deeds any document, including, but not limited to, any instrument of conveyance, signed by the foreclosed homeowner;

C. Transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any 3rd party, except that this paragraph may not defeat or affect a grant of interest or encumbrance against a bona fide purchaser or encumbrance for value and without notice of a violation of this chapter. Knowledge on the part of any such person or entity that the property was a residence in foreclosure does not constitute notice of a violation of this chapter. This paragraph does not abrogate any duty of inquiry that exists as to rights or interests of persons in possession of the residence in foreclosure; or

D. Pay the foreclosed homeowner any consideration.

#### §6199. Enforcement

This section applies to any violation of this chapter in connection with the actions of a foreclosure purchaser.

1. Enforcement. In addition to other actions allowed pursuant to this section, the administrator may undertake any authorized actions pursuant to Title 9-A, Article 6 to ensure compliance with this chapter.

2. Private action. A private cause of action may be brought by a foreclosed homeowner on the basis of a violation of this chapter. A foreclosed homeowner may be awarded actual and consequential damages and costs, including reasonable attorney's fees, and may be granted injunctive, declaratory and other equitable relief the court determines appropriate in an action to enforce compliance with this chapter.

3. Remedies cumulative. The remedies provided in this section are cumulative and do not restrict any remedy that is otherwise available. The provisions of this chapter are not exclusive and are in addition to any other requirements, rights, remedies and penalties provided by state or federal law.

4. Improvident transfer. The remedies provided under Title 33, chapter 20 apply to any violation of this chapter in connection with actions of a foreclosure purchaser.

5. Stay of eviction action. The automatic stay of an eviction action is governed by this subsection.

A. A court hearing an eviction action against a foreclosed homeowner must issue an automatic stay without imposition of a bond if a defendant makes a prima facie showing that the defendant:

(1) Has commenced an action concerning a foreclosure reconveyance; asserts a defense under that action that the property that is the subject of the eviction action is also the subject of a foreclosure reconveyance in violation of this chapter; or asserts a claim or affirmative defense of fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice in connection with a foreclosure reconveyance;

(2) Owned the residence in foreclosure;

(3) Conveyed title to the residence in foreclosure to a 3rd party upon a promise that the defendant would be allowed to occupy the residence or other real property in which the foreclosure purchaser or a person acting in participation with the foreclosure purchaser has an interest and that the residence or other real property would be the subject of a foreclosure reconveyance; and

(4) Since the conveyance, has continuously occupied the residence in foreclosure or other real property in which the foreclosure purchaser or a person acting in participation with the foreclosure purchaser has an interest. For purposes of this subparagraph, notarized affidavits are acceptable means of proof to meet the defendant's burden. Upon good cause shown, a defendant may request and the court may grant up to an additional 2 weeks to produce evidence required to make the prima facie showing.

B. The automatic stay expires upon the later of:

(1) The failure of the foreclosed homeowner to commence an action in a court of competent jurisdiction in connection with a foreclosure reconveyance within 90 days after the issuance of the stay; and

(2) The issuance of an order lifting the stay by a court hearing claims related to the foreclosure reconveyance.

6. Unfair trade practice. The Attorney General may bring an action under Title 5, chapter 10 for any violation of this chapter.

#### §6200. Rulemaking

The administrator may adopt rules as necessary to carry out the purposes of this chapter. Rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Source: <http://www.mainelegislature.org/legis/statutes/32/title32ch80-Bsec0.html>

**An Act To Regulate Foreclosure Negotiators, Maine Revised Statute Annotated  
sec 6171-6183. M.R.S.A. 32 §§6171-6183**

§6171. Short title

This chapter may be known and cited as the "Debt Management Services Act."

§6172. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Administrator. "Administrator" means the Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation.

1-A. Certified counselor. "Certified counselor" means an individual certified by a training program or organization approved by the administrator that authenticates the competence of the individual providing education and assistance to consumers in connection with debt management services.

1-B. Consumer education program. "Consumer education program" means a program or plan that seeks to improve the financial literacy of consumers.

1-C. Consumer's obligation. "Consumer's obligation" means a debt or debts incurred for personal, family or household purposes and does not include a debt or debts incurred for business or commercial purposes.

2. Debt management service. "Debt management service" means:

A. The receiving of money from a consumer for the purpose of distributing one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligation;

B. Arranging or assisting a consumer to arrange for the distribution of one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligation;

C. Exercising control, directly or indirectly, or arranging for the exercise of control over funds of a consumer for the purpose of distributing payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligation; or

D. Acting or offering to act as an intermediary between a consumer and one or more creditors of the consumer for the purpose of adjusting, settling, discharging, reaching a compromise on or otherwise altering the terms of payment of the consumer's obligation.

3. Debt management service provider. "Debt management service provider" means a person, wherever located, that provides or offers to provide to a consumer in this State any debt management services, in return for a fee or other consideration, and a person located in this State that provides or offers to provide to a consumer who is not a resident of this State any debt management services, in return for a fee or other consideration. "Debt management service provider" does not include:

A. A supervised financial organization;

B. A supervised lender; or

C. A person admitted to the practice of law in this State as of the effective date of this chapter, except to the extent that debt management services constitute the exclusive activity of that attorney.

4. Person. "Person" means an individual or an organization.

5. Supervised financial organization. "Supervised financial organization" has the same meaning as in Title 9-A, section 1-301, subsection 38-A.

6. Supervised lender. "Supervised lender" has the same meaning as defined in Title 9-A, section 1-301, subsection 39.

debt management service provider registration bond

#### §6173. Registration and annual reregistration

1. Nonprofit organizations.

2. Registration and reregistration. An organization desiring to act, or continue to act, as a debt management service provider shall apply to the administrator for registration or reregistration in accordance with this chapter. The application must be in a form prescribed by the administrator. The administrator may refuse the application if it contains erroneous or incomplete information. A registration may not be issued unless the administrator, upon investigation, finds that the financial soundness and responsibility, insurance coverage, consumer education programs and services component, character and fitness of the applicant and, when applicable, its partners, officers or directors, warrant belief that the business will be operated honestly and fairly within the purposes of this chapter. The initial application for registration may be filed at any time and must include a fee of \$500. A registration or reregistration under this chapter expires on December 31st of the year approved. An annual reregistration application must be filed by December 1st of each year for the following year and must include a fee of \$250.

2-A. Separate registration required. A separate registration is required for each place of business. An application fee of \$250 must accompany an application for registration for a place of business other than that of the first registered location of the registrant.

3. Action on registration application. The administrator shall take action on an application within 30 days after the administrator has accepted the application as complete. Upon written request, the applicant is entitled to a hearing on the question of the applicant's qualifications for registration if the administrator has notified the applicant in writing that the application has been denied or the administrator has not issued a registration within 30 days after the application for the registration was accepted as complete by the administrator. A request for a hearing may not be made more than 60 days after the application was accepted as complete or the administrator has mailed a written notice to the applicant stating that the application has been denied and stating the reasons for the denial of the application.

#### §6174. Bond required

Each application must be accompanied by evidence of a surety bond in a form approved by the administrator in the aggregate amount of \$50,000 to run to the administrator for use by the administrator and any person or persons who may have a cause of action against a debt management service provider. The terms of the bond must run concurrently with the period of time during which the registration is in effect.

#### §6174-A. Limits on fees and charges

1. Initial fee. A debt management service provider may charge to a consumer a reasonable one-time initial or set-up fee in an amount not to exceed \$75.
2. Service fees. In addition to the fee set forth in subsection 1, a debt management service provider may assess either of the following fees:
  - A. For a debt management service provider that distributes monthly payments to a consumer's creditor or creditors, a reasonable monthly fee not to exceed \$40; or [2007, c. 36, §8 (NEW).]
  - B. For a debt management service provider that acts or offers to act as an intermediary between a consumer and one or more creditors of the consumer for the purpose of adjusting, settling, discharging, reaching a compromise on or otherwise altering the terms of payment of the consumer's obligation, a reasonable fee not to exceed 15% of the amount by which the consumer's debt is reduced as part of each settlement.
3. Limitation on excess fees. A debt management service provider may not charge more than one fee authorized under subsections 1 and 2 on the basis that the consumer has entered into a debt management services agreement for joint obligations of a consumer and a consumer's spouse or other member of the consumer's household.
4. Application. This section does not apply to a debt management service provider located in this State that does not provide debt management services to a consumer who is a resident of this State.

#### §6174-B. Counselor certification; consumer education program

1. Certified counselor. A debt management service provider shall provide evidence to the administrator within 12 months after initial employment of a counselor that the counselor is a certified counselor.
2. Consumer education. A debt management service provider shall offer a consumer education program approved by the administrator. Providers of consumer education programs shall submit each such program to the administrator for approval, and each such submission must be accompanied by a \$100 fee. A debt management service provider may charge consumers a reasonable fee for the program not to exceed \$50.
3. Application. This section does not apply to a debt management service provider located in this State that does not provide debt management services to a consumer who is a resident of this State.

#### §6175. Handling of consumer funds

1. Funds deposited in trust account. The debt management service provider shall deposit, within 2 business days of receipt, all funds received from or on behalf of a consumer for payment to a creditor or creditors in a federally insured trust account for the benefit of the consumer in a supervised financial organization. Any trust account established to receive consumer funds is free from trustee process and unavailable to creditors of the debt management service provider.
2. Requirements for handling of funds. The debt management service provider shall:
  - A. Maintain separate records of account for each consumer receiving debt management services;

B. Remit funds received from or on behalf of a consumer to the consumer's creditor or creditors within 15 business days of receipt of the funds; and

C. Correct or remedy any misdirected payments resulting from an error by the debt management service provider and reimburse the consumer for any actual costs or fees imposed by a creditor as a result of such misdirection.

3. Commingling of funds. The debt management service provider may not commingle trust accounts established for the benefit of consumers with any operating accounts of the debt management service provider.

#### §6177. Reports and records

1. Written reports to consumers. A debt management service provider shall provide to each consumer receiving debt management services periodic written reports accounting for funds received from the consumer for payment to the consumer's creditor or creditors whose obligations are listed in the consumer's agreement with the debt management service provider and disbursements made to each such creditor on the consumer's behalf since the last report. The debt management service provider shall provide such reports to the consumer not less than once each calendar quarter.

2. Maintenance of records. A debt management service provider shall maintain books and records for each consumer for whom it provides debt management services for 6 years following the final transaction with the consumer.

#### §6178. Powers and functions of administrator

The administrator may exercise the following powers and functions.

1. Complaint investigation. The administrator may receive and act on complaints, take action to obtain voluntary compliance with this chapter or refer cases, including cases involving violations under section 6173 or 6175 or Title 17, section 701, to the Attorney General, who shall appear for and represent the administrator in court.

2. Rules. The administrator may adopt rules to carry out the requirements of this chapter in accordance with Title 5, chapter 375. Rules adopted pursuant to this chapter are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

3. Examinations. The administrator may examine the books, accounts and records of any debt management service provider, make an investigation to determine compliance with this chapter and charge the reasonable expenses necessarily incurred to conduct the examinations to the debt management service provider.

4. Appropriation of funds. The administrator may appropriate for the use of the administrator the aggregate of fees, examination expense reimbursement or other payments made to the administrator pursuant to this chapter and carry forward any balance of funds from a fiscal year to be expended for the same purpose in the following fiscal year.

#### §6179. Prohibited acts

A debt management service provider may not: [

1. Purchase debt. Purchase any debt or obligation of a consumer;

2. Lend money. Lend money or provide credit to any consumer;

3. Mortgage interest. Obtain a mortgage or other security interest in property of a consumer;

4. Debt collector. Operate as a debt collector in this State, as defined in section 11002, subsection 6; or

5. Negative amortization. Structure an agreement for the consumer that, at the conclusion of the projected term for the consumer's participation in the debt management service agreement, would result in negative amortization of any of the consumer's obligations to creditors.

#### §6180. Advertising

1. False advertising. A debt management service provider may not engage in this State in false or misleading advertising concerning the terms and conditions of any services or assistance offered.

2. Dissemination; no liability. This section does not impose liability on the owner or personnel of any medium in which an advertisement appears or through which an advertisement is disseminated.

#### §6181. Effects of violations on rights of parties

1. Violations; unfair, unconscionable or deceptive practices. A debt management service provider that violates any provision of this chapter or any rule adopted by the administrator or that through any unfair, unconscionable or deceptive practice causes actual damage to a consumer is subject to enforcement action pursuant to subsection 2.

2. Enforcement actions. The following enforcement actions may be taken by the administrator or an aggrieved consumer against a debt management service provider for violations of any provision of this chapter or any rule adopted pursuant to this chapter or for unfair, unconscionable or deceptive practices that cause actual damage to a consumer:

A. After notice and hearing, a cease and desist order from the administrator;

B. When in the opinion of the administrator immediate action is required to protect the public interest, a cease and desist order without prior notice and hearing after which the administrator shall afford an opportunity for a hearing, the results of which are subject to review under Title 5, chapter 375, subchapter VII;

C. After notice and hearing, forfeiture of such portion of the required bond as proportionately may make aggrieved parties whole;

D. A civil action by the administrator through the Attorney General, after which a court may assess a civil penalty payable to the State of not more than \$5,000;

E. A civil action by an aggrieved consumer in which that consumer has the right to recover actual damages from the debt management service provider in an amount determined by the court plus costs of the action together with reasonable attorney's fees; or

F. Revocation, suspension or nonrenewal of the debt management service provider's registration pursuant to section 6182.

#### §6182. Suspension or revocation of registration

1. Suspension or revocation. After notice and hearing, the administrator may suspend or revoke a debt management service provider's registration if the administrator finds that one of the conditions of subsection 2 is met.

2. Conditions for suspension or revocation. The following conditions are grounds for suspension or revocation of a registration:

A. A fact or condition exists that, if it had existed at the time when the registrant applied for registration, would have been grounds for denying the application;

B. The registrant knowingly violates a material provision of this chapter or rule or order validly adopted by the administrator under authority of this chapter;

C. The registrant is insolvent;

D. The registrant refuses to permit the administrator to make an examination authorized by this chapter; or

E. The registrant fails to respond within a reasonable time and in an appropriate manner to communications from the administrator.

### §6183. Debt management services related to residential mortgage loans

A person that engages in debt management services as described in section 6172, subsection 2, paragraph D related to a consumer's residential mortgage loan shall comply with the requirements of this chapter governing debt management service providers, subject to the following conditions and provisions.

1. Good faith and fair dealing. A person subject to this section shall act in good faith and with fair dealing in any transaction, practice or course of business in connection with the providing of debt management services.

2. Training. With respect to section 6174-B, training leading to certification of the counselor must relate to subject matter specific to such activity, including but not limited to the tax consequences to the consumer of forgiven debt, the consumer's options for discharge of debt, including but not limited to the availability of bankruptcy, and all other options available to the consumer. The consumer education program must also include information about the tax consequences of forgiven debt.

3. Written reports. With respect to section 6177, subsection 1, the periodic written reports must consist of written updates provided to the consumer on at least a quarterly basis as well as a final accounting provided to the consumer.

4. Exceptions. Section 6179, subsections 1 and 3 do not apply to the provisions of this section.

5. Disclosure. If the service to be provided to the consumer includes the sale or transfer of an interest in real property:

A. The consumer's right to cancel the agreement by providing a written notice of cancellation to the other party pursuant to section 6176, subsection 2, paragraph E is effective only until the date of consummation of the transfer;

B. The debt management service provider must provide the consumer with the names and contact information for 3rd-party housing counselors approved by the United States Department of Housing and Urban Development; and



C. The debt management service provider must specifically advise the consumer in writing whether the consumer will be liable for a deficiency or not liable for a deficiency resulting from the sale or transfer.

6. Damages. In addition to any other remedies available to the consumer, a consumer has a right to recover consequential damages from the debt management service provider for a violation of this section.

Source: <http://www.mainelegislature.org/legis/statutes/32/title32ch80-Asec0.html>

**Maryland Real Property Code Annotated, Protection of Homeowners in Foreclosure Act, sec 7-301. Code Ann. §§ 7.301-7.324**

§ 7-301. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Commissioner. -- "Commissioner" means the Commissioner of Financial Regulation in the Department of Labor, Licensing, and Regulation.

(c) Foreclosure consultant. -- "Foreclosure consultant" means a person who:

(1) Solicits or contacts a homeowner in writing, in person, or through any electronic or telecommunications medium and directly or indirectly makes a representation or offer to perform any service that the person represents will:

(i) Stop, enjoin, delay, void, set aside, annul, stay, or postpone a foreclosure sale;

(ii) Obtain forbearance from any servicer, beneficiary or mortgagee;

(iii) Assist the homeowner to exercise a right of reinstatement provided in the loan documents or to refinance a loan that is in foreclosure and for which notice of foreclosure proceedings has been published;

(iv) Obtain an extension of the period within which the homeowner may reinstate the homeowner's obligation or extend the deadline to object to a ratification;

(v) Obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in default or contained in the mortgage;

(vi) Assist the homeowner to obtain a loan or advance of funds;

(vii) Avoid or ameliorate the impairment of the homeowner's credit resulting from the filing of an order to docket or a petition to foreclose or the conduct of a foreclosure sale;

(viii) Save the homeowner's residence from foreclosure;

(ix) Purchase or obtain an option to purchase the homeowner's residence within 20 days of an advertised or docketed foreclosure sale; or

(x) Arrange for the homeowner to become a lessee or renter entitled to continue to reside in the homeowner's residence after a sale or transfer; or

(2) Systematically contacts owners of residences in default to offer foreclosure consulting services.

(d) Foreclosure consulting contract. -- "Foreclosure consulting contract" means a written, oral, or equitable agreement between a foreclosure consultant and a homeowner for the provision of any foreclosure consulting service.

(e) Foreclosure consulting service. -- "Foreclosure consulting service" includes:

(1) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in default;

(2) Contacting creditors on behalf of a homeowner;

(3) Arranging or attempting to arrange for an extension of the period within which a homeowner may cure the homeowner's default and reinstate the homeowner's obligation;

(4) Arranging or attempting to arrange for any delay or postponement of the sale of a residence in default;

(5) Arranging or facilitating the purchase of a homeowner's equity of redemption or legal or equitable title;

(6) Arranging or facilitating the sale of a homeowner's residence or the transfer of legal title, in any form, to another party as an alternative to foreclosure; or

(7) Arranging for or facilitating a homeowner remaining in the homeowner's residence after a sale or transfer as a tenant, renter, or lessee under terms provided in a written lease.

(f) Foreclosure rescue transaction. -- "Foreclosure rescue transaction" means a transaction:

(1) In which a residence in default is conveyed by a homeowner who retains a legal or equitable interest in all or part of the property, including an interest under a lease-purchase agreement, an option to reacquire the property, or any other legal or equitable interest in the property conveyed; and

(2) That is designed or intended by the parties to prevent or delay actual or anticipated foreclosure proceedings against the residence in default.

(g) Foreclosure surplus acquisition. -- "Foreclosure surplus acquisition" means a transaction involving the transfer, sale, or assignment of the surplus remaining and due the homeowner based on the audit account during a foreclosure proceeding.

(h) Foreclosure surplus purchaser. --

(1) "Foreclosure surplus purchaser" means a person who acts as the acquirer by

assignment, purchase, grant, or conveyance of the surplus resulting from a foreclosure sale.

(2) "Foreclosure surplus purchaser" includes a person who acts in joint venture or joint enterprise with one or more acquirers.

(i) Homeowner. -- "Homeowner" means the record owner of a residence in default or a residence in foreclosure, or an individual occupying the residence under a use and possession order issued under Title 8, Subtitle 2 of the Family Law Article.

(j) Residence in default. -- "Residence in default" means residential real property located in the State consisting of not more than four single family dwelling units, one of which is occupied by the owner, or the owner's spouse or former spouse under a use and possession order issued under Title 8, Subtitle 2 of the Family Law Article, as the individual's principal place of residence, and on which the mortgage is at least 60 days in default.

(k) Residence in foreclosure. -- "Residence in foreclosure" means residential real property located in the State consisting of not more than four single family dwelling units, one of which is occupied by the owner, or the owner's spouse or former spouse under a use and possession order issued under Title 8, Subtitle 2 of the Family Law Article, as the individual's principal place of residence, and against which an order to docket or a petition to foreclose has been filed.

(l) "Settlement" means an in-person, face-to-face meeting with the homeowner to complete final documents incident to the sale or transfer of real property or the creation of a mortgage or equitable interest in real property, conducted by a settlement agent, during which the homeowner must be presented with a completed copy of the HUD-1 Settlement Form.

#### § 7-302. Applicability of subtitle

(a) To whom it does not apply. -- Except as provided in subsection (b) of this section, this subtitle does not apply to:

(1) An individual admitted to practice law in the State, while performing any activity related to the individual's regular practice of law in the State;

(2) A person who holds or services a mortgage loan secured by a residence in default while the person performs servicing, collection, and loss mitigation activities in regard to that mortgage loan, provided the mortgage loan did not arise as a result of a foreclosure consulting contract;

(3) (i) A person doing business under any law of this State or the United States regulating banks, trust companies, savings and loan associations, credit unions, or insurance companies, while the person performs services as a part of the person's

normal business activities; and

(ii) Any subsidiary, affiliate, or agent of a person described in item (i) of this item, while the subsidiary, affiliate, or agent performs services as a part of the subsidiary's, affiliate's, or agent's normal business activities;

(4) A judgment creditor of the homeowner, if the judgment creditor's claim accrued before the written notice of foreclosure sale required under § 7-105.2 of this title is sent;

(5) A person licensed as a mortgage lender under Title 11, Subtitle 5 of the Financial Institutions Article while:

(i) Acting under the authority of that license in regard to a residence in default; and

(ii) Arranging for a refinancing of a mortgage loan for the residence in default;

(6) A person licensed as a real estate broker, associate real estate broker, or real estate salesperson under Title 17 of the Business Occupations and Professions Article only:

(i) While the person:

1. Engages in any activity for which the person is licensed under Title 17 of the Business Occupations and Professions Article; and

2. Does not violate any provision of § 7-307 of this subtitle or Title 17 of the Business Occupations and Professions Article; and

(ii) If the residence in default for which the person is conducting a licensed activity:

1. Is listed in the local multiple listing service; and

2. Is sold or transferred through a settlement, including the conveyance or transfer of deed, title, or establishment of equitable interest; or

(7) A nonprofit organization that solely offers counseling or advice to homeowners in foreclosure or loan default, if the organization is not directly or indirectly related to and does not contract for services with for-profit lenders.

(b) To whom it does apply. -- This subtitle does apply to an individual who:

(1) Is functioning in a position listed under subsection (a) of this section; and

(2) Is engaging in activities or providing services designed or intended to transfer title to a residence in default directly or indirectly to that individual, a relative of that individual, or an agent or affiliate of that individual.

§§ 7-303, 7-304.

Reserved.

§ 7-305. Rescission

(a) In general. -- In addition to any other right under law to cancel or rescind a contract, a homeowner has the right to rescind a foreclosure consulting contract at any time.

(b) When it occurs. -- Rescission occurs when the homeowner gives written notice of rescission to the foreclosure consultant at the address specified in the contract or through any facsimile or electronic mail address identified in the contract or other materials provided to the homeowner by the foreclosure consultant.

(c) Notice -- When effective. -- Notice of rescission, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid.

(d) Notice -- Form. -- Notice of rescission need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to rescind the foreclosure consulting contract.

(e) Repayment. -- After the rescission of a foreclosure consulting contract, the homeowner shall repay, within 60 days from the date of rescission, any funds paid or advanced by the foreclosure consultant or anyone working with the foreclosure consultant under the terms of the foreclosure consulting contract, together with interest calculated at the rate of 8% a year.

(f) Conditioning right of rescission on repayment prohibited. -- The right to rescind may not be conditioned on the repayment of any funds.

§ 7-306. Foreclosure consulting contract

(a) Basic requirements. -- A foreclosure consulting contract shall:

(1) Be provided to the homeowner for review before signing;

(2) Be printed in at least 12 point type and written in the same language that is used by the homeowner and was used in discussions with the foreclosure consultant to describe the consultant's services or to negotiate the contract;

(3) Fully disclose the exact nature of the foreclosure consulting services to be provided, including any sale or tenancy that may be involved, and the total amount and terms of any compensation from any source to be received by the foreclosure consultant or anyone working in association with the consultant;

(4) State the duty of the foreclosure consultant to provide the homeowner with written

copies of any research the foreclosure consultant has regarding the value of the homeowner's residence in default, including any information on sales of comparable properties or any appraisals;

(5) Be dated and personally signed by the homeowner and the foreclosure consultant and be witnessed and acknowledged by a notary public appointed and commissioned by the State; and

(6) Contain the following notice, which shall be printed in at least 14 point boldface type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the homeowner's signature:

**"NOTICE REQUIRED BY MARYLAND LAW**

..... (Name) or anyone working for him or her CANNOT ask you to sign or have you sign any lien, mortgage, or deed as part of signing this agreement unless the terms of the transfer are specified in this document and you are given a separate explanation of the precise nature of the transaction. The separate explanation must include: how much money you must pay; how much money you will receive, if any; and how much money the foreclosure consultant will receive from any source.

..... (Name) or anyone working for him or her CANNOT guarantee you that they will be able to refinance your home or arrange for you to keep your home. Continue making mortgage payments until a refinancing, if applicable, is approved.

You have the right to rescind this foreclosure consulting contract at any time by informing the foreclosure consultant that you want to rescind the contract. See the attached Notice of Rescission form for an explanation of this right. After any rescission, you must repay, within 60 days, any money spent on your behalf as a result of this agreement, along with interest calculated at the rate of 8% a year.

If a contract to sell or transfer the deed or title to your property is involved in any way, you may rescind that contract at any time within 5 days after the date you sign that contract and you are informed of this right. After any rescission, you must repay, within 60 days, any money spent on your behalf as a result of this agreement, along with interest calculated at the rate of 8% a year.

**THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY BEFORE SIGNING."**

(b) Additional requirements. -- The contract shall contain on the first page, in at least 12 point type size:

(1) The name and address of the foreclosure consultant to which the notice of rescission is to be mailed; and

(2) The date the homeowner signed the contract.

(c) Notice of Rescission. --

(1) The contract shall be accompanied by a completed form in duplicate, captioned "NOTICE OF RESCISSION".

(2) The Notice of Rescission shall:

(i) Be on a separate sheet of paper attached to the contract;

(ii) Be easily detachable; and

(iii) Contain the following statement printed in at least 15 point type:

"NOTICE OF RESCISSION

(Date of Contract)

You may rescind this foreclosure consulting contract, without any penalty, at any time.

If you want to rescind this contract, mail or deliver a signed and dated copy of this Notice of Rescission, or any other written notice indicating your intent to rescind to (name of foreclosure consultant) at (address of foreclosure consultant, including facsimile and electronic mail).

After any rescission, you (the homeowner) must repay any money spent on your behalf as a result of this agreement, within 60 days, along with interest calculated at the rate of 8% a year.

This is an important legal contract and could result in the loss of your home. Contact an attorney before signing.

NOTICE OF RESCISSION

TO: (name of foreclosure consultant)  
(address of foreclosure consultant, including facsimile and electronic mail)



I hereby rescind this contract.

..... (Date)  
..... (Homeowner's signature)".

(d) Copy to homeowner. -- The foreclosure consultant shall provide the homeowner with a signed and dated copy of the foreclosure consulting contract and the attached Notice of Rescission immediately upon execution of the contract.

(e) Time period of rescission. -- The time during which the homeowner may rescind the foreclosure consulting contract does not begin to run until the foreclosure consultant has complied with this section.

(f) Void provisions. -- Any provision in a foreclosure consulting contract that attempts or purports to waive any of the rights specified in this title, consent to jurisdiction for litigation or choice of law in a state other than Maryland, consent to venue in a county other than the county in which the property is located, or impose any costs or filing fees greater than the fees required to file an action in a circuit court, is void.

#### § 7-307. Prohibited activities by foreclosure consultant

A foreclosure consultant may not:

(1) Engage in, arrange, offer, promote, promise, solicit, participate in, assist with, or carry out a foreclosure rescue transaction;

(2) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;

(3) Claim, demand, charge, collect, or receive any interest or any other compensation for any loan that the foreclosure consultant makes to the homeowner that exceeds 8% a year;

(4) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation;

(5) Receive any consideration from any third party in connection with foreclosure consulting services provided to a homeowner unless the consideration:

(i) Is first fully disclosed in writing to the homeowner;

(ii) Is clearly listed on any settlement documents; and

(iii) Is not in violation of any provision of this subtitle;

(6) Receive a commission, regardless of how described, for the sale of a residence in default that exceeds 8% of the sales price;

(7) Receive any money to be held in escrow or on a contingent basis on behalf of the homeowner;

(8) Acquire any interest, directly or indirectly, or by means of a subsidiary, affiliate, or corporation in which the foreclosure consultant or a member of the foreclosure consultant's immediate family is a primary stockholder, in a residence in default from a homeowner with whom the foreclosure consultant has contracted;

(9) Take any power of attorney from a homeowner for any purpose, except to inspect documents as provided by law; or

(10) Induce or attempt to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with this subtitle.

#### § 7-308. Foreclosure consultant license

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "License" has the meaning stated in § 17-101(g) of the Business Occupations and Professions Article.

(3) "Provide real estate brokerage services" has the meaning stated in § 17-101(l) of the Business Occupations and Professions Article.

(b) License required. -- A foreclosure consultant who provides real estate brokerage services shall be licensed as required under Title 17 of the Business Occupations and Professions Article.

(c) License to be presented. -- A foreclosure consultant shall present a copy of the license to a homeowner no later than the time a foreclosure consulting contract is executed.

#### § 7-309. Duties

(a) In general. -- A foreclosure consultant has a duty to provide the homeowner with

written copies of any research the foreclosure consultant has regarding the value of the homeowner's residence in default, including any information on sales of comparable properties or any appraisals.

(b) Duty of care. -- A foreclosure consultant owes the same duty of care to a homeowner as a licensed real estate broker owes to a client under § 17-532 of the Business Occupations and Professions Article.

#### § 7-310. Rescission of contract

(a) Right to rescind. -- In addition to any other right under law to rescind a contract, the homeowner of a residence in default has the right to rescind a contract for the sale or transfer of the residence in default within 5 days after the execution of the contract.

(b) Void provisions. -- Any provision in a contract or other agreement concerning a sale or transfer of a residence in default that attempts or purports to waive the homeowner's rights under this title, consent to jurisdiction for litigation or choice of law in a state other than Maryland, consent to venue in a county other than the county in which the property is located, or impose any costs or filing fees greater than the fees required to file an action in a circuit court, is void.

(c) Use of quitclaim deed prohibited. -- Except when a primary mortgage lender takes a deed in lieu of foreclosure, a sale or transfer of a residence in default may not be executed using a quitclaim deed.

(d) Notice. -- A notice of rescission under this section:

(1) Shall be in writing but need not take any particular form specified in this subtitle or any form contained in any agreement with the purchaser or transferee; and

(2) Is effective, however expressed, if it indicates the intention of the homeowner to rescind the contract.

(e) Right may not be conditioned on repayment of funds. -- The right to rescind may not be conditioned on the repayment of any funds, provided however that any debt existing prior to a rescission shall continue to exist.

(f) Return of deed. -- Within 10 days after receipt of a notice of rescission, the purchaser or transferee shall return, without condition, any original deed, title, contract, and any other document signed by the homeowner.

(g) No recordation during five-day rescission period. -- During the 5-day rescission period, a deed or other document affecting title to the homeowner's residence in default may not be recorded.

§ 7-311. Foreclosure reconveyance

(a) Scope. -- This section applies to a contract for the sale or transfer of a residence in default that is included in a foreclosure consulting contract or arranged by a foreclosure consultant.

(b) Notice to Homeowner. -- In addition to any other requirement under law, the purchaser of a residence in default shall provide the homeowner with a document entitled "Notice to Homeowner".

(c) Notice to Homeowner -- Contents. -- The document entitled "Notice to Homeowner" shall:

(1) Contain the total sales price of the residence in default and an explanation of the distribution of the proceeds of the sale, including any payments to any parties, including the foreclosure consultant;

(2) Be printed in 12 point type and written in the same language that is used by the homeowner and was used in discussions to describe the foreclosure consultant's or purchaser's services or to negotiate the transfer or sale of the property;

(3) Be dated and personally signed by the homeowner and the purchaser and witnessed and acknowledged by a notary public appointed and commissioned by the State;

(4) Describe in detail the terms of any sale or transfer including:

(i) The name, business address, telephone number, and facsimile number of the person to whom the deed or title will be sold or transferred;

(ii) The address of the residence in default;

(iii) The total consideration to be given or received, directly or indirectly, by the homeowner, purchaser, and the foreclosure consultant;

(iv) The time at which title is to be sold or transferred to the purchaser; and

(v) Any financial or legal obligations to which the homeowner may remain subject; and

(5) Contain the following statement printed in at least 14 point boldface type and located in immediate proximity to the space reserved for the homeowner's signature:

"If you change your mind about selling or transferring ownership of your property, you, the homeowner, may rescind the contract for the sale or transfer of the deed or title

to your property any time within the next 5 days. See the attached Notice of Right to Rescind Contract for the Sale or Transfer of Deed or Title. After any rescission, you must repay, within 60 days, any money spent on your behalf as a result of this agreement, along with interest calculated at the rate of 8% a year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY BEFORE SIGNING."

(d) Notice of Right to Rescind Contract for Sale or Transfer of Deed of Title. --

(1) The purchaser shall provide the homeowner with a document entitled "NOTICE OF RIGHT TO RESCIND CONTRACT FOR THE SALE OR TRANSFER OF DEED OR TITLE".

(2) The document entitled "NOTICE OF RIGHT TO RESCIND CONTRACT FOR THE SALE OR TRANSFER OF DEED OR TITLE" shall:

(i) Be a separate document and not printed on the back of any other document; and

(ii) Contain the following statement printed in at least 14 point type:

"NOTICE OF RIGHT TO RESCIND CONTRACT FOR THE SALE  
OR TRANSFER OF DEED OR TITLE

(Date)

You may rescind the contract for the sale or transfer of ownership of your property within 5 business days after the date you sign this document and are notified of this right.

To rescind this contract, mail or deliver a signed and dated copy of this Notice, or any other written notice expressing a similar intent to (name of purchaser) at (address of purchaser, including facsimile and electronic mail).

After any rescission, you (the homeowner) must repay any money spent on your behalf as a result of this agreement, within 60 days, along with interest calculated at the rate of 8% a year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY BEFORE SIGNING.

NOTICE OF RESCISSION

TO: (name of purchaser)

(address of purchaser, including facsimile and electronic mail)

I hereby rescind the contract for the sale or transfer of deed or title to my property.  
Please return all executed documents to me.

..... (Date)

..... (Homeowner's signature)".

(e) Notice of Right to Rescind Contract for Sale or Transfer of Deed of Title -- Copy to homeowner. -- The purchaser shall provide the homeowner with a copy of the Notice of Right to Rescind Contract for the Sale or Transfer of Deed or Title immediately on execution of any document that includes an agreement to sell or transfer.

(f) Time period for rescission. -- The time during which the homeowner may rescind the contract for the sale or transfer does not begin to run until the purchaser has complied with this part.

#### § 7-312. Obligations of purchaser of residence in default

A purchaser of a residence in default may not:

(1) Represent, directly or indirectly, that:

(i) The purchaser is acting as an advisor or a consultant, or in any other manner represent that the purchaser is acting on behalf of the homeowner;

(ii) The purchaser has certification or licensure that the purchaser does not have;

(iii) The purchaser is assisting the homeowner to "save the house" or use a substantially similar phrase; or

(iv) The purchaser is assisting the homeowner in preventing a foreclosure if the result of the transaction is that the homeowner will no longer own the property;

(2) Make any other statements, directly or by implication, or engage 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 residence in default, the amount of proceeds the homeowner will receive after a sale or

transfer, any contract term, or the homeowner's rights or obligations incident to or arising out of the sale or transfer; or

(3) Until the homeowner's right to rescind the transaction has expired:

(i) Record any document, including an instrument of conveyance, signed by the homeowner; or

(ii) Transfer or encumber or purport to transfer or encumber any interest in the residence in default to any third party.

§ 7-313. Tenancy agreement included in contract

(a) "Statement about tenancy" document. --

(1) If a tenancy agreement is included in a contract for the sale or transfer of a residence in default, the purchaser shall provide the homeowner with a document entitled "STATEMENT ABOUT TENANCY" at the time the contract is executed.

(2) The document entitled "STATEMENT ABOUT TENANCY" shall:

(i) Be on a separate sheet of paper attached to the contract for the sale or transfer of a residence in default;

(ii) Be dated and personally signed by the homeowner and the purchaser and be witnessed and acknowledged by a notary public appointed and commissioned by the State;

(iii) Contain a statement informing the homeowner of the homeowner's right to a copy of a signed lease; and

(iv) Contain the following statement printed in at least 15 point type:

"STATEMENT ABOUT TENANCY

(Date of Contract)

I agree to sell my home. I understand that I will no longer have an ownership interest in or any other right to own this property. Even though I may be able to live on the premises as a tenant, I will have no right to repurchase this property or to obtain any other kind of ownership interest. If I do not pay the rent as agreed, I may be subject to eviction. As a tenant, I am entitled to receive a written lease from the new owner of the property."

(b) "Statement about tenancy" document -- Purchaser to provide. -- The purchaser shall provide the homeowner with a signed and dated copy of the document entitled "STATEMENT ABOUT TENANCY" immediately upon execution of the contract for the

sale or transfer of the residence in default.

(c) Period of rescission to begin after document provided. -- The time during which the homeowner may rescind the contract for the sale or transfer of a residence in default under § 7-310 of this subtitle does not begin to run until the purchaser has complied with this section.

#### § 7-314. Foreclosure surplus acquisition

(a) Form. -- Each foreclosure surplus acquisition shall be in the form of a written contract.

(b) Contents. -- Each foreclosure surplus acquisition contract shall:

(1) Contain the entire agreement of the parties;

(2) Be printed in at least 12 point type, in the same language that is used by the homeowner and was used by the foreclosure surplus purchaser and the homeowner to negotiate the sale of the residence in foreclosure;

(3) Be fully completed, dated, and personally signed by the homeowner and the foreclosure surplus purchaser before the statement of account has been referred to the auditor; and

(4) Include:

(i) The name, business address, and telephone number of the foreclosure surplus purchaser;

(ii) The address of the residence in foreclosure;

(iii) The total consideration to be given by the foreclosure surplus purchaser in connection with or incident to the transaction;

(iv) A complete description of the terms of payment or other consideration, including any services of any nature that the foreclosure surplus purchaser represents the foreclosure surplus purchaser will perform for the homeowner before or after the sale; and

(v) The following notice, which shall be printed in at least 14 point boldface type, completed with the name of the foreclosure surplus purchaser, and located in immediate proximity to the space reserved for the homeowner's signature:

**"NOTICE REQUIRED BY MARYLAND LAW**

If you have any questions about this document, seek legal counsel before signing. This is an important legal contract. Failure to read and understand these documents



may cause you to lose valuable rights.

The effect of these documents is that you may lose the equity in your home. This agreement will not stop the foreclosure or get your house back. If you believe the foreclosure sale was improper, you should immediately seek legal advice to determine what objections to ratification or to rescind the order of ratification may be filed.

You may rescind this contract for the sale of your house without any penalty or obligation at any time within 10 days after the auditor states the account of the foreclosure sale. See the attached Notice of Rescission form for an explanation of this right. After the rescission, you must repay from the surplus proceeds any consideration received, directly or indirectly, together with an amount for interest calculated at the rate of 8% a year."

(c) Notice of Rescission. --

(1) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Rescission".

(2) The Notice of Rescission shall:

(i) Be on a separate sheet of paper attached to the contract;

(ii) Be easily detachable; and

(iii) Contain the following statement printed in at least 15 point type:

"NOTICE OF RESCISSION

..... (Date of contract)

You may rescind this contract for the sale of your house at any time within 10 days after the auditor states the account of the foreclosure sale.

To rescind this transaction, mail or deliver a signed and dated copy of this Notice of Rescission to ..... (Name of purchaser) at ..... (Address of purchaser, including facsimile and electronic mail) with a copy to the court appointed auditor.

I hereby rescind this transaction.

..... (Date)

..... (Homeowner's signature)".

(d) Copy to homeowner. -- The foreclosure surplus purchaser shall provide the homeowner with a copy of the contract and the attached Notice of Rescission at the

time the contract is executed by all parties.

(e) Effect. -- The contract required by this section survives delivery of any instrument of conveyance of the residence in foreclosure, is binding in the audit, and has no effect on persons other than the parties to the contract.

(f) Void provisions. -- Any provision in a contract that attempts or purports to waive any of the rights specified in this title, consent to jurisdiction or choice of law in a state other than Maryland, consent to venue in a county other than the county in which the property is located, or impose any costs or filing fees greater than the fees required to file an action in a circuit court, is void.

### § 7-315. Rescission

(a) In general. -- In addition to any other right of rescission, a homeowner has the right to rescind any contract with a foreclosure surplus purchaser at any time within 10 days after the statement of audit account of the foreclosure sale.

(b) Written notice. --

(1) Rescission occurs when the homeowner delivers, by any means, written Notice of Rescission to the address specified in the contract, with a copy to the auditor. As part of the rescission, the homeowner shall repay any consideration received directly or indirectly, together with interest calculated at the rate of 8% a year.

(2) On receipt of the Notice of Rescission, the auditor shall restate the account. The repayment of consideration and interest by the homeowner shall be incorporated by the auditor into the revised statement of account filed with the court.

(3) Upon ratification of the amended audit, the attorney named in the mortgage, mortgage assignee for purposes of foreclosure, trustee, or substitute trustee in making distribution of the surplus funds shall comply with the revised court-approved audit.

(c) Written notice -- Form. -- A Notice of Rescission given by a homeowner need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to rescind the contract.

(d) Conditioning right of rescission on repayment prohibited. -- The right to rescind may not be conditioned on the repayment of any funds.

(e) Return of original documents. -- Within 10 days after receipt of a Notice of Rescission given in accordance with this section, the foreclosure surplus purchaser shall return, without condition, the original contract and all other documents signed by the homeowner.

§§ 7-316, 7-317.

Reserved.

## § 7-318. Waiver of rights

(a) Inducement or attempt prohibited. -- A person may not induce or attempt to induce a homeowner to waive the homeowner's rights under this subtitle.

(b) Void and unenforceable. -- Any waiver by a homeowner of the provisions of this subtitle is void and unenforceable as contrary to public policy.

### § 7-318.1. Violations

It is a violation of this subtitle if a foreclosure consultant:

(1) Fails to obtain a real estate broker's license as required under § 7- 308 of this subtitle; or

(2) Violates any provision of Title 17 of the Business Occupations and Professions Article.

### § 7-319. Enforcement

(a) Injunction. -- The Attorney General may seek an injunction to prohibit a person who has engaged or is engaging in a violation of this subtitle from engaging or continuing to engage in the violation.

(b) Necessary order or judgment. -- The court may enter any order or judgment necessary to:

(1) Prevent the use by a person of any prohibited practice;

(2) Restore to a person any money or real or personal property acquired from the person by means of any prohibited practice; or

(3) Appoint a receiver in case of willful violation of this subtitle.

(c) Costs. -- In any action brought by the Attorney General under this section, the Attorney General is entitled to recover the costs of the action for the use of the State.

(d) Violations. -- A violation of this subtitle is an unfair or deceptive trade practice within the meaning of Title 13 of the Commercial Law Article and is subject to the enforcement and penalty provisions contained in Title 13 of the Commercial Law Article.

### § 7-319.1. Enforcement powers of Commissioner.

(a) In general. -- The Commissioner may enforce the provisions of this subtitle by exercising any of the powers provided under §§ 2-113 through 2-116 of the Financial

Institutions Article.

(b) Injunction; orders; recovery of costs. --

(1) The Commissioner may seek an injunction to prohibit a person who has engaged or is engaging in a violation of this subtitle from engaging or continuing to engage in the violation.

(2) The court may enter any order or judgment necessary to:

(i) Prevent the use by a person of any prohibited practice;

(ii) Restore to a person any money or real or personal property acquired from the person by means of any prohibited practice; or

(iii) Appoint a receiver in case of willful violation of this subtitle.

(3) In any action brought by the Commissioner under this subsection, the Commissioner is entitled to recover the costs of the action for the use of the State.

(c) Affirmative corrective action; restitution. -- The Commissioner may enforce the provisions of this subtitle by requiring a violator to take affirmative action to correct the violation including the restitution of money or property to any person aggrieved by the violation.

(d) Investigative and aid to other units of State government. -- The Commissioner may:

(1) Investigate violations of this subtitle; and

(2) Aid any other unit of State government that has regulatory jurisdiction over the business activities of the violator.

(e) Cooperation in investigation by other units of law enforcement. -- The Commissioner may cooperate in the investigation and prosecution of any violation of this subtitle with the Office of the Attorney General, the State's Attorney, or any other unit of law enforcement.

§ 7-320. Action for damages by homeowner

(a) In general. --

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

(2) A homeowner may bring an action for damages under this section:

(i) Without having to exhaust administrative remedies under this subtitle; and

(ii) Regardless of the status of an administrative action or a criminal prosecution, if any, under this subtitle.

(b) Attorney's fees. -- A homeowner who brings an action under this section and who is awarded damages may also seek, and the court may award, reasonable attorney's fees.

(c) Treble damages. -- If the court finds that the defendant willfully or knowingly violated this subtitle, the court may award damages equal to three times the amount of actual damages

#### § 7-321. Penalties

(a) In general. -- A person who violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$ 10,000 or both.

(b) Subject to § 5-106(b) of the Courts Article. -- A person who violates this subtitle is subject to § 5-106(b) of the Courts Article.

§§ 7-323, 7-324.

Reserved.

940 Code of Massachusetts Regulations 25.00, Foreclosure Rescue Transactions and Foreclosure-related Services. 940 C.M.R. §§25.00-25.03.

#### 25.01: Definitions

(1) Foreclosure Rescue Transaction shall mean a transaction:

(a) by which residential property is conveyed where the person conveying the property (homeowner) maintains a legal or equitable interest in the property conveyed, including, without limitation, a lease interest, an option to acquire the property, or other interest in the property conveyed; and

(b) that is designed or intended by the parties to avoid or delay actual or anticipated foreclosure proceedings against a homeowner's residential property.

(2) Foreclosure-related Services shall mean any goods or services 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. Foreclosure-related Services shall include the offer, arrangement or placement of a residential mortgage loan, or other loan, when those goods or services are advertised, offered or promoted in the context described in 940 CMR 25.01(2)(a) and/or (b).

#### 25.02: Prohibition on Foreclosure Rescue Transactions and Advance Fees for Foreclosure-related Services

(1) It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) to, for compensation or gain or for potential or contingent compensation or gain, whether at the time of the transaction or in the future, engage in, arrange, offer, promote, promise, solicit participation in, or carry out a Foreclosure Rescue Transaction in the Commonwealth or concerning residential property in the Commonwealth. Nothing in 940 CMR 25.02(1) 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, by way of example, such transactions engaged in between or among family members or arranged by a non-profit community or non-profit housing organization.

(2) It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a) to solicit, arrange, or accept an advance fee in connection with offering, arranging or providing Foreclosure-related Services; provided, however, that 940 CMR 25.02(2) shall not prohibit a licensed attorney from soliciting, arranging or accepting an advance fee or retainer for legal services in connection with the preparation and filing of a bankruptcy petition, or court proceedings, to avoid a foreclosure. Provided further, however, that a licensed attorney accepting an advance fee or legal retainer must comply with all applicable laws and regulations pertaining to such fees, including the Massachusetts Rules of Professional Conduct, specifically Rules 1.5 and 1.6. For purposes of 940 CMR 25.02, an advance fee is any money or consideration paid in advance of actually receiving services. If the Foreclosure-related Services at issue concern the offer, arrangement or placement of a residential mortgage loan by a licensed mortgage broker or licensed mortgage lender, then 940 CMR 25.02(2) shall not prohibit the solicitation, payment or acceptance of a loan application fee provided that the fee conforms with all applicable laws and regulations, including any rules or regulations of the Commissioner of Banks.

#### 25.03: Marketing of Foreclosure-related Services

It is an unfair or deceptive act in violation of M.G.L. c. 93A, § 2(a):

(a) to advertise, offer or promote the availability of Foreclosure Rescue Transactions or services related to Foreclosure Rescue Transactions;

(b) to advertise, offer or promote Foreclosure-related Services if the person so promoting intends to provide Foreclosure-related Services by offering, engaging in, arranging, promoting, promising, or soliciting participation in, a Foreclosure Rescue Transaction;

(c) to advertise, offer or promote Foreclosure-related Services without disclosing, clearly and conspicuously:

1. the precise goods and/or services offered and to be provided by the promoter of Foreclosure-Related Services; and
2. a precise description of how the promoter 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) for a licensed mortgage broker or licensed mortgage lender to advertise, offer or promote Foreclosure-related Services, where the goods or services promoted concern the offer, arrangement or placement of a residential mortgage loan (i.e., replacement financing), without complying with all laws and regulations that apply to the marketing of mortgage loans, including, without limitation, the regulations of the Commissioner of Banks (209 CMR 32.00 et seq.) and the Office of the Attorney General (940 CMR 8.00 et seq.).

Source: <http://www.mass.gov/ago/government-resources/ags-regulations/940-cmr-2500.html>

**Minnesota Statutes, Mortgage Foreclosures, sec 325N. Minn. Stat §§ 325N.01-325N.18**

**325N.01 DEFINITIONS.**

The definitions in paragraphs (a) to (h) apply to sections 325N.01 to 325N.09.

(a) "Foreclosure consultant" means any person who, directly or indirectly, makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:

- (1) stop or postpone the foreclosure sale;
- (2) obtain any forbearance from any beneficiary or mortgagee;
- (3) assist the owner to exercise the right of reinstatement provided in section 580.30;
- (4) obtain any extension of the period within which the owner may reinstate the owner's obligation;
- (5) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;
- (6) assist the owner in foreclosure or loan default to obtain a loan or advance of funds;
- (7) avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale;
- (8) save the owner's residence from foreclosure; or
- (9) negotiate or modify the terms or conditions of an existing residential mortgage loan.

(b) A foreclosure consultant does not include any of the following:

- (1) a person licensed to practice law in this state when the person renders service in the course of the person's practice as an attorney-at-law;
- (2) a person licensed as a debt management services provider under chapter 332A, when the person is acting as a debt management services provider as defined in that chapter;
- (3) a person licensed as a real estate broker or salesperson under chapter 82 when the



person engages in acts whose performance requires licensure under that chapter unless the person is engaged in offering services designed to, or purportedly designed to, enable the owner to retain possession of the residence in foreclosure;

(4) a person licensed as an accountant under chapter 326A when the person is acting in any capacity for which the person is licensed under those provisions;

(5) 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 United States or this state to provide services;

(6) a person who holds or is owed an obligation secured by a lien on any 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 or as part of a proposed foreclosure reconveyance;

(7) any person or entity doing business under any law of this state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons or entities, and any agent or employee of these persons or entities while engaged in the business of these persons or entities;

(8) a person licensed as a residential mortgage originator or servicer pursuant to chapter 58, when acting under the authority of that license, except that the provisions of section 325N.04, clause (1), shall apply to any person operating under a mortgage originator license who negotiates or offers to negotiate the terms or conditions of an existing residential mortgage loan;

(9) a nonprofit agency or organization that has tax-exempt status under section 501(c)(3) of the Internal Revenue Code that offers counseling or advice to an owner of a home in foreclosure or loan default if they do not contract for services with for-profit lenders or foreclosure purchasers, except that they shall comply with the provisions of section 325N.04, clause (1);

(10) a judgment creditor of the owner, to the extent that the judgment creditor's claim accrued prior to the personal service of the foreclosure notice required by section 580.03, but excluding a person who purchased the claim after such personal service; and

(11) a foreclosure purchaser as defined in section 325N.10.

(c) "Foreclosure reconveyance" means a transaction involving:

(1) the transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and

(2) the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess either the residence in foreclosure or any other real property, which interest includes, but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

(d) "Person" means any individual, partnership, corporation, limited liability company, association, or other group, however organized.

(e) "Service" means and includes, but is not limited to, any of the following:

(1) debt, budget, or financial counseling of any type;

(2) receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure;

(3) contacting creditors or servicers to negotiate or offer to negotiate the terms or conditions of an existing residential mortgage loan;

(4) arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure may cure the owner's default and reinstate the owner's obligation pursuant to section 580.30;

(5) arranging or attempting to arrange for any delay or postponement of the time of sale of the residence in foreclosure;

(6) advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court; or

(7) giving any advice, explanation, or instruction to an owner of a residence in foreclosure, which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a residence in foreclosure, pursuant to a power of sale contained in any mortgage.

(f) "Residence in foreclosure" means residential real property consisting of one to four family dwelling units, one of which the owner occupies as the owner's principal place of residence, where there is a delinquency or default on any loan payment or debt secured by or attached to the residential real property including, but not limited to, contract for deed payments.

(g) "Owner" means the record owner of the residential real property in foreclosure at the time the notice of pendency was recorded, or the summons and complaint served.

(h) "Contract" means any agreement, or any term in any agreement, between a foreclosure consultant and an owner for the rendition of any service as defined in paragraph (e).

325N.02 RESCISSION OF FORECLOSURE CONSULTANT CONTRACT.

(a) In addition to any other right under law to rescind a contract, an owner has the right to cancel such a contract until midnight of the third business day after the day on which the owner signs a contract which complies with section 325N.03.

(b) Cancellation occurs when the owner gives written notice of cancellation to the foreclosure consultant at the address specified in the contract.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(d) Notice of cancellation given by the owner need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

325N.03 CONTRACT.

(a) Every contract 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.

(b) The following notice, printed in at least 14-point boldface type and completed with the name of the foreclosure consultant, must be printed immediately above the statement required by paragraph (c):

"NOTICE REQUIRED BY MINNESOTA LAW

..... (Name) or anyone working for him or her

CANNOT:

(1) Take any money from you or ask you for money until

..... (Name) has completely finished doing

everything he or she said he or she would do; and

(2) Ask you to sign or have you sign any lien, mortgage, or deed."

(c) The contract must be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract, must be dated and signed by the owner, and must contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least 10-point boldface type, as follows:

"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."

(d) The notice of cancellation must contain, and the contract must contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) the name and physical address of the foreclosure consultant to which the notice of cancellation is to be mailed or otherwise delivered. A post office box does not constitute a physical address. A post office box may be designated for delivery by mail only if it is accompanied by a physical address at which the notice could be delivered by a method other than mail. An e-mail address may be included, in addition to the physical address; and

(2) the date the owner signed the contract.

(e) Cancellation occurs when the foreclosed homeowner delivers, by any means, written notice of cancellation to the address specified in the contract. If cancellation is mailed, delivery is effective upon mailing. If e-mailed, cancellation is effective upon transmission. The contract must be accompanied by a completed form in duplicate, captioned "notice of cancellation," which must be attached to the contract, must be easily detachable, and must contain in at least 10-point type the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....

(Enter date of transaction) (Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date. To cancel this transaction, you may use any of the following methods:

- (1) mail or otherwise deliver a signed and dated copy of this cancellation notice, or any other written notice of cancellation; or
- (2) e-mail a notice of cancellation

to .....

(Name of foreclosure consultant)

at .....

(Physical address of foreclosure consultant's place of business)

.....

(E-mail address of foreclosure consultant's place of business)

NOT LATER THAN MIDNIGHT OF .....

(Date)

I hereby cancel this transaction .....

(Date)

.....

(Owner's signature)"

(f) The foreclosure consultant shall provide the owner with a copy of the contract and the attached notice of cancellation immediately upon execution of the contract.

(g) The three business days during which the owner may cancel the contract shall not begin to run until the foreclosure consultant has complied with this section.

325N.04 VIOLATIONS.

It is a violation for a foreclosure consultant to:

- (1) claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented he or she would perform;

(2) claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason which exceeds eight percent per annum of the amount of any loan which the foreclosure consultant may make to the owner. Such a loan must not, as provided in clause (3), be secured by the residence in foreclosure or any other real or personal property;

(3) take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security is void and unenforceable;

(4) receive any consideration from any third party in connection with services rendered to an owner 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 an owner with whom the foreclosure consultant has contracted;

(6) take any power of attorney from an owner for any purpose, except to inspect documents as provided by law; or

(7) induce or attempt to induce any owner to enter a contract which does not comply in all respects with sections 325N.02 and 325N.03.

#### 325N.05 WAIVER NOT ALLOWED.

Any waiver by an owner of the provisions of sections 325N.01 to 325N.09 is void and unenforceable as contrary to public policy. Any attempt by a foreclosure consultant to induce an owner to waive the owner's rights is a violation of sections 325N.01 to 325N.09.

#### 325N.06 REMEDIES.

(a) A violation of sections 325N.01 to 325N.09 is considered to be a violation of section 325F.69, and all remedies of section 8.31 are available for such an action. A private cause of action under section 8.31 by a foreclosed homeowner is in the public interest. An owner may bring an action against a foreclosure consultant for any violation of sections 325N.01 to 325N.09. Judgment must be entered for actual damages, reasonable attorney fees and costs, and appropriate equitable relief.

(b) The rights and remedies provided in paragraph (a) are cumulative to, and not a limitation of, any other rights and remedies provided by law. Any action brought pursuant to this section must be commenced within four years from the date of the alleged violation.

(c) The court may award exemplary damages up to 1-1/2 times the compensation charged by the foreclosure consultant if the court finds that the foreclosure consultant violated the provisions of section 325N.04, clause (1), (2), or (4), and the foreclosure consultant's conduct was in bad faith.

(d) Notwithstanding any other provision of this section, no action may be brought on the basis of a violation of sections 325N.01 to 325N.09, except by an owner against whom the violation was committed or by the attorney general. This limitation does not apply to administrative action by the commissioner of commerce.

#### 325N.07 PENALTY.

Any person who commits any violation described in section 325N.04 may, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year or both. Prosecution or conviction for any violation described in section 325N.04 will not bar prosecution or conviction for any other offenses. These penalties are cumulative to any other remedies or penalties provided by law.

#### 325N.08 PROVISIONS SEVERABLE.

If any provision of sections 325N.01 to 325N.09 or the application of any of these provisions to any person or circumstance is held to be unconstitutional and void, the remainder of sections 325N.01 to 325N.09 remains valid.

#### 325N.09 LIABILITY.

(a) Any provision in a contract which attempts or purports to require arbitration of any dispute arising under sections 325N.01 to 325N.09 is void at the option of the owner.

(b) This section applies to any contract entered into on or after August 1, 2004.

#### FORECLOSURE PURCHASERS

#### 325N.10 DEFINITIONS.

Subdivision 1. Scope. For the purposes of sections 325N.10 to 325N.18, the terms defined in this section have the meanings given them. Subd. 2. Foreclosed homeowner. "Foreclosed homeowner" means an owner of residential real property, including a condominium, that is the primary residence of the owner and whose mortgage on the real property is or was in foreclosure.

Subd. 3. Foreclosure reconveyance. "Foreclosure reconveyance" means a transaction involving:

(1) the transfer of title to real property by a foreclosed homeowner during a foreclosure

proceeding, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and

(2) the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess either the residence in foreclosure or other real property, which interest includes, but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

Subd. 4. Foreclosure purchaser.

"Foreclosure purchaser" means a person that has acted as the acquirer in a foreclosure reconveyance. Foreclosure purchaser also includes a person that has acted in joint venture or joint enterprise with one or more acquirers in a foreclosure reconveyance.

A foreclosure purchaser does not include: (i) a natural person who shows that the natural person is not in the business of foreclosure purchasing and has a prior personal relationship with the foreclosed homeowner, or (ii) a federal or state chartered bank, savings bank, thrift, or credit union.

Subd. 5. Resale. "Resale" means a bona fide market sale of the property subject to the foreclosure reconveyance by the foreclosure purchaser to an unaffiliated third party.

Subd. 6. Resale price. "Resale price" means the gross sale price of the property on resale.

Subd. 7. Residence in foreclosure. "Residence in foreclosure" means residential real property consisting of one to four family dwelling units, one of which the owner occupies as the owner's principal place of residence, where there is a delinquency or default on any loan payment or debt secured by or attached to the residential real property, including, but not limited to, contract for deed payments.

#### 325N.11 CONTRACT REQUIREMENT; FORM AND LANGUAGE.

A foreclosure purchaser shall enter into every foreclosure reconveyance in the form of a written contract. Every contract must be written in letters of a size equal to at least 12-point boldface type, in the same language principally used by the foreclosure purchaser and foreclosed homeowner to negotiate the sale of the residence in foreclosure and must be fully completed and signed and dated by the foreclosed homeowner and foreclosure purchaser before the execution of any instrument of conveyance of the residence in foreclosure.

#### 325N.12 CONTRACT TERMS.



Every contract required by section 325N.11 must contain the entire agreement of the parties and must include the following terms:

- (1) the name, business address, and the telephone number of the foreclosure purchaser;
- (2) the address of the residence in foreclosure;
- (3) the total consideration to be given by the foreclosure purchaser in connection with or incident to the sale;
- (4) a complete description of the terms of payment or other consideration including, but not limited to, any services of any nature that the foreclosure purchaser represents he or she will perform for the foreclosed homeowner before or after the sale;
- (5) the time at which possession is to be transferred to the foreclosure purchaser;
- (6) a complete description of the terms of any related agreement designed to allow the foreclosed homeowner to remain in the home, such as a rental agreement, repurchase agreement, contract for deed, or lease with option to buy;
- (7) a notice of cancellation as provided in section 325N.14, paragraph (b); and
- (8) the following notice in at least 14-point boldface type, if the contract is printed or in capital letters if the contract is typed, and completed with the name of the foreclosure purchaser, immediately above the statement required by section 325N.14, paragraph (a):

**"NOTICE REQUIRED BY MINNESOTA LAW**

Until your right to cancel this contract has ended, ..... (Name) or anyone working for .....

(Name) CANNOT ask you to sign or have you sign any deed or any other document." The contract required by this section survives delivery of any instrument of conveyance of the residence in foreclosure, and has no effect on persons other than the parties to the contract.

**325N.13 CONTRACT CANCELLATION.**

(a) In addition to any other right of rescission, the foreclosed homeowner has the right to cancel any contract with a foreclosure purchaser until midnight of the fifth business day following the day on which the foreclosed homeowner signs a contract that complies with sections 325N.10 to 325N.15 or until 8:00 a.m. on the last day of the period during which the foreclosed homeowner has a right of redemption, whichever occurs first.

(b) Cancellation occurs when the foreclosed homeowner delivers, by any means, written notice of cancellation, provided that, at a minimum, the contract and the notice of cancellation must contain a physical address to which notice of cancellation may be mailed or otherwise delivered. A post office box does not constitute a physical address. A post office box may be designated for delivery by mail only if it is accompanied by a physical address at which the notice could be delivered by a method other than mail. An e-mail address may be provided in addition to the physical address. If cancellation is mailed, delivery is effective upon mailing. If e-mailed, cancellation is effective upon transmission.

(c) A notice of cancellation given by the foreclosed homeowner need not take the particular form as provided with the contract.

(d) Within ten days following receipt of a notice of cancellation given in accordance with this section, the foreclosure purchaser shall return without condition any original contract and any other documents signed by the foreclosed homeowner.

325N.14 NOTICE OF CANCELLATION.

(a) The contract must contain in immediate proximity to the space reserved for the foreclosed homeowner's signature a conspicuous statement in a size equal to at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, as follows:

"You may cancel this contract for the sale of your house without any penalty or obligation at any time before

.....

(Date and time of day)

See the attached notice of cancellation form for an explanation of this right."

The foreclosure purchaser shall accurately enter the date and time of day on which the cancellation right ends.

(b) The contract must be accompanied by a completed form in duplicate, captioned "notice of cancellation" in a size equal to a 12-point boldface type if the contract is printed, or in capital letters, if the contract is typed, followed by a space in which the foreclosure purchaser shall enter the date on which the foreclosed homeowner executes the contract. This form must be attached to the contract, must be easily detachable, and must contain in type of at least 10 points, if the contract is printed or in capital letters if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....  
(Enter date contract signed)

You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before

.....  
(Enter date and time of day)

To cancel this transaction, you may use any of the following methods: (1) mail or otherwise deliver a signed and dated copy of this cancellation notice; or (2) e-mail a notice of cancellation to

.....  
(Name of purchaser)

at .....

(Physical address of purchaser's place of business)

.....  
(E-mail address of foreclosure consultant's place of business)

NOT LATER THAN .....

(Enter date and time of day)

I hereby cancel this transaction .....

(Date)

.....  
(Seller's signature)"

(c) The foreclosure purchaser shall provide the foreclosed homeowner with a copy of the contract and the attached notice of cancellation at the time the contract is executed by all parties.

(d) The five business days during which the foreclosed homeowner may cancel the

contract must not begin to run until all parties to the contract have executed the contract and the foreclosure purchaser has complied with this section.

#### 325N.15 WAIVER.

Any waiver of the provisions of sections 325N.10 to 325N.18 is void and unenforceable as contrary to public policy except a consumer may waive the five-day right to cancel provided in section 325N.13 if the property is subject to a foreclosure sale within the five business days, and the foreclosed homeowner agrees to waive his or her right to cancel in a handwritten statement signed by all parties holding title to the foreclosed property.

#### 325N.16 LIABILITY.

(a) Any provision in a contract which attempts or purports to require arbitration of any dispute arising under sections 325N.10 to 325N.18 is void at the option of the owner.

(b) This section applies to any contract entered into on or after August 1, 2004.

#### 325N.17 PROHIBITED PRACTICES.

A foreclosure purchaser shall not:

(a) enter into, or attempt to enter into, a foreclosure reconveyance with a foreclosed homeowner unless:

(1) the foreclosure purchaser verifies and can demonstrate that the foreclosed homeowner has a reasonable ability to pay for the subsequent conveyance of an interest back to the foreclosed homeowner. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to make the lease payments and purchase the property within the term of the option to purchase. There is a rebuttable presumption that a homeowner is reasonably able to pay for the subsequent conveyance if the owner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed 60 percent of the owner's monthly gross income. For the purposes of this section, "primary housing expenses" means the sum of payments for regular principal, interest, rent, utilities, hazard 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) the foreclosure purchaser and the foreclosed homeowner complete a closing for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed or mortgage from a foreclosed homeowner. For purposes of this section, "closing" means an in-person meeting to complete final documents incident to the sale of the real

property or creation of a mortgage on the real property conducted by a closing agent, as defined in section 82.55, who is not employed by or an affiliate of the foreclosure purchaser, or employed by such an affiliate, and who does not have a business or personal relationship with the foreclosure purchaser other than the provision of real estate settlement services;

(3) the foreclosure purchaser obtains the written consent of the foreclosed homeowner to a grant by the foreclosure purchaser of any interest in the property during such times as the foreclosed homeowner maintains any interest in the property; and

(4) the foreclosure purchaser complies with the requirements for disclosure, loan terms, and conduct in the federal Home Ownership Equity Protection Act, United States Code, title 15, section 1639, or its implementing regulation, Code of Federal Regulations, title 12, sections 226.31, 226.32, and 226.34, for any foreclosure reconveyance in which the foreclosed homeowner obtains a vendee interest in a contract for deed, regardless of whether the terms of the contract for deed meet the annual percentage rate or points and fees requirements for a covered loan in Code of Federal Regulations, title 12, sections 226.32 (a) and (b);

(b) fail to either:

(1) ensure that title to the subject dwelling has been reconveyed to the foreclosed homeowner; or

(2) make a payment to the foreclosed homeowner such that the foreclosed homeowner has received consideration in an amount of at least 82 percent of the fair market value of the property within 150 days of either the eviction or voluntary relinquishment of possession of the dwelling by the foreclosed homeowner. The foreclosure purchaser shall make a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make a payment, including providing written documentation of expenses, within this 150-day period. The accounting shall be on a form prescribed by the attorney general, in consultation with the commissioner of commerce, without being subject to the rulemaking procedures of chapter 14.

For purposes of this provision, the following applies:

(i) 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;

(ii) the time for determining the fair market value amount shall be determined in the foreclosure reconveyance contract as either at the time of the execution of the foreclosure reconveyance contract or at resale. 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 of the eviction or voluntary relinquishment of the property by the foreclosed homeowner. If the contract states that the fair market value

shall be determined at the time of resale, and the resale is not completed within 120 days of the eviction or voluntary relinquishment of the property by the foreclosed homeowner, the fair market value shall be determined by an appraisal conducted during this 120-day period and payment, if required, shall be made to the homeowner, but the fair market value shall be recalculated as the resale price on resale and an additional payment amount, if appropriate based on the resale price, shall be made to the foreclosed homeowner within 15 days of resale, and a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make additional payment, shall be made within 15 days of resale, including providing written documentation of expenses. The accounting shall be on a form prescribed by the attorney general, in consultation with the commissioner of commerce, without being subject to the rulemaking procedures of chapter 14;

(iii) "consideration" shall mean any payment or thing of value provided to the foreclosed homeowner, including unpaid rent or contract for deed payments owed by the foreclosed homeowner prior to the date of eviction or voluntary relinquishment of the property, reasonable costs paid to third parties necessary to complete the foreclosure reconveyance transaction, payment of money to satisfy a debt or legal obligation of the foreclosed homeowner, or the reasonable cost of repairs for damage to the dwelling caused by the foreclosed homeowner; or a penalty imposed by a court for the filing of a frivolous claim under section 325N.18, subdivision 6, but

(iv) "consideration" shall not include amounts imputed as a down payment or fee to the foreclosure purchaser, or a person acting in participation with the foreclosure purchaser, incident to a contract for deed, lease, or option to purchase entered into as part of the foreclosure reconveyance, except for reasonable costs paid to third parties necessary to complete the foreclosure reconveyance;

(c) enter into repurchase or lease terms as part of the subsequent conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct;

(d) represent, directly or indirectly, that:

(1) the foreclosure purchaser is acting as an advisor or a consultant, or in any other manner represents that the foreclosure purchaser is acting on behalf of the homeowner;

(2) the foreclosure purchaser has certification or licensure that the foreclosure purchaser does not have, or that the foreclosure purchaser is not a member of a licensed profession if that is untrue;

(3) the foreclosure purchaser is assisting the foreclosed homeowner to "save the house" or substantially similar phrase; or

(4) the foreclosure purchaser is assisting the foreclosed homeowner in preventing a

completed foreclosure if the result of the transaction is that the foreclosed homeowner will not complete a redemption of the property;

(e) make any other statements, directly or by implication, or engage in any other conduct that is false, deceptive, or misleading, or that has the likelihood to cause confusion or misunderstanding, including, but not limited to, statements regarding the value of the residence in foreclosure, the amount of proceeds the foreclosed homeowner will receive after a foreclosure sale, any contract term, or the foreclosed homeowner's rights or obligations incident to or arising out of the foreclosure reconveyance; or

(f) do any of the following until the time during which the foreclosed homeowner may cancel the transaction has fully elapsed:

(1) accept from any foreclosed homeowner an execution of, or induce any foreclosed homeowner to execute, any instrument of conveyance of any interest in the residence in foreclosure;

(2) record with the county recorder or file with the registrar of titles any document, including but not limited to, any instrument of conveyance, signed by the foreclosed homeowner;

(3) transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any third party, provided no grant of any interest or encumbrance is defeated or affected as against a bona fide purchaser or encumbrance for value and without notice of a violation of sections 325N.10 to 325N.18, and knowledge on the part of any such person or entity that the property was "residential real property in foreclosure" does not constitute notice of a violation of sections 325N.10 to 325N.18. This section does not abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the residential real property in foreclosure; or

(4) pay the foreclosed homeowner any consideration.

#### 325N.18 ENFORCEMENT.

Subdivision 1. Remedies. A violation of sections 325N.10 to 325N.17 is considered to be a violation of section 325F.69, and all the remedies of section 8.31 are available for such an action. A private right of action under section 8.31 by a foreclosed homeowner is in the public interest.

Subd. 1a. Limitation. Notwithstanding any other provision of this section, no action may

be brought on the basis of a violation of sections 325N.10 to 325N.18, except by an owner against whom the violation was committed or by the attorney general. This limitation does not apply to administrative action by the commissioner of commerce.

Subd. 2. Exemplary damages. In a private right of action under section 8.31 for a violation of section 325N.17, the court may award exemplary damages of any amount. In the event the court determines that an award of exemplary damages is appropriate, the amount of exemplary damages awarded shall not be less than 1-1/2 times the foreclosed homeowner's actual damages. Any claim for exemplary damages brought pursuant to this section must be commenced within four years after the date of the alleged violation.

Subd. 3. Remedies cumulative. The remedies provided in this section are cumulative and do not restrict any remedy that is otherwise available. The provisions of sections 325N.10 to 325N.18 are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law. No action under this section shall affect the rights in the foreclosed property held by a good faith purchaser for value under sections 507.34, 508.48, 508A.48, or other applicable law.

Subd. 4. Criminal penalty. Any foreclosure purchaser who engages in any practice which would operate as a fraud or deceit upon a foreclosed homeowner may, upon conviction, be fined not more than \$50,000 or imprisoned not more than one year, or both. Prosecution or conviction for any one of the violations does not bar prosecution or conviction for any other offenses.

Subd. 5. Failure of transaction. Failure of the parties to complete the reconveyance transaction, in the absence of additional misconduct, shall not subject a foreclosure purchaser to the criminal penalties under this section or section 325N.07.

Subd. 6. Stay of eviction action. (a) A court hearing an eviction action against a foreclosed homeowner must issue an automatic stay, without imposition of a bond, if a defendant makes a prima facie showing that the defendant:

(1) has (i) commenced an action concerning a foreclosure reconveyance; (ii) asserts a defense under section 504B.121 that the property that is the subject of the eviction action is also the subject of a foreclosure reconveyance in violation of sections 325N.10 to 325N.17; or (iii) asserts a claim or affirmative defense of fraud, false pretense, false promise, misrepresentation, misleading statement, or deceptive practice, in connection with a foreclosure reconveyance;

(2) owned the foreclosed residence;

(3) conveyed title to the foreclosed residence to a third party upon a promise that the



defendant would be allowed to occupy the foreclosed residence or other real property in which the foreclosure purchaser or a person acting in participation with the foreclosure purchaser has an interest and that the foreclosed residence or other real property would be the subject of a foreclosure reconveyance; and

(4) since the conveyance, has continuously occupied the foreclosed residence or other real property in which the foreclosure purchaser or a person acting in participation with the foreclosure purchaser has an interest. For purposes of this subdivision, notarized affidavits are acceptable means of proof to meet the defendant's burden. Upon good cause shown, a defendant may request and the court may grant up to an additional two weeks to produce evidence required to make the prima facie showing.

(b) A court may award to a plaintiff a \$500 penalty upon a showing that the defendant filed a frivolous claim or asserted a frivolous defense.

(c) The automatic stay expires upon the later of:

(1) the failure of the foreclosed homeowner to commence an action in a court of competent jurisdiction in connection with a foreclosed reconveyance transaction within 90 days after the issuance of the stay; or

(2) the issuance of an order lifting the stay by a court hearing claims related to the foreclosure reconveyance.

(d) If, after the expiration of the stay or an order lifting the stay, a court finds that the defendant's claim or defense was asserted in bad faith and wholly without merit, the court may impose a sanction against the defendant of \$500 plus reasonable attorney fees.

Source: <https://www.revisor.leg.state.mn.us/statutes/?id=325N&format=pdf>

**Missouri Revised Statutes, Merchandising Practices, sec. 407.935.  
M.O. Rev. Stat. § 407.935-407.943.**

Definitions.

407.935. As used in sections 407.935 to 407.943, the following words and phrases shall mean:

(1) "Contract", any agreement, or any term thereof, between a foreclosure consultant and an owner for the rendition of any service as defined in subdivision (6) of this section;

(2) "Foreclosure consultant":

(a) Includes any person who makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will do in any manner any of the following:

a. Stop or postpone the foreclosure sale;

b. Obtain any forbearance from any beneficiary or mortgagee;

c. Assist the owner to exercise any right of redemption;

d. Obtain any extension of the period within which the owner may reinstate his obligation;

e. Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained in any such deed of trust or mortgage;

f. Assist the owner in obtaining a loan or advance of funds;

g. Avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale;

h. Save the owner's residence from foreclosure;

(b) A foreclosure consultant does not include any of the following:

a. A person licensed to practice law in this state when the person renders service in the course of his practice as an attorney at law;

b. A person licensed as a real estate broker pursuant to chapter 339 when the person makes a direct loan or when the person:

(i) Engages in acts, the performance of which require licensure under that chapter;

(ii) Is entitled to compensation for the act performed in connection with the sale of a residence in foreclosure or with the arranging of a loan secured by a lien on a residence in foreclosure;

(iii) Does not claim, demand, charge, collect, or receive any compensation until the acts have been performed or cannot be performed because of the failure of the owner to accept an offer from a purchaser or lender ready, willing, and able to purchase a residence in foreclosure or make a loan secured by a lien on a residence in foreclosure on the terms prescribed in a listing or a loan agreement; and

(iv) Does not acquire any interest in a residence in foreclosure directly from an owner for whom the person agreed to perform the acts other than as a trustee or beneficiary under a deed of trust given to secure the payment of a loan or that compensation;

(v) For the purposes of this subdivision, a "direct loan" means a loan of a real estate broker's own funds secured by a deed of trust on the residence in foreclosure, which

loan and deed of trust the broker in good faith attempts to assign to a lender, for an amount at least sufficient to cure all of the defaults on obligations which are then subject to a notice of default, provided that: if a foreclosure sale is conducted with respect to the deed of trust, the person conducting the foreclosure sale has no interest in the residence in foreclosure or in the outcome of the sale and is not owned, controlled, or managed by the lending broker; the lending broker does not acquire any interest in the residence in foreclosure directly from the owner other than as a beneficiary under the deed of trust; and the loan is not made for the purpose or effect of avoiding or evading the provisions of this act\*;

c. A person or his 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 United States or this state to provide services;

d. A person who holds or is owed an obligation secured by a lien on any residence in foreclosure when the person performs services in connection with the obligation or lien;

e. Any person licensed to make loans pursuant to sections 367.100 to 367.215, subject to the authority of the director of finance to terminate this exclusion, if after notice and hearing, any such licensee is found to have engaged in practices described in section 407.938;

f. Any person or entity doing business under any law of this state, or of the United States relating to banks, trust companies, savings and loan associations, credit unions, or any person or entity authorized under the laws of this state to conduct a title or escrow business, or a mortgagee which is a United States department of housing and urban development approved mortgagee and any subsidiary or affiliate of the above, and any agent or employee of the above while engaged in business of these persons or entities;

(3) "Owner", the record owner of any residence in foreclosure;

(4) "Person", any individual, partnership, corporation, association or other group, however organized;

(5) "Residence in foreclosure", any real property improved by a residential structure used or intended to be used as a residence by not more than four families, and occupied by the owner, which is the subject of any attempt by any person to enforce an obligation, the performance of which is secured by a mortgage or deed of trust encumbering the real property;

(6) "Service" includes, but is not limited to, any of the following:

(a) Debt, budget, or financial counseling of any type;

(b) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure;

(c) Contacting creditors on behalf of an owner of a residence in foreclosure;

(d) Arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure may cure his default and reinstate his obligation;

(e) Arranging or attempting to arrange for any delay or postponement of the time of sale of the residence in foreclosure;

- (f) Advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court;
- (g) Giving any advice, explanation or instruction to an owner of a residence in foreclosure which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a residence in foreclosure pursuant to a power of sale contained in any deed of trust.

407.937. 1. In addition to any other right under law to rescind a contract, an owner has the right to cancel a contract until midnight of the third business day after the day on which the owner signs a contract which complies with section 407.938.

2. The term "third business day" shall exclude all intervening Saturdays, Sundays and national and state holidays.

3. Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

4. Notice of cancellation given by the owner need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

Contract, form of--notice required, contents--contract to be accompanied by notice of cancellation, contents.

407.938. 1. Every contract shall be in writing and shall fully disclose the exact nature of the foreclosure consultant's services and the total amount and terms of compensation.

2. The following notice, printed in at least fourteen-point boldface type and completed with the name of the foreclosure consultant, shall be printed immediately above the statement required by subsection 3 of this section: **NOTICE REQUIRED BY MISSOURI LAW** ..... (Enter name of foreclosure consultant) or anyone working for him or her cannot:

- (1) Take any money from you or ask you for money until ..... (Enter name of foreclosure consultant) has completely finished doing everything he or she said he or she would do; and
- (2) Ask you to sign or have you sign any lien, mortgage, deed of trust, or deed.

3. The contract shall be written in the same language as principally used by the foreclosure consultant to describe his services or to negotiate the contract, shall be dated and signed by the owner, and shall contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least ten-point bold type, as follows:

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.

4. The contract shall contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

- (1) The name and address of the foreclosure consultant to which the notice or cancellation is to be mailed;
- (2) The date the owner signed the contract.

5. The contract shall be accompanied by a completed form in duplicate, captioned "notice of cancellation", which shall be attached to the contract, shall be easily detachable, and shall contain in type of at least ten-point the following statement written in the same language as used in the contract: NOTICE OF CANCELLATION

..... (Enter date of transaction.) ..... (Date) You may cancel this transaction, without any penalty or obligation, within three business days from the above date. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to ..... (Enter name of foreclosure consultant) at ..... (Enter address of foreclosure consultant's place of business) NOT LATER THAN MIDNIGHT OF ..... (Enter date) I hereby cancel this transaction on ..... (Date) ..... (Owner's signature)

6. The foreclosure consultant shall provide the owner with a copy of the contract and the attached notice of cancellation.

Foreclosure consultants, unlawful acts--penalty.

407.940. 1. It shall be unlawful for a foreclosure consultant to knowingly:

- (1) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented he would perform;
- (2) Claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason which exceeds ten percent per annum of the amount of any loan which the foreclosure consultant may make to the owner;
- (3) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security shall be void and unenforceable;
- (4) Receive any consideration from any third party in connection with services rendered to an owner unless such consideration is fully disclosed to the owner;
- (5) Acquire any interest in a residence in foreclosure from an owner with whom the foreclosure consultant has contracted. Any interest acquired in violation of this subdivision shall be voidable, provided that nothing herein shall affect or defeat the title of a bona fide purchaser or encumberer for value and without notice of a violation of this section. Knowledge that the property was a "residence in foreclosure" shall not constitute notice of a violation of this section. This subdivision shall not be deemed to abrogate any duty of inquiry which exists as to rights or interests of persons in possession of a residence in foreclosure;
- (6) Take any power of attorney from an owner for any purpose, except to inspect documents as provided by law;

(7) Induce or attempt to induce any owner to enter a contract which does not comply in all respects with sections 407.935 and 407.937.

2. Any violation of any of the acts enumerated in subsection 1 of this section shall be a class A misdemeanor.

Waiver, void--penalty.

407.941. Any waiver by an owner of the provisions of sections 407.935 to 407.943 shall be deemed void and unenforceable as contrary to public policy. Any attempt by a foreclosure consultant to induce an owner to waive his rights shall be deemed a violation of subdivision (7) of subsection 1 of section 407.940.

Action against foreclosure consultant authorized--exemplary damages authorized--remedies not exclusive.

407.943. 1. An owner may bring an action against a foreclosure consultant for any violation of sections 407.935 to 407.943. Judgment shall be entered for actual damages, reasonable attorneys' fees and costs, and appropriate equitable relief. The court also may, in its discretion, award exemplary damages equivalent to at least twice the compensation received by the foreclosure consultant in violation of section 407.940, in addition to any other award of actual damages.

2. The rights and remedies provided in subsection 1 of this section are cumulative to, and not a limitation of, any other rights and remedies provided by law. Any action brought pursuant to this section shall be commenced within three years from the date of the alleged violation.

**Nebraska Revised Statutes, Foreclosure Protection Act, sec. 76-2701-76-2728.  
N.R.S. §§76-2701 to 76-2728.**

76-2701: Act, how cited.

Sections 76-2701 to 76-2728 shall be known and may be cited as the Nebraska Foreclosure Protection Act.

76-2702: Legislative findings and intent.

The Legislature hereby finds, determines, and declares that home ownership and the accumulation of equity in one's home provide significant social and economic benefits to the state and its citizens. Unfortunately, too many homeowners in financial distress, especially the poor, elderly, and financially unsophisticated, are vulnerable to a variety of deceptive or unconscionable business practices designed to dispossess them or otherwise strip the equity from their homes. There is a compelling need to curtail and prevent the most deceptive and unconscionable of these business practices, provide each homeowner with information necessary to make an informed and intelligent decision regarding transactions with certain foreclosure consultants and equity purchasers, provide certain minimum requirements for contracts between such parties, including statutory rights to cancel such contracts, and ensure and foster fair dealing in the sale and purchase of homes in foreclosure. Therefore, it is the intent of the Legislature that all violations of the Nebraska Foreclosure Protection Act have a significant public impact and that the terms of the act be liberally construed to achieve these purposes.

76-2703: Definitions, where found.

For purposes of the Nebraska Foreclosure Protection Act, unless the context otherwise requires, the definitions found in sections 76-2704 to 76-2712 apply.

76-2704: Associate, defined.

Associate means a partner, a subsidiary, an affiliate, an agent, or any other person working in association with a foreclosure consultant or an equity purchaser. Associate does not include a person who is excluded from the definition of an equity purchaser or a foreclosure consultant.

76-2705: Equity purchase contract, defined.

Equity purchase contract means an agreement between an equity purchaser and a homeowner pertaining to the acquisition of title to the homeowner's personal residence.

76-2706: Equity purchaser, defined.

Equity purchaser means a person who, in the course of the person's business, vocation, or occupation, acquires title to a residence in foreclosure. Equity purchaser does not include a person who acquires such title:

(1) For the purpose of using such property as his or her personal residence for at least one year;

(2) By a deed in lieu of foreclosure to the holder of an evidence of debt, or an associate of the holder of an evidence of debt, of a consensual lien or encumbrance of record, if such consensual lien or encumbrance is recorded in the register of deeds office of the county where the residence in foreclosure is located prior to a foreclosure sale;

(3) By a deed from any trustee, sheriff, or other person appointed by a court as a result of a foreclosure sale;

(4) At a sale of property authorized by statute;

(5) By order or judgment of any court;

(6) From the person's spouse, relative, or relative of a spouse, by the half or whole blood or by adoption, or from a guardian, conservator, or personal representative of such person; or

(7) While performing services as a part of a person's normal business activities under any law of this state or the United States that regulates banks, trust companies, savings and loan associations, credit unions, insurance companies, title insurers, insurance producers, or escrow companies authorized to conduct business in this state, an affiliate or subsidiary of such person, or an employee or agent acting on behalf of such person.

76-2707: Evidence of debt, defined.

Evidence of debt means a writing that evidences a promise to pay or a right to the payment of a monetary obligation such as a promissory note; bond; negotiable instrument; loan, credit, or similar agreement; or monetary judgment entered by a court of competent jurisdiction.

76-2708: Foreclosure consultant, defined.

(1) Foreclosure consultant means a person who:

(a) Does not, directly or through an associate, take or acquire any interest in or title to the residence in foreclosure; and

(b) In the course of such person's business, vocation, or occupation, makes a solicitation, representation, or offer to a homeowner to perform, in exchange for



compensation from the homeowner or from the proceeds of any loan or advance of funds, a service that the person represents will do any of the following:

- (i) Stop or postpone a foreclosure sale;
- (ii) Obtain a forbearance from a beneficiary under a deed of trust, mortgage, or other lien;
- (iii) Assist the homeowner in exercising a right to cure a default;
- (iv) Obtain an extension of the period within which the homeowner may cure a default;
- (v) Obtain a waiver of an acceleration clause contained in an evidence of debt secured by a deed of trust, mortgage, or other lien on a residence in foreclosure or contained in such deed of trust, mortgage, or other lien;
- (vi) Assist the homeowner to obtain a loan or an advance of funds;
- (vii) Avoid or reduce the impairment of the homeowner's credit resulting from the recording of a notice of election and demand for sale, commencement of a judicial foreclosure action, any foreclosure sale or the granting of a deed in lieu of foreclosure, or any late payment or other failure to pay or perform under the evidence of debt, the deed of trust, or other lien securing such evidence of debt;
- (viii) In any way delay, hinder, or prevent the foreclosure upon the homeowner's residence; or
- (ix) Assist the homeowner in obtaining from the beneficiary, mortgagee, or grantee of the lien in foreclosure, or from counsel for such beneficiary, mortgagee, or grantee, the remaining or excess proceeds from the foreclosure sale of the residence in foreclosure.

(2) Foreclosure consultant does not include:

- (a) A person licensed to practice law in this state while performing any activity related to the person's attorney-client relationship with a homeowner or any activity related to the person's attorney-client relationship with the beneficiary, mortgagee, grantee, or holder of any lien being enforced by way of foreclosure;
- (b) A holder or servicer of an evidence of debt or the attorney for the holder or servicer of an evidence of debt secured by a deed of trust or other lien on any residence in foreclosure Revised 12/12 while the person performs services in connection with the evidence of debt, lien, deed of trust, or other lien securing such debt;
- (c) A person doing business under any law of this state or the United States, which law regulates banks, trust companies, savings and loan associations, credit unions, insurance companies, title insurers, insurance producers, or escrow companies

authorized to conduct business in the state, while the person performs services as part of the person's normal business activities, an affiliate or subsidiary of any of such entities, or an employee or agent acting on behalf of any of such entities;

(d) A person originating or closing a loan in a person's normal course of business, if, as to that loan:

(i) The loan is subject to the requirements of the federal Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 et seq., as the act existed on July 18, 2008; or

(ii) With respect to any junior mortgage or home equity line of credit, the loan is subordinate to and closed simultaneously with a qualified first mortgage loan under subdivision (2)(d)(i) of this section or is initially payable on the face of the note or contract to an entity included in subdivision (2)(c) of this section;

(e) A judgment creditor of the homeowner;

(f) A title insurance company or title insurance agent authorized to conduct business in this state while performing title insurance and settlement services;

(g) A person licensed as a real estate broker, associate broker, or real estate salesperson pursuant to the Nebraska Real Estate License Act while the person engages in any activity for which the person is licensed; or

(h) A nonprofit organization that solely offers counseling or advice to homeowners in foreclosure or loan default, unless the organization is an associate of the foreclosure consultant.

76-2709: Foreclosure consulting contract, defined.

Foreclosure consulting contract means any agreement between a foreclosure consultant and a homeowner.

76-2710: Holder of evidence of debt, defined.

Holder of evidence of debt means the person in actual possession of or otherwise entitled to enforce an evidence of debt, except that holder of evidence of debt does not include a person acting as a nominee solely for the purpose of holding the evidence of debt or deed of trust as an electronic registry without any authority to enforce the evidence of debt or deed of trust. The following persons are presumed to be the holder of evidence of debt:

(1) The person who is the obligee of and who is in possession of an original evidence of debt;

(2) The person in possession of an original evidence of debt together with the proper

endorsement or assignment thereof to such person;

(3) The person in possession of a negotiable instrument evidencing a debt which has been duly negotiated to such person or to bearer or indorsed in blank; or

(4) The person in possession of an evidence of debt with authority, which may be granted by the original evidence of debt or deed of trust, to enforce the evidence of debt as an agent, a nominee, or a trustee or in a similar capacity for the obligee of the evidence of debt.

76-2711: Homeowner, defined.

Homeowner means the owner of a residence in foreclosure, including a vendee under a contract for deed to real property as defined in section 45-1002.

76-2712: Residence in foreclosure, defined.

Residence in foreclosure means a residence or dwelling that is occupied as the homeowner's principal place of residence and against which any type of foreclosure action, including, but not limited to, the filing of a notice of default of a deed of trust or the filing of a lawsuit to foreclose a mortgage or other lien, has been commenced.

76-2713: Foreclosure consulting contract; form; notice required; right to cancel; notice.

(1) A foreclosure consulting contract shall be in writing and provided to and retained by the homeowner, with changes, alterations, or modifications, for review at least twenty-four hours before it is signed by the homeowner.

(2) A foreclosure consulting contract shall be printed in at least twelve-point type and shall include the name, address, facsimile number, and email address of the foreclosure consultant to which a notice of cancellation may be delivered and the date the homeowner signed the contract.

(3) A foreclosure consulting contract shall fully disclose the exact nature of the foreclosure consulting services to be provided and the total amount and terms of any compensation to be received by the foreclosure consultant or associate.

(4) A foreclosure consulting contract shall be dated and personally signed, with each page being initialed by each homeowner of the residence in foreclosure and the foreclosure consultant, and shall be acknowledged by a notary public in the presence of the homeowner at the time the contract is signed by the homeowner.

(5) A foreclosure consulting contract shall contain the following notice, which shall be

printed in at least fourteen-point, boldface type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the homeowner's signature:

NOTICE REQUIRED BY NEBRASKA LAW

..... (NAME OF FORECLOSURE CONSULTANT) OR (HIS/HER/ITS)

ASSOCIATE CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN ANY DOCUMENT THAT TRANSFERS ANY INTEREST IN YOUR HOME OR PROPERTY TO (HIM/HER/IT) OR (HIS/HER/ITS) ASSOCIATE.

..... (NAME OF FORECLOSURE CONSULTANT) OR (HIS/HER/ITS)

ASSOCIATE CANNOT GUARANTEE YOU THAT THEY WILL BE ABLE TO REFINANCE YOUR HOME OR ARRANGE FOR YOU TO KEEP YOUR HOME. YOU MAY, AT ANY TIME, CANCEL THIS CONTRACT, WITHOUT PENALTY OF ANY KIND.

IF YOU WANT TO CANCEL THIS CONTRACT, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS NOTICE OF CANCELLATION, OR ANY OTHER WRITTEN NOTICE, INDICATING YOUR INTENT TO CANCEL TO ..... (NAME OF FORECLOSURE CONSULTANT) AT ..... (ADDRESS OF FORECLOSURE CONSULTANT, INCLUDING FACSIMILE NUMBER AND EMAIL ADDRESS).

AS PART OF ANY CANCELLATION, YOU (THE HOMEOWNER) MUST REPAY ANY MONEY ACTUALLY SPENT ON YOUR BEHALF BY ..... (NAME OF FORECLOSURE CONSULTANT) PRIOR TO RECEIPT OF THIS NOTICE AND, AS A RESULT OF THIS AGREEMENT, WITHIN SIXTY DAYS, ALONG WITH INTEREST AT THE PRIME RATE PUBLISHED BY THE FEDERAL RESERVE BOARD PLUS TWO PERCENTAGE POINTS, WITH THE TOTAL INTEREST RATE NOT TO

EXCEED EIGHT PERCENT PER YEAR.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY OR A HOUSING COUNSELOR APPROVED BY THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT BEFORE SIGNING.

(6) A completed form in duplicate, captioned NOTICE OF CANCELLATION, shall accompany a foreclosure consulting contract. The notice of cancellation shall:

- (a) Be on a separate sheet of paper attached to the contract;
- (b) Be easily detachable; and
- (c) Contain the following statement, printed in at least fourteen-point type:

NOTICE OF CANCELLATION

..... (DATE OF CONTRACT)

TO: (NAME OF FORECLOSURE CONSULTANT)

(ADDRESS OF FORECLOSURE CONSULTANT, INCLUDING FACSIMILE NUMBER AND EMAIL ADDRESS)

I HEREBY CANCEL THIS CONTRACT.

..... (DATE)

..... (HOMEOWNER'S SIGNATURE)

(7) A foreclosure consultant shall provide to the homeowner a signed, dated, and acknowledged copy of the foreclosure consulting contract and the attached notice of cancellation immediately upon execution of the contract.

(8) The time during which the homeowner may cancel a foreclosure consulting contract does not begin to run until the foreclosure consultant has complied with this section.

76-2714: Homeowner; right to cancel foreclosure consulting contract; notice; when effective; repayment of funds.

(1) In addition to any right of rescission available under state or federal law, a homeowner has the right to cancel a foreclosure consulting contract at any time.

(2) Cancellation occurs when a homeowner gives written notice of cancellation of the foreclosure consulting contract to the foreclosure consultant at the address specified in the contract or through any facsimile number or email address identified in the contract or other materials provided to the homeowner by the foreclosure consultant.

(3) Notice of cancellation, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid.

(4) Notice of cancellation need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to cancel the foreclosure consulting contract.

(5) As part of the cancellation of a foreclosure consulting contract, the homeowner shall repay, within sixty days after the date of cancellation, all funds paid or advanced in good faith prior to the receipt of notice of cancellation by the foreclosure consultant or his or her associate under the terms of the foreclosure consulting contract, together with interest at the prime rate published by the Federal Reserve Board plus two percentage points, with the total interest rate not to exceed eight percent per year, from the date of expenditure until repaid by the homeowner.

(6) Except as provided in subsection (5) of this section, the right to cancel shall not be conditioned on the repayment of any funds.

76-2715: Foreclosure consulting contract; provisions prohibited.

A provision in a foreclosure consulting contract is void as against public policy if the provision attempts or purports to:

(1) Waive any of the rights specified in sections 76-2713 to 76-2718 or the right to a jury trial;

(2) Consent to jurisdiction for litigation or choice of law in a state other than Nebraska;

(3) Consent to venue in a county other than the county in which the residence in foreclosure is located; or

(4) Impose any costs or fees greater than the actual costs and fees.

76-2716: Foreclosure consultant; prohibited acts.

A foreclosure consultant shall not:

(1) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;

(2) Claim, demand, charge, collect, or receive any interest or any other compensation for a loan that the foreclosure consultant makes to the homeowner that exceeds the prime rate published by the Federal Reserve Board at the time of any loan plus two percentage points, with the total interest rate not to exceed eight percent per year;

(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 a third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner;

(5) Acquire an interest, directly, indirectly, or through an associate, in the real or personal property of a homeowner with whom the foreclosure consultant has contracted;

(6) Obtain a power of attorney from a homeowner for any purpose other than to inspect documents as provided by law; or

(7) Induce or attempt to induce a homeowner to enter into a foreclosure consulting contract that does not comply in all respects with sections 76-2713 to 76-2718.

76-2717: Foreclosure consultant or associate; unconscionable transaction or contract; review by court.

(1) A foreclosure consultant or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction. (2)(a) If a court, as a matter of law, finds a foreclosure consulting contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.

(b) When it is claimed or appears to the court that a foreclosure consulting contract or any clause of such contract may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.

(c) In order to support a finding of unconscionability, there must be evidence of an unreasonable inequality of bargaining power or other circumstances in which there is an

absence of meaningful choice for one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the foreclosure consultant or associate.

76-2718: Foreclosure consulting contract and notices; English required; translation into other language.

A foreclosure consulting contract, and all notices of cancellation provided for therein, shall be written in English and shall be accompanied by a written translation from English into any other language principally spoken by the homeowner, certified by the person making the translation as a true and correct translation of the English version. The translated version shall be presumed to have equal status and credibility as the English version.

76-2719: Equity purchase contract; form.

Every equity purchase contract shall be written in at least twelve-point, boldface type and fully completed, signed, and dated by the homeowner and equity purchaser prior to the execution of any instrument quitclaiming, assigning, transferring, conveying, or encumbering an interest in the residence in foreclosure.

76-2720: Equity purchase contract; contents; notice.

(1) Every equity purchase contract shall contain the entire agreement of the parties and shall include the following:

(a) The name, business address, telephone number, facsimile number, and email address of the equity purchaser;

(b) The street address and full legal description of the residence in foreclosure;

(c) Clear and conspicuous disclosure of any financial or legal obligations of the homeowner that will be assumed by the equity purchaser. If the equity purchaser will not be assuming any financial or legal obligations of the homeowner, the equity purchase contract shall so state;

(d) The total consideration to be paid by the equity purchaser in connection with or incident to the acquisition by the equity purchaser of the residence in foreclosure;

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

(f) The date and time when possession of the residence in foreclosure is to be transferred to the equity purchaser;



- (g) The terms of any rental agreement or lease;
- (h) The specifications of any option or right to repurchase the residence in foreclosure, including the specific amounts of any escrow deposit, downpayment, purchase price, closing costs, commissions, or other fees or costs;
- (i) A notice of cancellation as provided in section 76-2722; and
- (j) The following notice, in at least fourteen-point, boldface type, completed with the name of the equity purchaser, immediately above the statement required by section 76-2722:

**NOTICE REQUIRED BY NEBRASKA LAW**

**UNTIL YOUR RIGHT TO CANCEL THIS CONTRACT HAS ENDED, .....**

**(NAME) OR ANYONE WORKING FOR ..... (NAME) CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN ANY DEED OR ANY OTHER DOCUMENT.**

(2) The equity purchase contract required by this section survives delivery of any instrument of conveyance of the residence in foreclosure, but does not have any effect on persons other than the parties to the contract or affect title to the residence in foreclosure.

76-2721: Homeowner; right to cancel equity purchase contract; limitation; when effective.

(1)(a) In addition to any right of rescission available under state or federal law, a homeowner has the right to cancel an equity purchase contract until midnight of the third business day following the day on which the homeowner signs a contract that complies with the Nebraska Foreclosure Protection Act or until noon on the last business day before the foreclosure sale of the residence in foreclosure, whichever occurs first.

(b) There shall be no right to cancel under the act with regard to any equity purchase contract executed on or after noon of the last business day before the foreclosure sale of the residence in foreclosure, if the homeowner first agrees to enter into an equity purchase contract with the equity purchaser on or after noon of the last business day before the foreclosure sale.

(2) Cancellation occurs when a homeowner personally delivers written notice of cancellation to the address specified in the equity purchase contract or upon deposit of such notice in the United States mail, properly addressed, with postage prepaid.

(3) A notice of cancellation given by a homeowner need not take the particular form as

provided with the equity purchase contract and, however expressed, is effective if it indicates the intention of the homeowner not to be bound by the equity purchase contract.

(4) In the absence of any written notice of cancellation from a homeowner, the execution by the homeowner of a deed or other instrument of conveyance of an interest in the residence in foreclosure to the equity purchaser after the expiration of the rescission period creates a rebuttable presumption that the homeowner did not cancel the equity purchase contract.

76-2722: Equity purchase contract; Notice of Cancellation; form; copy provided to homeowner.

(1)(a) The equity purchase contract shall contain, as the last provision before the space reserved for the homeowner's signature, a conspicuous statement in at least twelve-point, boldface type, as follows:

YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOUSE  
WITHOUT ANY PENALTY OR OBLIGATION AT ANY TIME BEFORE .....  
(DATE AND TIME OF DAY). SEE THE ATTACHED NOTICE OF CANCELLATION  
FORM FOR AN EXPLANATION OF THIS RIGHT.

(b) The equity purchaser shall accurately specify, within the equity purchase contract, the date and time of day on which the cancellation right ends.

(c) If no right to cancel the equity purchase contract exists under the Nebraska Foreclosure Protection Act as set forth in subdivision (1)(b) of section 76-2721, the equity purchase contract shall conspicuously state that no such cancellation right exists.

(2) The equity purchase contract shall be accompanied by duplicate completed forms, captioned Notice of Cancellation in at least twelve-point, boldface type if the equity purchase contract is printed or in capital letters if the equity purchase contract is typed, followed by a space in which the equity purchaser shall enter the date on which the homeowner executed the equity purchase contract. Such form shall:

(a) Be attached to the equity purchase contract;

(b) Be easily detachable; and

(c) Contain the following statement, in at least ten-point type if the equity purchase contract is printed or in capital letters if the contract is typed:

NOTICE OF CANCELLATION

..... (ENTER DATE EQUITY PURCHASE CONTRACT WAS SIGNED). YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOUSE, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE ..... (ENTER DATE AND TIME OF DAY). TO CANCEL THIS TRANSACTION, PERSONALLY DELIVER A SIGNED AND DATED COPY OF THIS NOTICE OF CANCELLATION IN THE UNITED STATES MAIL, POSTAGE PREPAID, TO ....., (NAME OF PURCHASER) AT ..... (STREET ADDRESS OF PURCHASER'S PLACE OF BUSINESS) NOT LATER THAN ..... (ENTER DATE AND TIME OF DAY). I HEREBY CANCEL THIS TRANSACTION

..... (DATE)

..... (SELLER'S SIGNATURE).

(3) The equity purchaser shall provide the homeowner with a copy of the equity purchase contract and the attached notice of cancellation.

(4) The time during which the homeowner may cancel the equity purchase contract does not begin to run until the equity purchaser has complied with this section.

76-2723: Option to repurchase; conditions.

A transaction in which a homeowner purports to grant a residence in foreclosure to an equity purchaser by an instrument that appears to be an absolute conveyance and in which an option to repurchase is reserved to the homeowner or is given by the equity purchaser to the homeowner shall be permitted only where all of the following conditions have been met:

(1) The reconveyance contract complies in all respects with section 76-2720;

(2) The reconveyance contract provides the homeowner with a nonwaivable, thirty-day right to cure any default of the reconveyance contract and specifies that the homeowner may exercise this right to cure on at least three separate occasions during the term of such reconveyance contract;

(3) The equity purchaser fully assumes or discharges the lien in foreclosure as well as any prior liens that will not be extinguished by the foreclosure, which assumption or

discharge shall be accomplished without a violation of the terms and conditions of the liens being assumed or discharged;

(4) The equity purchaser verifies and can demonstrate that the homeowner has or will have a reasonable ability to make the lease payments and to repurchase the residence in foreclosure within the term of the option to repurchase under the reconveyance contract. For purposes of this section, there is a rebuttable presumption that the homeowner has a reasonable ability to make lease payments and to repurchase the residence in foreclosure if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt do not exceed sixty percent of the homeowner's monthly gross income; and

(5) The price the homeowner must pay to exercise the option to repurchase the residence in foreclosure is not unconscionable. Without limitation on available claims under section 76-2726, a repurchase price exceeding twenty-five percent of the price at which the equity purchaser acquired the residence in foreclosure creates a rebuttable presumption that the reconveyance contract is unconscionable. The acquisition price paid by the equity purchaser may include any actual costs incurred by the equity purchaser in acquiring the residence in foreclosure, including repairs and capital improvements, and may include below market rent discounts. The equity purchaser shall provide the homeowner with documentation proving such costs and below market rent discounts prior to the homeowner's exercise of the option to purchase.

76-2724: Equity purchase contract; provisions prohibited.

A provision in an equity purchase contract between an equity purchaser and a homeowner is void as against public policy if it attempts or purports to:

(1) Waive any of the rights specified in sections 76-2719 to 76-2727 or the right to a jury trial;

(2) Consent to jurisdiction for litigation or choice of law in a state other than Nebraska;

(3) Consent to venue in a county other than the county in which the residence in foreclosure is located; or

(4) Impose any costs or fees greater than the actual costs and fees.

76-2725: Equity purchaser; duties; prohibited acts.

(1) The equity purchase contract provisions required by sections 76-2719 to 76-2724 shall be provided and completed in conformity with such sections by the equity purchaser.

(2) Until the time within which the homeowner may cancel the transaction has fully elapsed, the equity purchaser shall not do any of the following:

(a) Accept from a homeowner an execution of, or induce a homeowner to execute, an instrument of conveyance of any interest in the residence in foreclosure;

(b) Record with the register of deeds any document, including, but not limited to, the equity purchase contract, or any lease, lien, or instrument of conveyance that has been signed by the homeowner;

(c) Transfer or encumber or purport to transfer or encumber an interest in the residence in foreclosure to a third party; or

(d) Pay the homeowner any consideration.

(3) Within ten days following receipt of a notice of cancellation given in accordance with sections 76-2721 and 76-2722, the equity purchaser shall return without condition the original equity purchase contract and any other documents signed by the homeowner.

(4) An equity purchaser shall not make any untrue or misleading statements of material fact regarding the value of the residence in foreclosure, the amount of proceeds the homeowner will receive after a foreclosure sale, any equity purchase contract term, the homeowner's rights or obligations incident to or arising out of the sale transaction, or the nature of any document that the equity purchaser induces the homeowner to sign or any other untrue or misleading statement concerning the sale of the residence in foreclosure to the equity purchaser.

76-2726: Equity purchaser or associate; unconscionable transaction or contract; review by court.

(1) An equity purchaser or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.

(2)(a) If a court, as a matter of law, finds an equity purchase contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the equity purchase contract, enforce the remainder of the equity purchase contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.

(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.

(c) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the equity purchaser or associate such as that which results from an unreasonable inequality of bargaining power or under other circumstances in which there is an absence of meaningful choice for one of the parties,

together with contract terms that are, under standard industry practices, unreasonably favorable to the equity purchaser or associate.

76-2727: Equity purchase contract and related documents and instruments; English required; translation into other language.

Any equity purchase contract, rental agreement, lease, or option or right to repurchase and any notice, conveyance, lien, encumbrance, consent, or other document or instrument signed by a homeowner shall be written in English and shall be accompanied by a written translation from English into any other language principally spoken by the homeowner, certified by the person making the translation as a true and correct translation of the English version. The translated version shall be presumed to have equal status and credibility as the English version.

76-2728: Violation; penalty.

A person who violates any provision of the Nebraska Foreclosure Protection Act is guilty of a Class IV felony.

Source: <http://www.ndbf.ne.gov/legal/76-27.pdf>

**Nevada Revised Statutes Foreclosure Consultants, foreclosure purchasers, loan and modification consultants and persons performing covered services for compensation, Sec. 645F.250-645F.450. N.R.S. §§ 645F.250-645F.450.**

NRS 645F.300 Definitions. As used in NRS 645F.300 to 645F.450, inclusive, unless the context otherwise requires, the words and terms defined in NRS 645F.310 to 645F.370, inclusive, have the meanings ascribed to them in those sections.

NRS 645F.310 “Covered service” defined. “Covered service” includes, without limitation:

1. Financial counseling to a homeowner, including, without limitation, debt counseling and budget counseling.
2. Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a mortgage or other lien on a residence in foreclosure.
3. Contacting a creditor on behalf of a homeowner.
4. Arranging or attempting to arrange for an extension of the period within which a homeowner may cure a default and reinstate an obligation pursuant to a note, mortgage or deed of trust.
5. Arranging or attempting to arrange for any delay or postponement of the time of a foreclosure sale of a residence in foreclosure.
6. Advising a homeowner regarding the filing of any document or assisting in any manner in the preparation of any document for filing with a bankruptcy court.
7. Giving any advice, explanation or instruction to a homeowner which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a mortgage or other lien on a residence, the full satisfaction of the obligation, or the postponement or avoidance of a foreclosure sale.
8. Arranging or conducting, or attempting to arrange or conduct, for a homeowner any forensic loan audit or review or other audit or review of loan documents.
9. Arranging or attempting to arrange for a homeowner the purchase by a third party of the homeowner’s mortgage loan.
10. Arranging or attempting to arrange for a homeowner a reduction of the principal of the homeowner’s mortgage loan when such a mortgage loan is held by or serviced by a third party.
11. Providing the services of a loan modification consultant.
12. Providing the services of a foreclosure consultant.

NRS 645F.320 “Foreclosure consultant” defined. “Foreclosure consultant” means a person who, directly or indirectly, makes any solicitation, representation or offer to a homeowner to perform for compensation, or who, for compensation, performs any covered service that the person represents will do any of the following:

1. Prevent or postpone a foreclosure sale;
2. Obtain any forbearance from any mortgagee or beneficiary of a deed of trust;
3. Assist the homeowner to exercise the right of reinstatement provided in the legal documents;

4. Obtain any extension of the period within which the homeowner may reinstate the homeowner's obligation;
5. Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in foreclosure or included in the mortgage or deed of trust;
6. Assist the homeowner in foreclosure or loan default to obtain a loan or advance of money;
7. Avoid or ameliorate the impairment of the homeowner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale;
8. Save the homeowner's residence from foreclosure; or
9. Assist the homeowner to obtain a foreclosure reconveyance.

NRS 645F.330 "Foreclosure purchaser" defined. "Foreclosure purchaser" means a person who, in the course of his or her business, vocation or occupation, acquires or attempts to acquire title to a residence in foreclosure from a homeowner.

NRS 645F.340 "Foreclosure reconveyance" defined.

1. "Foreclosure reconveyance" means a transaction that involves:
  - (a) The transfer of title to a residence in foreclosure by a homeowner during a foreclosure proceeding by:
    - (1) The transfer of an interest in the residence in foreclosure from the homeowner; or
    - (2) The creation of a mortgage or other lien during the foreclosure process that allows the acquirer to obtain title to the residence in foreclosure by redeeming the property as a junior lien holder; and
  - (b) The subsequent conveyance, or promise of a subsequent conveyance, of an interest in the residence to the former homeowner by the acquirer, or a person acting in concert with the acquirer, that allows the former homeowner to remain in possession of the residence following the completion of the foreclosure proceeding.
2. As used in this section, "interest in the residence" includes, without limitation, an interest in a contract for a deed, a purchase agreement, and an option to purchase or lease.

NRS 645F.350 "Foreclosure sale" defined. "Foreclosure sale" means the sale of real property to enforce an obligation secured by a mortgage or lien on the property, including the exercise of a trustee's power of sale pursuant to NRS 107.080.

NRS 645F.360 "Homeowner" defined. "Homeowner" means the record owner of a residence, including, without limitation, the record owner of a residence in foreclosure at the time the notice of the pendency of an action for foreclosure is recorded pursuant to NRS 14.010 or the notice of default and election to sell is recorded pursuant to NRS 107.080.

NRS 645F.365 "Loan modification consultant" defined. "Loan modification consultant" means a person who, directly or indirectly, makes any solicitation, representation or offer to a homeowner to perform for compensation, or who, for compensation, performs any act that the person represents will adjust the terms of a



mortgage loan in a manner not provided for in the original or previously modified mortgage loan. Such an adjustment includes, without limitation:

1. A change in the payment amount;
2. A change in the loan amount;
3. A loan forbearance;
4. A change in the loan maturity; and
5. A change in the interest rate.

NRS 645F.367 “Residence” defined. “Residence” means a structure that contains not more than four individual units designed or intended for occupancy regardless of whether such a structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home or trailer used for occupancy.

NRS 645F.370 “Residence in foreclosure” defined. “Residence in foreclosure” means residential real property consisting of not more than four family dwelling units and against which there is an outstanding notice of the pendency of an action for foreclosure recorded pursuant to NRS 14.010 or notice of default and election to sell recorded pursuant to NRS 107.080.

NRS 645F.380 Applicability. The provisions of NRS 645F.300 to 645F.450, inclusive, do not apply to, and the terms “foreclosure consultant” and “foreclosure purchaser” do not include:

1. An attorney at law rendering services in the performance of his or her duties as an attorney at law, unless the attorney at law is rendering those services in the course and scope of his or her employment by or other affiliation with a person who is licensed or required to be licensed pursuant to NRS 645F.390;
2. A provider of debt-management services registered pursuant to chapter 676A of NRS while providing debt-management services pursuant to chapter 676A of NRS;
3. A person or the authorized agent of a person acting under the provisions of a program sponsored by the Federal Government, this State or a local government, including, without limitation, the Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Federal Home Loan Bank System;
4. A person who holds or is owed an obligation secured by a mortgage or other lien on a residence in foreclosure if the person performs services in connection with this obligation or lien and the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance;
5. Any person doing business under the laws of this State or of the United States relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of those persons, and any agent or employee of those persons while engaged in the business of those persons;
6. A person, other than a person who is licensed pursuant to NRS 645F.390, who is licensed pursuant to chapter 692A or any chapter of title 54 of NRS while acting under the authority of the license;

7. A nonprofit agency or organization that offers credit counseling or advice to a homeowner of a residence in foreclosure or a person in default on a loan; or

8. A judgment creditor of the homeowner whose claim accrued before the recording of the notice of the pendency of an action for foreclosure against the homeowner pursuant to NRS 14.010 or the recording of the notice of default and election to sell pursuant to NRS 107.080.

#### Licensing and Regulation

NRS 645F.390 Foreclosure consultants, loan modification consultants and persons performing covered services for compensation: Licensing; regulations.

1. The Commissioner shall adopt regulations for the licensing of:

- (a) A person who performs any covered service for compensation;
- (b) A foreclosure consultant; and
- (c) A loan modification consultant.

2. The regulations must prescribe, without limitation:

- (a) The method and form of application for a license;
- (b) The method and form of the issuance, denial or renewal of a license;
- (c) The grounds and procedures for the revocation, suspension or nonrenewal of a

license;

(d) The imposition of reasonable fees for application and licensure; and

(e) Any provisions necessary to comply with the provisions of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Public Law 110-289, 12 U.S.C. §§ 5101 et seq., including registration with the Registry, and the Mortgage Assistance Relief Services Rule, 16 C.F.R. Part 322, as promulgated by the Federal Trade Commission.

3. An application for a license pursuant to this section must include a complete set of the fingerprints of the applicant or, if the applicant is not a natural person, a complete set of the fingerprints of each person who will have an interest in the person who performs any covered service as a principal, partner, officer, director or trustee, and written permission authorizing the Division to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.

NRS 645F.392 Persons performing covered services for compensation: Written contracts for covered services; regulations.

1. A person who performs any covered service for compensation shall execute a written contract with a homeowner before providing any covered service.

2. The Commissioner shall adopt regulations describing the information that must be contained in a written contract for covered services.

NRS 645F.394 Foreclosure consultants, loan modification consultants and persons performing covered services for compensation: Deposits and trust accounts; commingling; records; inspection and audit. Repealed. (See chapter 278, Statutes of Nevada 2011, at page 1579.)

NRS 645F.396 Foreclosure consultants, loan modification consultants and persons performing covered services for compensation: Records; duties; inspection of records by Commissioner.

1. A person who performs any covered service for compensation, a foreclosure consultant and a loan modification consultant shall keep each of the following records for a period of not less than 24 months after the date the record is created:

(a) Each contract or other agreement between the person who performs any covered service for compensation, foreclosure consultant or loan modification consultant and a homeowner.

(b) A copy of each written communication between the person who performs any covered service for compensation, foreclosure consultant or loan modification consultant and a homeowner which occurred before the date on which the homeowner entered into a contract for covered services.

(c) A copy of every document or telephone recording created in connection with the requirements of subsection 2.

(d) The file of each homeowner, which must include, without limitation, the name of the homeowner, his or her telephone number, the amount of money paid by the homeowner and a description of the covered services purchased by the homeowner.

(e) For each covered service, a copy of every materially different sales script, training material, commercial communication or any other marketing material, including, without limitation, any material published on an Internet website.

(f) A copy of each disclosure provided to a homeowner pursuant to NRS 645F.398.

2. A person who performs any covered service for compensation, a foreclosure consultant and a loan modification consultant shall:

(a) Take reasonable steps to ensure that all employees and independent contractors of the person who performs any covered service for compensation, foreclosure consultant or loan modification consultant comply with the provisions of NRS 645F.300 to 645F.450, inclusive, and any regulations adopted pursuant thereto.

(b) If the person who performs any covered service for compensation, foreclosure consultant or loan modification consultant is engaged in the telemarketing of covered services, perform random, blind recording and testing of the oral representations made by persons engaged in sales or other customer service functions.

(c) Establish a procedure for receiving and responding to all complaints of homeowners.

(d) Record the number and nature of complaints of homeowners regarding transactions involving an employee or independent contractor of the person who performs any covered service for compensation, foreclosure consultant or loan modification consultant.

(e) Investigate promptly and fully each complaint received from a homeowner.

(f) Take corrective action with respect to any employee or independent contractor whom the person who performs any covered service for compensation, foreclosure consultant or loan modification consultant determines is not complying with the provisions of NRS 645F.300 to 645F.450, inclusive, and any regulations adopted pursuant thereto.

(g) Maintain any information necessary to demonstrate compliance with the requirements of this subsection.

3. All records kept pursuant to this section are subject to inspection and audit by the Commissioner and authorized representatives of the Commissioner.

NRS 645F.397 Foreclosure consultants, loan modification consultants and persons performing covered services for compensation: Disclosures.

1. A person who performs any covered service for compensation, a foreclosure consultant and a loan modification consultant shall:

(a) Include with each general commercial communication for any covered service the following disclosures printed in at least 12-point type:

(1) “[Name of company] is not associated with the government, and our service is not approved by the government or your lender.”

(2) In any case in which the person who performs any covered service for compensation, the foreclosure consultant or the loan modification consultant makes an express or implied representation that homeowners will receive covered services:

“Even if you accept this offer and use our service, your lender may not agree to change your loan.”

(b) Include with each commercial communication which is specific to a homeowner the following disclosures printed in at least 12-point type:

(1) “You may stop doing business with us at any time. You may accept or reject the offer we obtain from your lender [or servicer]. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [insert total amount or method of calculating the total amount] for our services.”

(2) “[Name of company] is not associated with the government, and our service is not approved by the government or your lender.”

(3) In any case in which the person who performs any covered service for compensation, the foreclosure consultant or the loan modification consultant makes an express or implied representation that the homeowner will receive covered services:

“Even if you accept this offer and use our service, your lender may not agree to change your loan.”

(c) Include with any commercial communication relating to a covered service in which the person who performs any covered service for compensation, foreclosure consultant or loan modification consultant represents expressly or by implication that a homeowner should temporarily or permanently discontinue payments, in whole or in part, on any mortgage or lien on a residence in foreclosure a clear and prominent statement, in close proximity to the express or implied representation and printed in at least 12-point type, which provides that:

“If you stop paying your mortgage, you could lose your home and damage your credit rating.”

2. The disclosures required by paragraphs (a) and (b) of subsection 1 must be made in a clear and prominent manner and:

(a) In a written communication, the disclosures must appear together and be preceded by the heading “IMPORTANT NOTICE,” printed in at least 14-point bold type; and

(b) In an oral communication, the audio component of the required disclosures must be preceded by the statement “Before using this service, consider the following

information” and, if the oral communication is made by telephone, must be made at the beginning of the communication.

3. As used in this section, “total amount” means all amounts the homeowner must pay to purchase, receive and use all covered services that are subject to the contract for covered services, including, without limitation, all fees and charges.

NRS 645F.398 Foreclosure consultants, loan modification consultants and persons performing covered services for compensation: Notice requirements.

1. A person who performs any covered service for compensation, a foreclosure consultant and a loan modification consultant shall, at the time the person who performs any covered service for compensation, the foreclosure consultant or the loan modification consultant provides a homeowner with a written agreement between the homeowner and the homeowner’s lender or servicer incorporating the offer of mortgage assistance obtained from the homeowner’s lender or servicer:

(a) Provide the following notice printed in at least 12-point type to the homeowner:

“This is an offer of mortgage assistance we obtained from your lender [or servicer]. You may accept or reject the offer. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [insert total amount or method of calculating the total amount] for our services.”

Ê The notice must be made in a clear and prominent manner on a separate written page and be preceded by the heading “IMPORTANT NOTICE: BEFORE BUYING THIS SERVICE, CONSIDER THE FOLLOWING INFORMATION” printed in at least 14-point bold type.

(b) Provide the homeowner with a notice printed in at least 12-point type from the homeowner’s lender or servicer which includes a complete description of all material differences between the terms, conditions and limitations which apply to the homeowner’s current mortgage loan and the terms, conditions and limitations which will apply to the homeowner’s mortgage loan if he or she accepts the offer of the lender or servicer, including, without limitation, the differences between the mortgage loans with regard to the:

- (1) Principal balance;
- (2) Contract interest rate, including the maximum rate and any adjustable rates;
- (3) Amount and number of scheduled periodic payments;
- (4) Monthly amounts owed for principal, interest, taxes and mortgage insurance;
- (5) Amount of any delinquent payments owing or outstanding; and
- (6) Term.

Ê The notice required by this paragraph must be made in a clear and prominent manner on a separate written page and be preceded by the heading “IMPORTANT INFORMATION FROM [name of lender or servicer] ABOUT THIS OFFER” printed in at least 14-point bold type.

2. If the offer obtained from the lender or servicer by the person who performs any covered service for compensation, the foreclosure consultant or the loan modification consultant is a trial mortgage loan modification, the notice required by paragraph (b) of subsection 1 must include notice to the homeowner:

(a) That the homeowner may not qualify for a permanent mortgage loan modification; and

(b) Setting forth the likely amount of scheduled periodic payments and arrears, payments and fees the homeowner would owe if the homeowner failed to qualify for a permanent mortgage loan modification.

3. As used in this section, "total amount" has the meaning ascribed to it in NRS 645F.397.

(Added to NRS by 2011, 1575)

#### Unlawful Acts and Penalties

NRS 645F.400 Persons performing covered services for compensation: Prohibited acts.

1. A person who performs any covered service shall not:

(a) Claim, demand, charge, collect or receive any compensation except in accordance with the terms of a contract for covered services.

(b) Claim, demand, charge, collect or receive any fee, interest or other compensation for any reason which is not fully disclosed to the homeowner.

(c) Take or acquire, directly or indirectly, any wage assignment, lien on real or personal property, assignment of a homeowner's equity, any interest in a residence or other security for the payment of compensation. Any such assignment or security is void and unenforceable.

(d) Receive any consideration from any third party in connection with a covered service provided to a homeowner unless the consideration is first fully disclosed to the homeowner.

(e) Accept a power of attorney from a homeowner for any purpose, other than to inspect documents as provided by law.

(f) Make any representation, express or implied, that a homeowner cannot or should not contact or communicate with his or her lender or servicer.

(g) Misrepresent any aspect of any covered service.

(h) Make any representation, express or implied, that a covered service is affiliated with, associated with or endorsed or approved by:

(1) The Federal Government, the State of Nevada or any department, agency or political subdivision thereof;

(2) Any governmental plan for homeowner assistance;

(3) Any nonprofit housing counselor agency or program;

(4) The maker, holder or servicer of a homeowner's mortgage loan; or

(5) Any other person, entity or program.

(i) Make any representation, express or implied, about the benefits, performance or efficacy of any covered service unless, at the time the representation is made, the person who performs any covered service, the foreclosure consultant or the loan modification consultant possesses and relies upon competent and reliable evidence which substantiates that the representation is true. As used in this paragraph, "competent and reliable evidence" means tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area that have been conducted and evaluated in an objective manner by persons qualified to do so using procedures generally accepted in the profession to yield accurate and reliable results.

(j) Obtain or attempt to obtain any waiver of the provisions of NRS 645F.300 to 645F.450, inclusive, or any regulations adopted pursuant thereto. Any such waiver is void and unenforceable.

2. In addition to any other penalty, a violation of any provision of this section shall be deemed to constitute mortgage lending fraud for the purposes of NRS 205.372.

NRS 645F.405 Foreclosure consultants, loan modification consultants and persons performing covered services for compensation prohibited from claiming or receiving compensation before homeowner executes written agreement. A person who performs any covered service for compensation, a foreclosure consultant and a loan modification consultant shall not claim, demand, charge, collect or receive any compensation before a homeowner has executed a written agreement with the lender or servicer incorporating the offer of mortgage assistance obtained from the lender or servicer by the person who performs any covered service for compensation, the foreclosure consultant or the loan modification consultant.

NRS 645F.410 Administrative penalties for violation of chapter, regulation or other applicable law; disposition of money collected as administrative penalties; appointment of hearing officers or panels by Commissioner; claims for attorney's fees and investigative costs.

1. In addition to any other remedy or penalty, the Commissioner may, after giving notice and opportunity to be heard, impose an administrative penalty of not more than \$25,000 on any person licensed or required to be licensed pursuant to NRS 645F.390 who violates any provision of this chapter or any regulation adopted pursuant thereto or any other applicable law.

2. Except as otherwise provided in this section, all money collected from administrative penalties imposed pursuant to this section must be deposited in the State General Fund.

3. The money collected from an administrative penalty may be deposited with the State Treasurer for credit to the Account for Mortgage Lending created by NRS 645F.270 if:

(a) The person pays the administrative penalty without exercising the right to a hearing to contest the penalty; or

(b) The administrative penalty is imposed in a hearing conducted by a hearing officer or panel appointed by the Commissioner.

4. The Commissioner may appoint one or more hearing officers or panels and may delegate to those hearing officers or panels the power of the Commissioner to conduct hearings, determine violations and impose the penalties authorized by this section.

5. If money collected from an administrative penalty is deposited in the State General Fund, the Commissioner may present a claim to the State Board of Examiners for recommendation to the Interim Finance Committee if money is needed to pay attorney's fees or the costs of an investigation, or both.

NRS 645F.420 Homeowner may bring action to recover damages.

1. A homeowner who is injured as a result of a person's violation of a provision of NRS 645F.400 may bring an action against the person to recover damages caused by the violation, together with reasonable attorney's fees and costs.

2. If the homeowner prevails in the action, the court may award such punitive damages as may be determined by a jury, or by a court sitting without a jury, but in no case may the punitive damages be less than one and one-half times the amount awarded to the homeowner as actual damages.

NRS 645F.430 Foreclosure purchasers: Criminal penalty for fraud or deceit against homeowner. A foreclosure purchaser who engages in any conduct that operates as a fraud or deceit upon a homeowner in connection with a transaction that is subject to the provisions of NRS 645F.300 to 645F.450, inclusive, including, without limitation, a foreclosure reconveyance, is guilty of a gross misdemeanor and shall be punished by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$50,000, or by both fine and imprisonment.

NRS 645F.440 Foreclosure purchasers: Transaction rescinded due to fraud or deceit upon homeowner.

1. In addition to the penalty provided in NRS 645F.430 and except as otherwise provided in subsection 5, if a foreclosure purchaser engages in any conduct that operates as a fraud or deceit upon a homeowner in connection with a transaction that is subject to the provisions of NRS 645F.300 to 645F.450, inclusive, including, without limitation, a foreclosure reconveyance, the transaction in which the foreclosure purchaser acquired title to the residence in foreclosure may be rescinded by the homeowner within 2 years after the date of the recording of the conveyance.

2. To rescind a transaction pursuant to subsection 1, the homeowner must give written notice to the foreclosure purchaser and a successor in interest to the foreclosure purchaser, if the successor in interest is not a bona fide purchaser, and record that notice with the recorder of the county in which the property is located. The notice of rescission must contain:

(a) The name of the homeowner, the foreclosure purchaser and any successor in interest who holds title to the property; and

(b) A description of the property.

3. Within 20 days after receiving notice pursuant to subsection 2:

(a) The foreclosure purchaser and the successor in interest, if the successor in interest is not a bona fide purchaser, shall reconvey to the homeowner title to the property free and clear of encumbrances which were created subsequent to the rescinded transaction and which are due to the actions of the foreclosure purchaser; and

(b) The homeowner shall return to the foreclosure purchaser any consideration received from the foreclosure purchaser in exchange for the property.

4. If the foreclosure purchaser has not reconveyed to the homeowner title to the property within the period described in subsection 3, the homeowner may bring an action to enforce the rescission in the district court of the county in which the property is located.



5. A transaction may not be rescinded pursuant to this section if the foreclosure purchaser has transferred the property to a bona fide purchaser.

6. As used in this section, "bona fide purchaser" means any person who purchases an interest in a residence in foreclosure from a foreclosure purchaser in good faith and for valuable consideration and who does not know or have reasonable cause to believe that the foreclosure purchaser engaged in conduct which violates subsection 1.

NRS 645F.445 Person with knowledge of violation prohibited from providing assistance or support to foreclosure consultant, loan modification consultant or person performing covered services for compensation. A person who knows or reasonably should know that another person who performs any covered service for compensation, a foreclosure consultant or a loan modification consultant is in violation of any provision of NRS 645F.300 to 645F.450, inclusive, and any regulations adopted pursuant thereto shall not provide substantial assistance or support to the person who performs any covered service for compensation, the foreclosure consultant or the loan modification consultant.

NRS 645F.450 Cumulative nature of penalties. The rights, remedies and penalties provided pursuant to the provisions of NRS 645F.300 to 645F.450, inclusive, are cumulative and do not abrogate and are in addition to any other rights, remedies and penalties that may exist at law or in equity, including, without limitation, any criminal penalty that may be imposed pursuant to NRS 645F.430.

Source: <http://www.leg.state.nv.us/NRS/NRS-645F.html>

**New Hampshire Revised Statute Annotated, Foreclosure Consultants Pre-Foreclosure Conveyances, sec. 479-B:1- 479-B:11. N.H.R.S.A. §§ 479-B:1- 479-B:11.**

479-B:1 Definitions. – In this chapter:

I. "Foreclosure consultant" means any person, or any person acting in concert with such person, or any agent or employee of such person who provides a foreclosure consulting service.

II. "Foreclosure consulting contract" means a written, oral, or constructive agreement between a foreclosure consultant and a homeowner for the provision of any foreclosure consulting service or pre-foreclosure conveyance.

III. "Foreclosure consulting service" means:

(a) An effort undertaken on behalf of or for the benefit of a homeowner to delay or prevent the loss of a home because of a mortgage default, delinquency, foreclosure, or execution of a tax deed.

(b) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure;

(c) Contacting mortgagees or other creditors secured by a homeowner's primary residence on behalf of the homeowner;

(d) Arranging or attempting to arrange for an extension of the period within which a homeowner may cure the homeowner's default and reinstate the homeowner's obligation;

(e) Arranging or attempting to arrange for any delay or postponement of the sale of a residence in foreclosure;

(f) Arranging or facilitating the purchase of a homeowner's legal or equitable title or any property interest in a homeowner's residence within 30 days of:

(1) The publication or letter of notice of a foreclosure sale; or

(2) The letter notice of a municipality's intent to execute a tax deed.

(g) Arranging or facilitating any transaction through which a homeowner will become a lessee, optionee, life tenant, partial homeowner, or vested or contingent remainderman of the homeowner's residence;

(h) Arranging or facilitating the sale of a homeowner's residence or transfer of legal title and any property interest in a homeowner's residence, in any form, to another party as an alternative to foreclosure;

(i) Arranging for a homeowner to have an option to repurchase the homeowner's residence after a sale or transfer; or

(j) Arranging for or facilitating a homeowner remaining in the homeowner's residence as a tenant, renter, or lessee.

IV. "Pre-foreclosure purchaser" means any person or any person acting in concert with such person, who acquires title or possession of a deed or other interest in a residence in foreclosure as a result of a pre-foreclosure conveyance, or any person who participates in a joint venture or joint enterprise involving a pre-foreclosure conveyance.

V. "Pre-foreclosure conveyance" means a transaction involving:

(a) The transfer of title to real property or a beneficial interest in the property by a homeowner to delay or prevent a mortgage default or delinquency, foreclosure, or execution of a tax deed, 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, that allows the acquirer to obtain legal or equitable title to all or part of the property; and

(b)(1) 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; or

(2) The transaction does not pay or otherwise fully satisfy the homeowner's obligations under any existing note and mortgage securing such note.

VI. "Homeowner" means any owner or co-owner of a residence who is facing the loss of a home due to default, acceleration, or foreclosure of a deed of trust, mortgage, lien, or similar instrument or due to the notice, auction, or execution of a tax deed.

VII. "Person" means an individual, corporation, governmental subdivision or agency, business trust, estate, trustee for a trust, partnership, association, limited liability company, joint venture, government, or any other legal or commercial entity or agent.

VIII. "Residence in foreclosure" means residential real property consisting of not more than 4 dwelling units, one of which the owner occupies as his or her principal place of residence, where a loan secured by the home is in default, or where real property taxes are delinquent.

IX. "Settlement" means an in-person meeting with the homeowner to complete final documents incident to the sale or transfer of real property, or the creation of a mortgage or equitable interest in real property, conducted by a settlement agent who is not employed by or an affiliate of the pre-foreclosure purchaser.

X. "Execution of tax deed" means the procedures by which residential property is executed to a tax lienholder under RSA 80:76 or executed to a tax sale purchaser under RSA 80:38.

XI. "Short sale" means the sale of a homeowner's residence in which the proceeds of the sale, less closing costs, are less than the amount owed, creating a deficit to the seller and in which the sale also results in a short payoff to one or more of the seller's creditors.

#### 479-B:2 Foreclosure Consulting Contracts. –

I. A foreclosure consultant shall not enter into any agreement or provide any services on behalf of a homeowner until the homeowner has executed a foreclosure consulting contract. A foreclosure consulting contract shall:

(a) Be provided to the homeowner for review before signing;

(b) Be written in the same language that is spoken by the homeowner if the homeowner is unable to adequately understand or to express himself or herself in the spoken or written English language;

(c) Fully disclose the exact nature of the foreclosure consulting services to be provided, including any pre-foreclosure conveyance that may be involved, and the total amount and terms of any compensation to be received by the foreclosure consultant or any other person involved in the transaction; and

(d) Be dated and personally signed by the homeowner and the foreclosure

consultant and be witnessed and acknowledged by a notary public or justice of the peace appointed and commissioned by the state of New Hampshire.

II. The contract shall contain on the first page:

(a) The name, mailing address, physical address, electronic address, and facsimile number of the foreclosure consultant to which the notice of cancellation is to be mailed; and

(b) The date the homeowner signed the contract.

III. The contract shall be accompanied by a "notice of cancellation," which must be attached to the contract, be easily detachable, and explain the homeowner's right to cancel the contract and how to exercise that right. Each homeowner shall be given 2 copies of the completed notice of cancellation.

IV. The foreclosure consultant shall provide the homeowner with a signed and dated copy of the contract and the attached notice of cancellation immediately upon execution of the contract.

V. Any provision in a foreclosure consulting contract that attempts or purports to waive any of the rights specified in this chapter are void.

#### 479-B:3 Pre-Foreclosure Conveyances. –

I. No pre-foreclosure conveyance shall transfer any interest in real property unless the homeowner has received, at least 72 hours prior to his or her execution of conveyance documents, a document entitled "notice of loss of ownership."

II. The document entitled "notice of loss of ownership" shall:

(a) Contain the entire agreement of the parties;

(b) Be written in the same language that is spoken by the homeowner if the homeowner is unable to adequately understand or to express himself or herself in the spoken or written English language;

(c) Be dated and personally signed by the homeowner and the pre-foreclosure purchaser and witnessed and acknowledged by a notary public or justice of the peace appointed and commissioned by the state of New Hampshire;

(d) Describe in detail the terms of the pre-foreclosure conveyance including:

(1) The name, mailing address, physical address, electronic address, telephone number, and facsimile number of the person to whom the deed or title will be transferred;

(2) The address of the residence in foreclosure;

(3) The total consideration to be paid by the pre-foreclosure purchaser, the foreclosure consultant, and any other party as a result of the transfer, and the total consideration paid to the homeowner, with a specific dollar amount stated for each figure;

(4) The date on which title is to be transferred to the pre-foreclosure purchaser and the terms of any conveyance;

(5) Any financial or legal obligations that the homeowner may remain subject to, such as any mortgages, liens, or other obligations that will remain or be assumed pursuant to the transaction, and an affirmation by the pre-foreclosure purchaser that:

(A) The terms of the remaining or assumed obligations are not violated by the pre-foreclosure conveyance; and

(B) The pre-foreclosure conveyance will not cause a default in the remaining or

assumed obligations;

(6) A description of any services of any nature that the pre-foreclosure purchaser will perform for the homeowner before or after the sale or transfer;

(7) A complete description of the terms of any related agreement designed to allow the homeowner to remain in the home, including the terms of any rental agreement, repurchase agreement, contract for deed, land installment contract, or option to buy, and any provisions for eviction or removal of the homeowner with an affirmation by the pre-foreclosure purchaser that he or she has verified and can demonstrate that the homeowner has the ability to perform the transaction in a timely manner; and

(8) The amount of any repurchase price or fee associated with any transfer of title or deed back to the homeowner and how that fee will be calculated; and

(e) Contain a statement, located in immediate proximity to the space reserved for the homeowner's signature, stating: "You have a right to cancel this transaction within 5 business days until midnight of \_\_\_\_ (insert date). If you cancel, you must pay within 60 days \$\_\_\_\_, which is the amount paid to your lender to stop the foreclosure sale or to the municipality, county, or state to prevent execution of a tax deed."

(f) Contain an itemization of amounts expended on the homeowner's behalf to the homeowner's lender to stop the foreclosure sale or to the municipality, county, or state to prevent execution of a tax deed.

III. The pre-foreclosure purchaser shall also provide each homeowner with 2 copies of a notice of right to cancel transfer of deed or title immediately on execution of any document that includes a pre-foreclosure conveyance. The notice must be attached to the contract, be easily detachable, and explain the homeowner's right to cancel the contract and how to exercise that right. Each homeowner must be given 2 copies of the completed notice of right to cancel transfer of deed or title.

IV. Any provision in a foreclosure consulting contract or other agreement concerning a pre-foreclosure conveyance that attempts to waive the homeowner's rights under this section is void.

V. A pre-foreclosure conveyance may not be carried out using a power of attorney from the homeowner to the pre-foreclosure purchaser or any agent or employee of or person acting in concert with the pre-foreclosure purchaser.

#### 479-B:4 Right of Cancellation. –

I. In addition to any other right under law to cancel or rescind a contract, a homeowner has the unconditional right to:

(a) Cancel a foreclosure consulting contract at any time; and

(b) Cancel a pre-foreclosure conveyance at any time before midnight of the fifth business day after the latter of:

(1) Any conveyance, or transfer in any manner, of a legal or equitable property interest in a residence in foreclosure; or

(2) Delivery of the notices required for pre-foreclosure conveyance.

II. Notwithstanding any other provision of this chapter, the homeowner's right of cancellation shall expire upon the sale of the residence to a third party.

III. Subject to the limitation of paragraph II, during the pre-foreclosure conveyance cancellation period, no deed or other document affecting title to the homeowner's

residence may be recorded, and no interest in the property may be encumbered, transferred, or assigned in any manner.

IV. Cancellation occurs when the homeowner gives written notice of cancellation to the foreclosure consultant at the address specified in the contract or through any facsimile or electronic mail address identified in the contract or other materials provided to the homeowner by the foreclosure consultant.

V. Notice of cancellation, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid. If notice is given by facsimile or electronic mail, it is effective when successfully transmitted.

VI. Notice of cancellation need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to cancel the foreclosure consulting contract or pre-foreclosure conveyance.

VII. As part of the cancellation of a foreclosure consulting contract or pre-foreclosure conveyance, the homeowner shall repay, within 60 days from the date of cancellation or such longer period of time as may be deemed equitable by the court, any funds actually paid by a foreclosure consultant or pre-foreclosure purchaser to delay or prevent a mortgage default or delinquency, foreclosure, or execution of a tax deed in the form of mortgage arrearage, property tax arrearage, current mortgage payments, current tax payments, late fees, penalties, and any other out-of-pocket expenditures necessary to avoid the loss of the home by the homeowner. The amount to repay shall not include any fees or interest charged by the pre-foreclosure purchaser.

VIII. The right to cancel and the return of any property interest to the homeowner may not be conditioned on the repayment of any funds.

IX. The period during which a homeowner may cancel a pre-foreclosure conveyance does not commence until each homeowner has received clear, conspicuous, and accurate copies of all notices and documents required by this chapter.

X. Within 5 days after receipt of a notice of cancellation given in accordance with this chapter, the pre-foreclosure purchaser shall return, without condition, any original deed, title, contract, and any other document signed by the homeowner.

#### 479-B:5 Unlawful Practices. –

I. A foreclosure consultant shall have a fiduciary duty to the homeowner who retains his or her services and shall not act contrary to the interest of the homeowner.

II. A foreclosure consultant may not:

(a) Enter any agreement or provide any services on behalf of a homeowner until the homeowner has executed a foreclosure consulting contract;

(b) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;

(c) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security is null and void;

(d) Receive any consideration from any third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner and the third party's interest does not conflict with

the homeowner's or create a conflict between the consultant and the homeowner;

(e) Acquire any interest, directly or indirectly, or by means of a subsidiary, affiliate, or corporation in which the foreclosure consultant or a member of the foreclosure consultant's immediate family is a primary stockholder, in a residence in foreclosure from a homeowner with whom the foreclosure consultant has contracted;

(f) Take any power of attorney from a homeowner for any purpose, except to inspect documents as provided by law;

(g) Induce or attempt to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with this chapter; or

(h) Create or facilitate a transaction which would violate a homeowner's current deed of trust or other security interest, or which would constitute a default or cause a foreclosure or an acceleration of the debt secured by those agreements.

III. A pre-foreclosure purchaser may not:

(a) Enter into, or attempt to enter into, a pre-foreclosure conveyance with a homeowner unless:

(1) The pre-foreclosure purchaser verifies and can demonstrate that the homeowner has or will have a reasonable ability to pay for the subsequent reconveyance of the property back to the homeowner on completion of the terms of a pre-foreclosure conveyance, and if the pre-foreclosure conveyance provides for a lease with an option to repurchase the property, the homeowner has or will have a reasonable ability to make the lease payments and to repurchase the property within the term of the option to repurchase; and

(2) The pre-foreclosure purchaser and the homeowner complete a formal settlement before any transfer of an interest in the property is effected;

(b) Assign or transfer or facilitate the assignment or transfer of any interest in the homeowner's property until the requirements of this chapter have been met. Any such transfer or assignment shall be null and void;

(c) Obtain any interest in the homeowner's property on terms which would violate a homeowner's current deed of trust or other security interest, or which would constitute a default or cause a foreclosure or acceleration of the debt secured by those agreements;

(d) Fail to:

(1) Ensure that title to the property has been reconveyed to the homeowner in a timely manner if this chapter or the terms of a pre-foreclosure conveyance agreement require a reconveyance;

(2) Sell the property, if allowed under the terms of the conveyance, at a bona fide market sale to an unaffiliated third party; or

(3) Make payment to the homeowner within 90 days of any resale of the property so that the homeowner receives cash payments or consideration in an amount equal to at least 90 percent of the net proceeds from any resale of the property should a property subject to a pre-foreclosure conveyance be sold within 36 months after entering into a pre-foreclosure conveyance agreement. As used in this subparagraph, the term "net proceeds from any resale" means the resale price minus any necessary funds actually expended by the pre-foreclosure purchaser on the homeowner's behalf in order to delay or prevent the mortgage default of delinquency, foreclosure, or execution of a tax deed;

(e) Represent, directly or indirectly, that:

(1) The pre-foreclosure purchaser is acting as an advisor or a consultant, or in any other manner represent that the pre-foreclosure purchaser is acting on behalf of the homeowner;

(2) The pre-foreclosure purchaser has certification licensure or affiliations that the pre-foreclosure purchaser does not have; or

(3) The foreclosure purchaser is assisting the homeowner to avoid the loss of ownership, to "save the house," or a substantially similar phrase; or

(f) Until the homeowner's right to cancel the transaction has expired:

(1) Record any document transferring or encumbering any interest in the home; or

(2) Transfer or encumber or purport to transfer or encumber any interest in the residence to any third party.

IV. (a) The pre-foreclosure purchaser shall make a detailed accounting of the basis for the amount of a payment made to the homeowner of a property resold within 36 months after entering into a pre-foreclosure conveyance agreement.

(b) The accounting shall include detailed documentation of expenses and other consideration paid by the pre-foreclosure purchaser and deducted from the resale price.

#### 479-B:6 Waiver of Rights Prohibited. –

I. A person may not induce or attempt to induce a homeowner to waive the homeowner's rights under this chapter.

II. Any waiver by a homeowner of the provisions of this chapter is void and unenforceable as contrary to public policy.

#### 479-B:7 Maintenance of Rights Against Transferee. –

I. Any agreement, encumbrance, assignment or transfer of any interest in violation of this chapter shall be voidable at the option of the homeowner, until the time of a completed conveyance to a third party.

II. No action shall be brought under this chapter more than 3 years from the date of the violation.

479-B:8 Violation of the Consumer Protection Act. – A violation of this chapter is considered to be a violation of the New Hampshire consumer protection act, RSA 358-A, and all remedies of the consumer protection act are available for such violations.

479-B:9 Criminal Penalties. – A person who violates any provision of this chapter is guilty of a class A misdemeanor.

#### 479-B:10 Contracts and Notices. –

I. All disclosures, contracts, and notices required by this chapter shall be made clearly and conspicuously in language comprehensible by persons without training or knowledge in the area of real property and finance.

II. All notices required by this chapter, other than the homeowner's notice that he or she is canceling a contract, shall be printed in at least 14-point type.

III. Notices of cancellation that are required by this chapter to accompany certain



contracts shall be their own separate documents, not printed on the back of any other document.

Source. 2007, 322:1, eff. July 16, 2007.

#### Section 479-B:11

##### 479-B:11 Exemptions. –

I. The provisions of this chapter shall not apply to:

- (a) A duly licensed attorney at law acting on behalf of a client;
- (b) A person who holds or is owed an obligation secured by a lien on any residence in foreclosure while the person performs services in connection with the obligation or lien, if the obligation or lien did not arise as a result of a pre-foreclosure conveyance;
- (c) Any bank, trust company, savings and loan association, credit union, or insurance company chartered under the laws of any state or the United States or any subsidiary, affiliate, or agency thereof;
- (d) A pre-judgment or post-judgment lien creditor of the homeowner;
- (e) A person licensed as a mortgage banker or mortgage broker while engaged in any activity for which the person is licensed under RSA 397-A;
- (f) A person licensed as a real estate broker, associate real estate broker, or real estate salesperson, while engaged in any activity for which the person is licensed under RSA 331-A;
- (g) A nonprofit organization or government entity that offers counseling or advice to homeowners in foreclosure or loan default, if the organization is not directly or indirectly related to and does not contract for services with for-profit lenders, foreclosure consultants, or pre-foreclosure purchasers; or
- (h) A creditors' committee or trustee participating in a plan of reorganization or repayment through a proceeding under the jurisdiction of the United States Bankruptcy Court.

II. Notwithstanding any provision of the law to the contrary, the provisions of this chapter shall not apply to a person who purchases a homeowner's residence in a short sale in which:

- (a) As consideration for the sale, all liens against the property, including mortgages, were discharged or released;
- (b) If, as part of the sale, a deficiency was required by any creditor, the exact terms and conditions of any deficiencies were disclosed to the borrower by the purchaser at least 72 hours before the transfer. The disclosure shall be:
  - (1) Printed in at least 14-point type and in boldface; and
  - (2) Dated and personally signed by the homeowner and witnessed and acknowledged by a notary public or a justice of the peace appointed and commissioned by the state of New Hampshire; and
- (c) The homeowner received from the purchaser, at least 72 hours before the transfer, a document entitled "notice of short sale." The document entitled "notice of short sale" shall:
  - (1) Be printed in at least 14-point type;
  - (2) Be dated and personally signed by the homeowner and witnessed and acknowledged by a notary public or a justice of the peace appointed and commissioned by the state of New Hampshire;

(3) Contain a prominent statement, printed in at least 16-point type and in boldface, that the homeowner is selling his or her home, will no longer have any ownership of the home after the sale, and will no longer have the right to live in the home after the sale; and

(4) Describe in detail the terms of the sale.

III. Notwithstanding any provision of the law to the contrary, the provisions of this chapter shall not apply to a person who attempts to negotiate a short sale in which the person would purchase the homeowner's residence as set forth in paragraph II, but does not purchase the homeowner's residence or arrange for another person to purchase the homeowner's residence.

Source: <http://www.gencourt.state.nh.us/rsa/html/xlviii/479-b/479-b-mrg.htm>

**New York Code, Home equity theft prevention, sec. 265-A-265B. N.Y. RPP. LAW §§ 265A-265B.**

§ 265-a. Home equity theft prevention.

Sec 1. (a) The legislature finds and declares that homeowners who are in default on their mortgages or in foreclosure may be vulnerable to fraud, deception, and unfair dealing by home equity purchasers. The recent rapid escalation of home values throughout urban and rural areas has resulted in a significant increase in home equity, which constitutes the greatest financial asset held by many homeowners of this state. During the time period between the default on the mortgage and the scheduled foreclosure sale date, homeowners in financial distress, especially poor, elderly, and financially unsophisticated homeowners, are vulnerable to aggressive "equity purchasers" who induce homeowners to sell their homes for a small fraction of their fair market values, or in some cases even sign away their homes, through the use of schemes which often involve oral and written misrepresentations, deceit, intimidation, and other unreasonable commercial practices. (b) The legislature declares that it is the express policy of the state to preserve and guard the precious asset of home equity, and the social as well as the economic value of homeownership. (c) The legislature further finds that equity purchasers may have a significant impact upon the economy and well-being of this state and its local communities, and therefore the provisions of this section are necessary to promote the public welfare. (d) The intent and purposes of this section are to provide a homeowner with information necessary to make an informed and intelligent decision regarding the sale or transfer of his or her home to an equity purchaser; to require that the sales agreement be expressed in writing; to safeguard equity sellers against deceit and financial hardship; to ensure, foster and encourage fair dealing in the sale and purchase of homes in foreclosure or default; to prohibit representations that tend to mislead; to prohibit or restrict unfair contract terms; to provide a cooling off period for equity sellers who enter into covered contracts; to afford equity sellers a reasonable and meaningful opportunity to rescind sales to equity purchasers; and to preserve and protect home equity for the homeowners of this state.

Sec 2. The following definitions shall apply to this section:

(a) "Bona fide purchaser or encumbrancer for value" means anyone acting in good faith who purchases the residential real property from the equity purchaser for valuable consideration or provides the equity purchaser with a mortgage or provides a subsequent bona fide purchaser with a mortgage, provided that he or she had no notice of the equity seller's continuing right to, or equity in, the property prior to the acquisition of title or encumbrance, or of any violation of this section by the equity purchaser as related to the subject property.

(b) "Business day" means any calendar day except Sunday or the public holidays as set forth in section twenty-four of the general construction law.

(c) "Covered contract" means any contract, agreement, or arrangement, or any term thereof, between an equity purchaser and equity seller which:

(i) is incident to the sale of a residence in foreclosure; or

(ii) is incident to the sale of a residence in foreclosure or default where such contract, agreement or arrangement includes a reconveyance arrangement. For purposes of this section, any reference to the "sale" of a residence by an equity seller to an equity purchaser shall include a transaction where an equity seller receives consideration from the equity purchaser, and a transaction involving a transfer of title to the equity purchaser where no consideration is provided to the equity seller.

(d) "Default" means that the equity seller is two months or more behind in his or her mortgage payments.

(e) "Equity purchaser" means any person who acquires title to any residence in foreclosure or, where applicable, default, or his or her representative as defined in this subdivision, except a person who acquires such title as follows:

(i) to use, and who uses, such property as his or her primary residence;

(ii) by a deed from a referee in a foreclosure sale conducted pursuant to article thirteen of the real property actions and proceedings law;

(iii) at any sale of property authorized by statute;

(iv) by order or judgment of any court;

(v) from a spouse, or from a parent, grandparent, child, grandchild or sibling of such person or such person's spouse;

(vi) as a not-for-profit housing organization or as a public housing agency; or

(vii) a bona fide purchaser or encumbrancer for value.

(f) "Equity seller" means a natural person who is a property owner or homeowner at the time of the equity sale.

(g) "Foreclosure" means that there is an active lis pendens filed in court pursuant to article thirteen of the real property actions and proceedings law against the subject property, or the subject property is on an active property tax lien sale list.

(h) "Property owner" or "homeowner" means any or all record title owners of the residential real property in foreclosure or, where applicable, default at the time of the equity sale.

(i) "Reconveyance arrangement" means:

(i) the transfer of title to residential real property by an equity seller who is in default or foreclosure, either by transfer of interest from an equity seller to an equity purchaser or by creation of a mortgage or other lien or encumbrance during the time of default or foreclosure that allows the equity purchaser to obtain legal or equitable title to all or part of the property, and

(ii) the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the equity seller by the equity purchaser that allows the equity seller to

regain possession of the property, which interest shall include but not be limited to a purchase agreement, option to purchase, or lease.

(j) "Representative" means a person who in any manner solicits, induces, arranges, or causes any equity seller to transfer title or solicits any member of the equity seller's family or household to induce or cause any equity seller to transfer title to the residence in foreclosure or, where applicable, default to the equity purchaser.

(k) "Residence" and "residential real property" means residential real property consisting of one- to four-family dwelling units, one of which the equity seller occupies or occupied at a time immediately prior to the equity sale as his or her primary residence.

3. Every covered contract and notice of cancellation attached thereto shall be written in letters of a size equal to at least twelve-point bold type, in English or in both English and Spanish if Spanish is the primary language of the equity seller, and shall be fully completed and signed and dated by the equity seller and equity purchaser. Any instrument of conveyance shall become effective no sooner than midnight of the fifth business day after the date on which the covered contract is executed.

4. All covered contracts shall contain the entire agreement of the parties and shall include, but not be limited to, the following terms:

(a) The name, business address, and the telephone number of the equity purchaser;  
(b) The address of the residence in foreclosure or, where applicable, default;  
(c) The total consideration to be given by the equity purchaser in connection with or incident to the sale;

(d) A complete description of the terms of payment or other consideration including, but not limited to, any services of any nature which the equity purchaser represents he or she will perform for the equity seller before or after the sale;

(e) The time, if any, at which physical possession of the residence is to be transferred to the equity purchaser and the residence vacated by the equity seller;

(f) The terms of any rental or lease agreement;

(g) The terms of any reconveyance arrangement;

(h) A notice of cancellation as provided in paragraph (a) of subdivision six of this section; and

(i) The following notice shall appear on the contract in immediate proximity to the space reserved for the equity seller's signature and shall be in at least fourteen-point bold type if the covered contract is printed or in capital letters if the covered contract is typed. The notice must contain the name of the equity purchaser and the date and time by which the covered contract must be cancelled. The notice shall be completed by the equity purchaser:

"NOTICE REQUIRED BY NEW YORK  
LAW You may cancel this contract at any time before midnight of

\_\_\_\_\_. (Date)

---

\_\_\_\_ (Name of Equity Purchaser) or anyone working for  
\_\_\_\_ CANNOT ask you to (Name of  
Equity Purchaser) sign or have you sign any deed or any other document until your  
right to cancel this contract has ended. See attached notice of cancellation form  
for an explanation of this right. You should always consult an attorney or community  
organization before signing any legal documents concerning your home. It is advisable  
that you find your own attorney, and not consult with an attorney who has been provided  
to you by the purchaser. The law requires that this contract contain the entire  
agreement. You should not rely upon any other written or oral agreement or promise."  
The equity purchaser shall accurately enter the date on which the right to cancel ends.  
The covered contract required by this section shall survive delivery of any instrument of  
conveyance of the residence in foreclosure or, where applicable, default, and shall have  
no effect on persons other than the parties to the covered contract.

5. (a) In addition to the right of rescission described in subdivision eight of this section,  
the equity seller has the right to cancel and covered contract with an equity purchaser  
until midnight of the fifth business day following the day on which the equity seller and  
equity purchaser sign a covered contract that complies with this section.

(b) Cancellation occurs when the equity seller, or a representative of the equity seller,  
personally delivers written notice of cancellation to the address specified in the  
covered contract or sends a letter via facsimile or other means of written  
communication, United States mail, or through an established commercial letter  
delivery service, indicating cancellation to the business address of the equity purchaser  
listed on the covered contract. Proof of facsimile delivery or proof of mailing  
creates a presumption that the notice of cancellation has been delivered.

(c) A notice of cancellation given by the equity seller pursuant to paragraph (a) of this  
subdivision need not take the particular form as provided with the covered contract  
and, however expressed, is effective if it indicates the intention of the equity seller not to  
be bound by the covered contract.

(d) Within ten days following receipt of a notice of cancellation given in accordance  
with this subdivision, the equity purchaser shall return without condition any  
original covered contract and any other documents signed by the equity seller as well  
as any fee or other consideration received by the equity purchaser from the equity  
seller. Cancellation of the contract shall release the equity seller of all obligations  
to pay fees to the equity purchaser.

6. (a) The covered contract shall be accompanied by a form completed by the equity  
purchaser in duplicate, captioned "notice of cancellation" in at least twelve-point bold  
type if the covered contract is printed or in capital letters if the covered contract is  
typed. This form shall be attached to the covered contract, shall be easily detachable,  
and shall contain in type of at least twelve-point if the covered contract is printed  
or in capital letters if the covered contract is typed, the following statement written in  
the same language as used in the covered contract:

"NOTICE OF CANCELLATION This contract was entered into on  
\_\_\_\_\_  
(Enter date covered contract

signed) You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before midnight of \_\_\_\_\_ . (Enter date) To cancel this transaction, personally deliver a signed and dated copy of this cancellation notice, or send it by facsimile, United States mail, or an established commercial letter delivery service, indicating cancellation to \_\_\_\_\_ , at (Name of purchaser) \_\_\_\_\_ (Street address of purchaser's place of business and facsimile number if any) NOT LATER THAN midnight of \_\_\_\_\_ . (Enter date) If you wish to cancel this contract, sign and date both copies and return one copy immediately to the purchaser. I hereby cancel this transaction.

\_\_\_\_\_/\_\_\_\_\_  
(Seller's signature) (Date)

(b) The equity purchaser shall provide each equity seller with two copies of the covered contract and attached notice of cancellation. The equity purchaser shall accurately enter the date on which the right to cancel ends.

7. (a) Before midnight of the fifth business day after the date on which the covered contract is executed, the equity purchaser shall not do any of the following:

- (i) accept from any equity seller an execution of, or induce any equity seller to execute, any instrument of conveyance of any interest in the residence in foreclosure or, where applicable, default;
- (ii) record with the county clerk any document, including, but not limited to, any instrument of conveyance, signed by the equity seller;
- (iii) transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure or, where applicable, default to any third party;
- (iv) pay the equity seller any consideration; or
- (v) suggest, encourage, or provide any form which allows the equity seller to waive his or her right to cancel or rescind under this section.

(b) An equity purchaser shall make no false or misleading statement regarding the value of the residence in foreclosure or, where applicable, default; the amount of proceeds the equity seller will receive after a foreclosure sale; the timing of the judicial foreclosure process; any contract term; the equity seller's rights or obligations incident to or arising out of the sale transaction; the nature of any document which the equity purchaser induces the equity seller to sign; or any other false or misleading statement concerning the sale of the residence in foreclosure or, where applicable, default, or concerning the reconveyance arrangement.

(c) An equity purchaser is prohibited from representing, directly or indirectly, that:  
(i) the equity purchaser is acting as an advisor or a consultant, or in any other manner represents that the equity purchaser is acting on behalf of the equity seller;  
(ii) the equity purchaser has certification or licensure that the equity purchaser does not have, or that the equity purchaser is not a member of a licensed profession if he or she is actually such a member; (iii) the equity purchaser is assisting the equity

seller to save the house unless the equity purchaser has a good faith basis for the representation; or (iv) the equity purchaser is assisting the equity seller in preventing a completed foreclosure unless the equity purchaser has a good faith basis for the representation.

(d) It is unlawful for any equity purchaser to initiate, enter into, negotiate, or consummate any covered contract involving residential real property in foreclosure or, where applicable, default if such person, by the terms of such covered contract, takes unconscionable advantage of the equity seller.

8. (a) Any transaction involving residential real property in foreclosure or, where applicable, default which is in material violation of subdivision three, four, six, seven or eleven of this section is voidable and the transaction may be rescinded by the equity seller within two years of the date of the recording of the conveyance of the residential real property in foreclosure or, where applicable, default.

(b) Such rescission shall be effected by giving written notice to the equity purchaser and his or her successor in interest, if the successor is not a bona fide purchaser or encumbrancer for value as set forth in paragraph (c) of this subdivision, and by recording such notice with the county clerk of the county in which the property is located, within two years of the date of the recording of the conveyance to the equity purchaser. The notice of rescission shall contain the name of the equity seller and the name of the equity purchaser in addition to any successor in interest holding record title to the residential real property and shall particularly describe such residential real property. The equity purchaser and his or her successor in interest if the successor is not a bona fide purchaser or encumbrancer for value as set forth in paragraph (c) of this subdivision, shall have twenty days after the delivery of the notice in which to reconvey title to the property free and clear of encumbrances created subsequent to the rescinded transaction and which are due to the actions of the equity purchaser. As a condition of the reconveyance of title, the equity seller shall return to the equity purchaser any consideration received from the equity purchaser as part of the original transaction. Upon failure to reconvey title within such time, the equity seller may bring an action to enforce the rescission and for cancellation of the covered contract and deed.

(c) The provisions of this subdivision shall not affect the interest of a bona fide purchaser or encumbrancer for value if such purchase or encumbrance occurred prior to the recording of the notice of rescission pursuant to paragraph (b) of this subdivision. Knowledge that the property was residential real property in foreclosure or, where applicable, default shall not impair the status of such persons or entities as bona fide purchasers or encumbrancers for value. This subdivision shall not be deemed to abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the residential real property in foreclosure or, where applicable, default.

(d) In any action brought to enforce a rescission pursuant to this section, a court may award to a prevailing equity seller costs and reasonable attorneys' fees.

9. An equity seller may bring an action for the recovery of damages or equitable relief against an equity purchaser for a violation of subdivision three, four, six, seven or



eleven of this section. A court may award to a prevailing equity seller actual damages plus reasonable attorneys' fees and costs. In addition, the court may award equitable relief, or increase the award in an amount not to exceed three times the equity seller's actual damages, or both, if the court deems such award proper. Any action brought pursuant to this section shall be commenced within six years after the date of the alleged violation.

10. (a)(i) Any equity purchaser who, with intent to defraud, violates subdivision seven of this section or engages in any practice which would operate as a criminal fraud or deceit upon an equity seller shall, upon conviction, be guilty of a class E felony and subject to a fine of not more than twenty-five thousand dollars, imprisonment in accordance with the penal law, or both.

(ii) Any equity purchaser who knowingly violates subdivision seven of this section shall, upon conviction, be guilty of a class A misdemeanor and subject to a fine of not more than twenty-five thousand dollars, imprisonment in accordance with the penal law, or both. A second offense within five years shall be a class E felony and subject to a fine of not more than twenty-five thousand dollars, imprisonment in accordance with the penal law, or both.

(b) An equity purchaser who, when acting in good faith, violates subdivision seven of this section, shall not be deemed to have violated such subdivision if the equity purchaser:

(i) establishes by a preponderance of the evidence that the compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors;

(ii) notifies the equity seller within ninety days of the contract date of the compliance failure; and (iii) makes appropriate restitution to the equity seller and appropriate adjustments to the transaction within ninety days of the contract date.

Examples of bona fide errors include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error, nor is a failure to provide notices or other material information required by this section.

11. (a) In any transaction in which an equity seller purports to grant a residence in foreclosure or default to an equity purchaser by any instrument which appears to be an absolute conveyance and reserves to himself or herself or is given by the equity purchaser an option to repurchase, such transaction shall create a presumption that the transaction is a loan transaction, which may be overcome by clear and convincing evidence to the contrary, and that the purported absolute conveyance is a mortgage.

(b) An equity purchaser shall not enter into a reconveyance arrangement unless:

(i) The equity purchaser verifies by appropriate documentation that the equity seller has or is likely to have a reasonable ability to pay for the subsequent conveyance of an interest back to the equity seller. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to purchase the property within the

term of the option to purchase. There is a rebuttable presumption that the equity purchaser has not verified reasonable payment ability if the equity purchaser has not obtained documents other than a statement by the equity seller of assets, liabilities and income. The standard for determining a reasonable ability to pay shall be the same standard as set forth in paragraph (k) of subdivision two of section six-l of the banking law;

(ii) the equity purchaser and the equity seller complete a closing for any reconveyance arrangement in which the equity purchaser obtains a deed or mortgage from an equity seller. For purposes of this section, "closing" means an in-person meeting to complete final documents incident to the sale of the real property or creation of a mortgage on the real property conducted by an attorney who is not employed by or an affiliate of the equity purchaser;

(iii) the equity purchaser obtains the written consent from the equity seller before the equity purchaser grants any interest in the property to anyone else during such time as the equity seller maintains an interest in the property, including an option to repurchase; and

(iv) the equity purchaser notifies all existing mortgage lien holders of his or her intent to accept conveyance of an interest in the property from the equity seller, and fully complies with all terms and conditions contained in the mortgage lien documents, including but not limited to due-on-sale provisions or meeting all qualification requirements for assuming the repayment of the mortgage.

(c) An equity purchaser shall not enter into repurchase or lease terms as part of the reconveyance arrangement that are unfair or commercially unreasonable, and is prohibited from engaging in any other unfair or unconscionable conduct.

(d) As part of a reconveyance arrangement, an equity purchaser shall either:

(i) ensure that title to the residence is reconveyed to the equity seller; or

(ii) make a payment to the equity seller such that the equity seller has received consideration in an amount of at least eighty-two percent of the fair market value of the property within one hundred twenty days of either the eviction or voluntary relinquishment of possession of the residence by the equity seller. The equity purchaser shall make a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make a payment, including providing written documentation of expenses, within such one hundred twenty-day period. The accounting shall be on a form prescribed by the department of financial services. For purposes of this subparagraph, the following applies:

(A) 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 establishes the fair market value of the property;

(B) the time for determining the fair market value amount shall be determined in the reconveyance arrangement as either at the time of the execution of the reconveyance arrangement or at resale to a bona fide purchaser. If the covered 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 one hundred twenty days of the eviction or voluntary relinquishment of the property by the equity seller. If the covered contract states that the fair market value shall be determined at

the time of resale, and the resale is not completed within one hundred twenty days of the eviction or voluntary relinquishment of the property by the equity seller, the fair market value shall be determined by an appraisal conducted within ten days after the end of such one hundred twenty-day period and payment, if required, shall be made to the equity seller. If payment is not made to the equity seller at such time, the fair market value shall be recalculated as the resale price on resale and payment shall be made to the equity seller within fifteen days of resale. A detailed accounting of the basis for the payment amount shall be made within fifteen days of resale, including providing written documentation of expenses. The accounting shall be on a form prescribed by the department of financial services;

(C) "consideration" shall mean any payment or thing of value provided to the equity seller, including unpaid lease payments owed by the equity seller prior to the date of eviction or voluntary relinquishment of the property, reasonable costs paid to third parties necessary to complete the reconveyance transaction, payment of money to satisfy a debt or legal obligation of the equity seller or the reasonable cost of repairs for damage to the dwelling caused by the equity seller beyond ordinary wear and tear; but shall not include amounts imputed as any fee paid directly or indirectly to the equity purchaser, or his or her representative, incident to a reconveyance arrangement, except for reasonable costs paid to third parties necessary to complete the reconveyance.

(D) "resale" means a bona fide market sale of the property subject to the reconveyance arrangement by the equity purchaser to an unaffiliated third party.

(E) "resale price" means the purchase price of the property on resale.

(e) This subdivision shall not be deemed to abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the residential real property in foreclosure or default.

(f) All deeds or conveyances subject to a reconveyance arrangement shall state explicitly on the face of the document that the conveyance is subject to a reconveyance arrangement, and shall state the terms of the reconveyance arrangement. Moreover, all reconveyance arrangements must be simultaneously recorded by the equity purchaser with the subject deed in the county clerk's office where the property is located.

12. Any provision of a covered contract which attempts or purports to limit the liability of the equity purchaser under this section shall be null and void. Inclusion of such provision shall at the option of the equity seller render the covered contract void. The equity purchaser shall be liable to the equity seller for all damages proximately caused by such provision. Any provision in a covered contract which attempts or purports to require arbitration of any dispute arising under this section shall be void at the option of the equity seller.

13. 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 twenty-five 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.

14. This section shall not apply to a prior lien holder where the lien was properly recorded prior to the execution of any covered contract by both the equity seller and the equity purchaser nor shall any provision of this section be deemed to impair any equity or other available rights of any such prior lien holder.

15. The provisions of this section shall be liberally construed to effectuate the intent and to achieve the purposes set forth in subdivision one of this section.

16. The provisions of this section are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law.

17. Any waiver of the provisions of this section shall be void and unenforceable as contrary to the public policy.

18. If any provision of this section, or if any application thereof to any person or circumstances is held unconstitutional, the remainder of this section and the application of its provisions to other persons and circumstances shall not be affected thereby.

Source: <http://codes.lp.findlaw.com/nycode/RPP/8/265-a>

**New York Code, Distressed property consulting contracts, Section 265-B. N.Y. RPP. LAW § 265-B**

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 non-payment 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;
- (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 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;

(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 banks 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 payment for consulting services before the full 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](http://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.

#### 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.

Source: <http://codes.lp.findlaw.com/nycode/RPP/8/265-b>

**Oregon, Revised Statute, Mortgage Rescue Fraud Protection Act, sec. 646A.700-646A.765. O.R.S. §§ 646A.700-646A.765.**

646A.700 Short title. ORS 646A.702 to 646A.720 and 646A.725 to 646A.750 may be cited as the Mortgage Rescue Fraud Protection Act. [2008 c.19 §1]

646A.702 Definitions for ORS 646A.702 to 646A.720. As used in ORS 646A.702 to 646A.720:

(1) "Default" means having one or more homeowner obligations in arrears to an extent that a notice of default could properly be recorded against the residence.

(2) "Family" means a spouse, domestic partner, parent, stepparent, grandparent, child, stepchild, grandchild, sibling, aunt, uncle, cousin or in-law.

(3) "Foreclosure consultant," except as provided in ORS 646A.705, means a person that directly or through association with another makes a solicitation, representation or offer to a homeowner to perform, for or with the intent to receive compensation from or on behalf of the homeowner, a service that the solicitation, representation or offer indicates will accomplish one or more of the following:

(a) Prevent, postpone or stop a foreclosure sale.

(b) Obtain a forbearance from a beneficiary or mortgagee.

(c) Assist the homeowner in exercising a right of redemption.

(d) Obtain an extension of the period within which the homeowner may reinstate the homeowner's obligation.

(e) Obtain the waiver of an acceleration clause that is:

(A) Contained in a promissory note or contract; and

(B) Secured by or contained in a deed of trust for, or mortgage on, a residence in foreclosure or in default.

(f) Assist the homeowner in obtaining a loan or advance of funds.

(g) Avoid or ameliorate an impairment of the homeowner's credit resulting from a recorded notice of foreclosure or default.

(4) "Foreclosure consulting contract" means an agreement between a foreclosure consultant and a homeowner for the provision of services by a foreclosure consultant in regard to a residence in foreclosure or in default.

(5) "Homeowner" means the record owner of a residence.

(6) "Residence in foreclosure" means residential real property:

(a) Consisting of one to four single-family dwelling units;

(b) On which the owner occupies a dwelling unit; and

(c) Against which a notice of default has been recorded. [2008 c.19 §2]

646A.705 Persons that are not foreclosure consultants. The following are not foreclosure consultants for purposes of ORS 646A.702 to 646A.720:

(1) An individual licensed to practice law in this state, if performing services within an attorney-client relationship.

(2) A person that holds or is owed an obligation that is secured by a lien on a residence in foreclosure or default, if performing services in connection with the obligation or lien.

(3) A person doing business under authority of an Oregon or federal law regulating banks, trust companies, savings and loan associations, credit unions or insurance companies, or as a licensee under ORS chapter 725, if performing business services within the scope of that authority or license.

(4) A subsidiary, affiliate or agent of a person described in subsection (3) of this section, if performing business services within the scope of the person's authority or license as the person's subsidiary, affiliate or agent.

(5) The judgment creditor of a homeowner, if the creditor's claim accrued before a notice of sale was sent to the creditor under ORS 86.740.

(6) A title insurer authorized to conduct business in Oregon or an insurance producer licensed to conduct business in Oregon, if performing title insurance or settlement services within the scope of that authority or license.

(7) A mortgage broker or mortgage lender licensed under ORS 86A.095 to 86A.198 to conduct business in Oregon, if acting within the scope of that license.

(8) A real estate licensee under ORS 696.022 or an escrow agent licensed under ORS 696.511, if acting within the scope of that license.

(9) A tax-exempt organization that offers counseling or advice to homeowners in foreclosure, if the organization:

(a) Is not directly or indirectly related to for-profit lenders or foreclosure purchasers;

(b) Does not contract to provide services to or receive services from for-profit lenders or foreclosure purchasers; and

(c) Has provided counseling or advice to homeowners for five years or more.

(10) A creditors' committee, trustee or debtor in possession participating in a proceeding under the jurisdiction of the United States Bankruptcy Court.

(11) Any person whose employment with regard to a residential real property matter under the jurisdiction of the United States Bankruptcy Court is approved by order of the bankruptcy court.

(12) A person that is a member of the homeowner's family or is owned or controlled by a member of the homeowner's family. [2008 c.19 §3; 2011 c.9 §83]

646A.710 Foreclosure consulting contract; requirements; void provisions. (1) A written foreclosure consulting contract is required for any services that a foreclosure consultant provides to a homeowner. A foreclosure consultant shall provide a homeowner with a copy of the foreclosure consulting contract at least 24 hours before the homeowner signs the contract. The foreclosure consulting contract must:

(a) Be written in a language that is spoken by the homeowner and that was used in discussions between the homeowner and foreclosure consultant to describe the foreclosure consultant's services or to negotiate the contract and, except as provided in paragraph (f) of this subsection, be printed in at least 12-point type.

(b) Fully disclose the nature and extent of the services the foreclosure consultant is to provide.

(c) Fully disclose the terms and total amount of any compensation the foreclosure consultant or a person working in association with the foreclosure consultant is to receive.

(d) Be dated and personally signed by the homeowner and the foreclosure consultant.

(e) Contain on the first page the name and address, facsimile number and electronic mail address of the foreclosure consultant to which a notice of cancellation may be delivered.

(f) Contain, in immediate proximity to the space reserved for the homeowner's signature, a notice in substantially the following form and printed in at least 14-point boldfaced type:

---

**NOTICE REQUIRED BY OREGON LAW**

**THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. YOU SHOULD CONTACT A LAWYER OR OTHER PROFESSIONAL ADVISER BEFORE SIGNING.**

**YOU MAY CANCEL THIS CONTRACT AT ANY TIME.**

If you cancel, you must pay for any services that were provided under this contract before the cancellation and repay any money spent on your behalf under this contract. You have 60 days after cancellation to pay for services and to repay any money spent on your behalf. You must also pay any interest allowed by this contract, which may not exceed nine percent per year.

\_\_\_\_\_ (name of foreclosure consultant) or any person working with \_\_\_\_\_ (name of foreclosure consultant) CANNOT ask you to sign or have you sign any lien, mortgage or deed that transfers an interest in your home or property to \_\_\_\_\_ (name of foreclosure consultant) or any person working with \_\_\_\_\_ (name of foreclosure consultant).

\_\_\_\_\_ (name of foreclosure consultant) or any person working with \_\_\_\_\_ (name of foreclosure consultant) CANNOT guarantee you that they will be able to refinance your home or arrange for you to keep your home.

The law requires that this contract contain the entire agreement. You should not rely on any other written or oral agreement or promise.

---

(2) A foreclosure consulting contract provision is void if the provision provides for the homeowner to:

- (a) Waive any rights of the homeowner under ORS 646A.702 to 646A.720;
- (b) Consent to jurisdiction for litigation or dispute resolution in a state other than Oregon;
- (c) Consent to a choice of laws provision that applies the laws of a state other than Oregon;
- (d) Consent to venue in a county other than the county in which the residence in foreclosure or default is located; or

(e) Pay any costs or fees incurred by the foreclosure consultant to enforce the contract, other than court costs and filing fees incurred in a successful circuit court action. [2008 c.19 §4]

646A.715 Cancellation; effective date; payment for services provided before cancellation or breach; form; sufficiency of notice. (1) In addition to any other cancellation or rescission right, a homeowner may cancel a foreclosure consulting contract as provided under this section at any time.

(2) Cancellation under this section occurs when the homeowner gives written notice of cancellation to the foreclosure consultant:

(a) At a physical address specified in the foreclosure consulting contract; or

(b) At a facsimile number or electronic mail address specified in the foreclosure consulting contract.

(3)(a) If the homeowner gives written notice of cancellation under this section by mail, the notice is effective when deposited in the United States mail with the proper address and postage.

(b) If the homeowner gives written notice of cancellation under this section by facsimile or electronic mail, the notice is effective upon receipt. Proof of a transmission by the homeowner to the facsimile number or electronic mail address specified in the foreclosure consulting contract creates a rebuttable presumption that the foreclosure consultant received the notice at the time of the transmission.

(4) A homeowner who cancels or breaches a foreclosure consulting contract under this section shall, no later than 60 days after the cancellation or breach, pay for any services performed in good faith under the contract by or on behalf of the foreclosure consultant prior to the cancellation or breach and repay any moneys paid or advanced under the contract by or on behalf of the foreclosure consultant. The homeowner shall also pay any interest allowed by the foreclosure consulting contract, not to exceed nine percent per year.

(5) Failure of the homeowner to repay moneys as provided in subsection (4) of this section does not invalidate the cancellation of the foreclosure consulting contract.

(6) When both parties have signed the foreclosure consulting contract, the foreclosure consultant shall immediately provide the homeowner with a signed and dated copy of the contract and a cancellation form. The cancellation form must:

(a) Be in duplicate;

(b) Be on a separate sheet of paper attached to the foreclosure consulting contract;

(c) Be easily detachable; and

(d) Contain a statement in substantially the following form and printed in at least 14-point boldfaced type:

---

HOW TO CANCEL

\_\_\_\_\_(Date of Contract)

YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY AT ANY TIME.

To cancel the contract, mail or deliver a signed and dated copy of this Notice of Cancellation, or write something saying you want to cancel, and send it to \_\_\_\_\_ (name of foreclosure consultant) at \_\_\_\_\_ (address of foreclosure consultant). You can cancel by fax or e-mail. Send any cancellation by fax to \_\_\_\_\_ or any cancellation by e-mail to \_\_\_\_\_.

If you cancel, you must pay for any services that were provided under the contract before the cancellation and repay any money spent on your behalf under the contract. You have 60 days after cancellation to pay for services and to repay any money spent on your behalf. You must also pay any interest allowed under the contract, which may not exceed nine percent per year.

#### NOTICE OF CANCELLATION

TO: \_\_\_\_\_ (name of foreclosure consultant)

\_\_\_\_\_ (address, fax or e-mail of foreclosure consultant)

I cancel this contract.

Date: \_\_\_\_\_

Your (homeowner's) printed name and address:

\_\_\_\_\_

Your (homeowner's) signature:

\_\_\_\_\_

---

(7) A written notice of cancellation under this section is sufficient, however expressed, if the notice indicates the intent of the homeowner to cancel the foreclosure consulting contract. The contract may not require the homeowner to use the notice of cancellation form set forth in subsection (6) of this section. [2008 c.19 §5]

646A.720 Prohibited acts of foreclosure consultant. A foreclosure consultant may not:

(1) Claim, demand, charge, collect or receive any compensation from a homeowner unless the foreclosure consultant has performed in good faith under the contract:

(a) Each service the foreclosure consultant contracted to perform for the homeowner; or

(b) Each service to be compensated, prior to the homeowner canceling or breaching the contract.

(2) Claim, demand, charge, collect or receive interest or other compensation that exceeds nine percent per year on any services performed, any loan by the foreclosure

consultant to the homeowner or any moneys paid or advanced to the homeowner under the foreclosure consulting contract.

(3) Take a wage assignment, lien on real or personal property or other security for the payment of compensation.

(4) Receive consideration from a third party in connection with services provided by a foreclosure consultant to a homeowner, unless the consideration is first fully disclosed in writing to the homeowner.

(5) Directly or indirectly acquire an interest in a residence in foreclosure or default transferred by a homeowner with whom the foreclosure consultant has contracted, including any interest transferred to or through a member of the foreclosure consultant's family or to or through a subsidiary, affiliate or related entity in which the foreclosure consultant or a member of the foreclosure consultant's family is a primary member, shareholder or owner.

(6) Receive compensation from a third party for facilitating or arranging for entry into an equity conveyance as defined in ORS 646A.725 by a homeowner with whom the foreclosure consultant has contracted.

(7) Facilitate or arrange for entry into an equity conveyance as defined in ORS 646A.725 by a homeowner with whom the foreclosure consultant has contracted, if the foreclosure consultant knows or should know that the equity purchaser has failed to comply with ORS 646A.735 (1).

(8) Take a power of attorney from a homeowner except for the purpose of obtaining or inspecting documents.

(9) Induce or attempt to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with ORS 646A.702 to 646A.720.

(10) Directly or by implication make a statement or engage in conduct that is false, deceptive, misleading or likely to cause confusion or misunderstanding regarding a:

- (a) Foreclosure consultant service;
- (b) Foreclosure consulting contract; or
- (c) Residence in foreclosure or default. [2008 c.19 §6]

#### (Equity Conveyances)

646A.725 Definitions for ORS 646A.725 to 646A.750. As used in ORS 646A.725 to 646A.750:

(1) "Bona fide purchaser" means a person that purchases a residential real property from an equity purchaser:

- (a) For valuable consideration;
- (b) In good faith;
- (c) Without knowledge of any continuing right to, or equity in, the property by the equity seller; and
- (d) Without knowledge of any violation of ORS 646A.725 to 646A.750 by the equity purchaser regarding the property.

(2) "Business day" does not mean a Saturday or a legal holiday described in ORS 187.010 or 187.020.

(3) "Equity conveyance":

- (a) Means a transaction that involves:

(A) The transfer of an interest in a residence in foreclosure by an equity seller to an equity purchaser, or to another person acting in association with the equity purchaser, that allows the equity purchaser or other person to obtain legal or equitable title to all or part of the residential real property; and

(B) A subsequent conveyance, or agreement for a subsequent conveyance, of an interest in the residential real property from the equity purchaser or person acting in association with the equity purchaser to the equity seller to allow the equity seller to possess the property during, or after termination of, the foreclosure process.

(b) Does not mean a transfer of interest by means of a nonjudicial foreclosure sale or by means of a sheriff's sale or other judicial foreclosure action.

(4) "Equity conveyance contract" means a written contract between an equity seller and an equity purchaser that contains an agreement for an equity conveyance.

(5) "Equity purchaser," except as provided in ORS 646A.730, means a person that enters into an equity conveyance that transfers to the person, or to another acting in association with the person, an interest in residential real property sufficient to allow obtaining legal or equitable title to all or part of the property.

(6) "Equity recapture payment" means the resale price for a property, less the following:

(a) Amounts owing as of the closing of the resale for liens or other encumbrances created or suffered by the equity seller.

(b) Amounts paid after the transfer of interest in the property by the equity seller and before the closing of the resale on liens or other encumbrances created or suffered by the equity seller.

(c) Cash received by the equity seller from the equity purchaser under the equity conveyance contract.

(d) Title, escrow and other customary closing costs incurred by the equity purchaser under the equity conveyance contract or because of the resale.

(e) Real estate commissions and charges incurred by the equity purchaser under the equity conveyance contract or because of the resale.

(f) Charges for prorated taxes and homeowner association dues, attributable to a period of time prior to the transfer of interest in the property by the equity seller.

(g) Attorney fees incurred by the equity purchaser under the equity conveyance contract or because of the resale.

(h) Reimbursement of actual repair and maintenance expenses.

(i) Reimbursement for the construction of improvements to the property.

(7) "Equity seller" means a natural person who is the record owner of a residence in foreclosure at the time an interest in the residence is transferred under an equity conveyance to an equity purchaser or to a person acting in association with an equity purchaser.

(8) "Primary housing expenses" means the total amount required to pay regular principal, interest, rent, utilities, hazard insurance, real estate taxes and association dues on a residential real property.

(9) "Resale" means a sale by an equity purchaser to a bona fide purchaser of residential real property that is the subject of an equity conveyance contract.

(10) "Resale price" means the gross sale price of a residential real property upon resale.



(11) "Residence in foreclosure" means residential real property:

- (a) Consisting of one to four single-family dwelling units;
- (b) On which the owner occupies a dwelling unit; and
- (c) Against which a notice of default has been recorded.

(12) "Settlement agent" means a provider of settlement services who:

- (a) Is a licensed escrow agent, title insurance agent or attorney; and
- (b) Is not the equity purchaser or an employee or associate of the equity purchaser.

(13) "Settlement conference" means an in-person meeting between an equity seller and a settlement agent:

(a) For the purpose of completing documents incident to the transfer of an interest as part of an equity conveyance; and

(b) During which the settlement agent provides the equity seller with the HUD-1 settlement statement used by the United States Department of Housing and Urban Development. [2008 c.19 §9]

646A.730 Persons that are not equity purchasers. The following are not equity purchasers for purposes of ORS 646A.725 to 646A.750:

(1) A party to a deed in lieu of foreclosure.

(2) A creditors' committee, trustee or debtor in possession participating in a proceeding under the jurisdiction of the United States Bankruptcy Court.

(3) Any person whose employment with regard to a residential real property matter under the jurisdiction of the United States Bankruptcy Court is approved by order of the bankruptcy court.

(4) A family or living trust in which the equity seller is the beneficiary or a member of the beneficiary. [2008 c.19 §10]

646A.735 Written contract; requirements; void provisions; power of attorney prohibited. (1) A written contract is required for every equity conveyance. An equity purchaser shall provide an equity seller with a copy of the equity conveyance contract at least 24 hours before the equity seller signs the contract. The equity conveyance contract must:

(a) Be written in a language that is spoken by the equity seller and that was used in discussions between the equity seller and equity purchaser to describe the equity purchaser's services or to negotiate the terms of the contract and, except as provided in paragraph (f) of this subsection, be printed in at least 12-point type;

(b) Contain the entire agreement of the parties;

(c) Be dated and personally signed by the equity seller and the equity purchaser and witnessed by a notary public;

(d) Contain on the first page the name and address, facsimile number and electronic mail address of the settlement agent to which a notice of cancellation may be delivered;

(e) Describe in detail the terms of the equity conveyance including:

(A) The name and business address, and any telephone number, facsimile number and electronic mail address, of the person to whom the equity seller will transfer an interest in the residence in foreclosure;

(B) The address of the residence in foreclosure;

(C) The total consideration the equity purchaser and any other party are to give as a result of the transfer of interest;

(D) The time at which the interest is to be transferred to the equity purchaser or other person and the terms of the transfer;

(E) Any financial or legal obligations that the equity seller may remain subject to, including a description of any mortgages, liens or other obligations that will remain in place;

(F) Any services the equity purchaser will perform for the equity seller before or after the transfer of interest;

(G)(i) The terms of any post-transfer conveyance or agreement for a conveyance to the equity seller to allow the equity seller to remain in the home, including but not limited to the terms of any rental agreement, repurchase agreement, contract for deed, land installment contract or option to buy; and

(ii) Any provisions for eviction or removal of the equity seller in the case of late payment;

(H) An explanation of how any repurchase price or fee associated with any conveyance of title or deed back to the equity seller will be calculated; and

(I) An explanation of the percentage of any equity recapture payment the equity seller is to receive if the equity seller does not exercise a right to receive back a conveyance of title or deed; and

(f) Contain, in immediate proximity to the space reserved for the equity seller's signature, a notice in substantially the following form and printed in at least 14-point boldfaced type:

---

#### NOTICE REQUIRED BY OREGON LAW

THIS IS AN IMPORTANT LEGAL CONTRACT. YOU ARE TRANSFERRING YOUR DEED OR TITLE AND THIS COULD RESULT IN THE PERMANENT LOSS OF YOUR HOME. CONTACT A LAWYER OR OTHER PROFESSIONAL ADVISER BEFORE SIGNING.

YOU MAY CANCEL THIS CONTRACT WITHIN THREE (3) BUSINESS DAYS.

If you cancel, you must pay for services that were provided under this contract before cancellation and repay any money spent on your behalf under this contract. You have 60 days after cancellation to pay for the services and repay any money spent on your behalf. You must also pay any interest allowed by this contract, which may not exceed nine percent per year.

The law requires that this contract contain the entire agreement. You should not rely on any other written or oral agreement or promise.

---

(2) An equity conveyance contract provision is void if the provision provides for an equity seller to:

- (a) Waive any rights of the equity seller under ORS 646A.725 to 646A.750;
  - (b) Consent to jurisdiction for litigation or dispute resolution in a state other than Oregon;
  - (c) Consent to a choice of laws provision that applies the laws of a state other than Oregon;
  - (d) Consent to venue in a county other than the county in which the residential real property is located; or
  - (e) Pay any costs or fees that the equity purchaser or a person acting in association with the equity purchaser incurred to enforce the contract, other than court costs and filing fees incurred in a successful circuit court action.
- (3) An equity conveyance may not be carried out using a power of attorney from the equity seller to the equity purchaser or a person acting in association with the equity purchaser. [2008 c.19 §11]

646A.740 Cancellation; effective date; rebuttable presumption of delivery; payment for services; form; sufficiency of notice; return of documents. (1) In addition to any other cancellation or rescission right, an equity seller may cancel an equity conveyance contract as provided under this section before the earlier of:

- (a) Midnight of the third business day after the equity seller signs a document purporting to transfer an interest in the residence in foreclosure; or
  - (b) A foreclosure sale of the residence in foreclosure.
- (2) If the equity seller gives a written notice of cancellation under this section by mail, the notice is effective upon the earlier of:
- (a) Delivery to the physical address of the equity purchaser or settlement agent; or
  - (b) Actual receipt by the equity purchaser or settlement agent.
- (3) If the equity seller gives a written notice of cancellation under this section by facsimile number or electronic mail, the notice is effective upon the earlier of:
- (a) Delivery to the facsimile or electronic mail address of the equity purchaser or the settlement agent; or
  - (b) Actual receipt by the equity purchaser or settlement agent.
- (4) Proof of a transmission by the equity seller to the facsimile number or electronic mail address of the equity purchaser or of the settlement agent creates a rebuttable presumption that the notice of cancellation was delivered to the facsimile number or electronic mail address of the equity purchaser or settlement agent at the time of transmission.
- (5) An equity seller who cancels or breaches an equity conveyance contract under this section shall, no later than 60 days after the cancellation or breach, pay for any services provided in good faith under the contract prior to the cancellation or breach and repay any moneys paid or advanced under the contract by or on behalf of the equity purchaser. The equity seller shall also pay any interest stated in the equity conveyance contract, not to exceed nine percent per year.
- (6) Failure of the equity seller to repay moneys as provided in subsection (5) of this section does not invalidate the cancellation of the equity conveyance contract.
- (7) When both parties have signed the equity conveyance contract, the equity purchaser shall immediately provide the equity seller with a signed and dated copy of the contract and a cancellation form. The cancellation form must:

- (a) Be in duplicate;
  - (b) Be on a separate sheet of paper attached to the contract;
  - (c) Be easily detachable; and
  - (d) Contain a statement in substantially the following form and be printed in at least 14-point boldfaced type:
- 

## HOW TO CANCEL

IF YOU DECIDE NOT TO TRANSFER YOUR DEED OR TITLE, YOU MAY CANCEL THIS CONTRACT.

THE NOTICE OF CANCELLATION MUST BE RECEIVED WITHIN THREE (3) BUSINESS DAYS AFTER YOU SIGNED THE CONTRACT.

Date of Contract: \_\_\_\_\_

Your notice of cancellation must be received before midnight on: \_\_\_\_\_ (date).

To cancel the contract, deliver a signed and dated copy of this Notice of Cancellation, or write something saying you want to cancel, and deliver it to \_\_\_\_\_ (name of settlement agent) at \_\_\_\_\_ (address of settlement agent). You can cancel by fax or e-mail. Deliver any cancellation by fax to \_\_\_\_\_ or any cancellation by e-mail to \_\_\_\_\_.

If you cancel, you must pay for any services that were provided under the contract before you canceled and repay any money spent on your behalf under the contract. You have 60 days after cancellation to pay for the services and repay any money spent on your behalf. You must also pay any interest allowed under the contract, which may not exceed nine percent per year.

## NOTICE OF CANCELLATION

TO: \_\_\_\_\_ (name of settlement agent)

\_\_\_\_\_ (address, fax and e-mail of settlement agent)

I cancel the contract. Please return all signed documents to me.

Date: \_\_\_\_\_

Your (homeowner's) printed name and address:

\_\_\_\_\_

Your (homeowner's) signature:

---

---

(8) Notwithstanding subsection (1)(a) of this section, the period during which the equity seller may cancel the equity conveyance contract does not commence until the equity purchaser has complied with subsection (7) of this section.

(9) A notice of cancellation under this section is sufficient, however expressed, if the notice indicates the intent of the equity seller to cancel the equity conveyance contract. The equity conveyance contract may not require the equity seller to use the notice of cancellation form described in subsection (7) of this section.

(10) No later than 10 days after receipt of a notice of cancellation given in accordance with this section, the equity purchaser shall return, without condition, any original deed, title and contract, and any other document of transfer signed by the equity seller. [2008 c.19 §12]

646A.745 Required and prohibited acts. (1) An equity purchaser shall:

(a) Prior to an equity seller signing an equity conveyance contract:

(A) Verify and be able to demonstrate that the equity seller has or will have a reasonable ability to pay for the subsequent reconveyance of the residential real property interest back to the equity seller as provided under the equity conveyance contract; or

(B) If the equity conveyance contract provides for a lease with an option to repurchase the residential real property, verify and be able to demonstrate that the equity seller has or will have a reasonable ability to make the lease payments and repurchase the property within the term of the option to repurchase.

(b) Arrange for the equity seller and the settlement agent to complete a settlement conference before the equity seller transfers any interest under the equity conveyance contract.

(c) Comply with the requirements of the federal Home Ownership and Equity Protection Act (15 U.S.C. 1639) and its implementing regulations for any equity conveyance in which the equity seller obtains a vendee interest in a contract for deed.

(d) Ensure that title to, or other interest in, the residential real property is timely reconveyed to the equity seller as provided under the terms of the equity conveyance contract.

(e) If a residential real property is resold within 24 months after the equity seller enters into an equity conveyance contract, pay the equity seller cash or consideration in an amount equal to at least 82 percent of the equity recapture payment from the resale no later than 15 days after the receipt of cash or consideration from or on behalf of the purchasers of the property.

(f) Timely record the memorandum of agreement required by ORS 646A.750.

(2) An equity purchaser may not:

(a) As part of an equity conveyance contract, enter into repurchase or lease terms that are commercially unreasonable or unfair to an equity seller, or engage in any other unfair conduct.

(b) Represent, directly or indirectly, that the equity purchaser is acting as a financial adviser or foreclosure consultant to the equity seller or otherwise is acting on behalf of the equity seller.

(c) Make a false representation regarding the equity purchaser's possession of professional credentials that indicate knowledge or expertise regarding real property transactions.

(d) Represent, directly or indirectly, that the equity purchaser is assisting the equity seller in preventing a foreclosure, if the equity conveyance contract does not provide for the equity seller to completely redeem the residential real property and regain title.

(e) Directly or by implication make a statement or engage in conduct that is false, deceptive, misleading or likely to cause confusion or misunderstanding regarding an equity conveyance, including but not limited to a statement or conduct with regard to:

(A) The value of a residence in foreclosure;

(B) The amount of proceeds the equity seller would receive after a foreclosure sale;

(C) An equity conveyance contract term; or

(D) The equity seller's rights or obligations incident to or arising out of the equity conveyance.

(f) Before the equity seller's right to cancel an equity conveyance contract has expired:

(A) Record or cause to be recorded an instrument of conveyance or other document the equity seller signed;

(B) Transfer or purport to transfer any interest in the residential real property to any third party; or

(C) Encumber or purport to encumber any interest in the residential real property with any third party. [2008 c.19 §13]

646A.750 Rebuttable presumptions; accounting; bona fide purchaser; memorandum of agreement; form. (1) For purposes of determining whether an equity purchaser has violated ORS 646A.745 (1)(a), there is a rebuttable presumption that:

(a) An equity seller has or will have a reasonable ability to pay for a subsequent reconveyance of a residential real property if, on the date the equity seller signs the equity conveyance contract, the monthly payments projected for the equity seller's primary housing expenses under the contract and monthly payments for regular principal and interest payments on other personal debt do not, in total, exceed 60 percent of the equity seller's monthly gross income.

(b) The equity purchaser has failed to verify that the equity seller has a reasonable ability to pay for a subsequent reconveyance of a property if the equity purchaser has not obtained supporting documents other than a statement by the equity seller of assets, liabilities and income.

(2) If a property is resold within 24 months after an equity seller enters into an equity conveyance contract, at the time of making the equity recapture payment to the equity seller under ORS 646A.745 (1)(e), the equity purchaser shall provide the equity seller with a detailed accounting of the basis for the payment amount. The accounting shall include detailed documentation of the amounts subtracted by the equity purchaser from the resale price to determine the amount of the equity recapture payment.

(3) A bona fide purchaser that enters into a transaction with an equity seller or equity purchaser receives good title to the property, free and clear of:

(a) The rights of the parties to an equity conveyance contract or a memorandum of agreement; or

(b) Any cancellation of the equity conveyance contract.

(4) ORS 646A.725 to 646A.750 do not impose a duty on a property purchaser, settlement agent, title insurer or title insurance producer regarding the application of the proceeds of a resale of property by an equity purchaser.

(5) At the time of presenting an equity conveyance for recording, the equity purchaser shall present a memorandum of agreement for recording in the county where the residential real property is located. The memorandum of agreement must be signed by the equity purchaser and the equity seller, witnessed by a notary public and in substantially the following form:

---

MEMORANDUM OF AGREEMENT

DATED: \_\_\_\_\_

SELLER NAME (print):  
\_\_\_\_\_

PURCHASER NAME  
(print): \_\_\_\_\_

EXPIRATION DATE: \_\_\_\_\_, unless otherwise extended by written agreement between the parties.

LEGAL DESCRIPTION AND PROPERTY ADDRESS: \_\_\_\_\_

TERMS OF AGREEMENT: \_\_\_\_\_

TRUE AND ACTUAL CONSIDERATION  
IS: \_\_\_\_\_

SELLER SIGNATURE:  
\_\_\_\_\_

PURCHASER SIGNATURE:  
\_\_\_\_\_

---

\_\_\_\_\_ [2008 c.19 §14]

646A.755 Acts not precluded. ORS 646A.725 to 646A.750 do not preclude an equity seller from:

(1) Seeking to have a transfer of interest under an equity conveyance declared to be an equitable mortgage; or

(2) Asserting any claim against an equity purchaser for an equitable mortgage.  
[2008 c.19 §15]

646A.760 Civil action for damages; attorney fees and costs; limitation on commencement of action. (1) As used in this section, "equity seller" has the meaning given that term in ORS 646A.725.

(2) In addition to any action by the Attorney General under ORS 646.607 or any other cause of action, an equity seller may bring an action for damages incurred by the equity seller resulting from a violation of ORS 646A.725 to 646A.750.

(3) If a court finds that a defendant in an action under this section committed a violation of ORS 646A.725 to 646A.750 knowingly, in addition to any award of damages for other violations of ORS 646A.725 to 646A.750, the court shall award the equity seller three times the amount of the actual damages sustained by the equity seller as a result of the knowing violation.

(4) The court may award an equity seller prevailing in an action under this section reasonable attorney fees, costs and expenses. If a court finds that an equity seller brought an action under this section in bad faith or solely for purposes of harassment, the court may award a prevailing defendant reasonable attorney fees.

(5) An action under this section must be commenced within six years. [2008 c.19 §17]

(Penalties)

646A.765 Penalties. Violation of a provision of ORS 646A.702 to 646A.720 or 646A.725 to 646A.750 is a Class A misdemeanor.

Source: <http://www.leg.state.or.us/ors/646a.html>



Rhode Island General Law, Mortgage Foreclosure Consultant Regulation, sec. 5-79.1-5-79.9, RI. Gen. L. §§5-79.1-5-79.9.

§ 5-79-1 Definitions. – As used in this chapter:

(1) "Contract" means any agreement, or any term in any agreement, between a foreclosure consultant and an owner for the rendition of any services as defined in subdivision (8).

(2) "Foreclosure consultant" means any person who, directly or indirectly, makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:

- (i) Stop or postpone the foreclosure sale;
- (ii) Obtain any forbearance from any beneficiary or mortgagee;
- (iii) Assist the owner to exercise the right of redemption provided in § 34-23-2;
- (iv) Obtain any extension of the period within which the owner may reinstate the owner's obligation;
- (v) Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;
- (vi) Assist the owner in foreclosure or loan default to obtain a loan or advance of funds;
- (vii) Avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale; or
- (viii) Save the owner's residence from foreclosure.

(3) A foreclosure consultant does not include any of the following:

- (i) 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;
- (ii) A person licensed as a credit counselor under chapter 19-14.7, when the person is acting as a credit counselor in accordance with the chapter;
- (iii) A person licensed as a real estate broker or salesperson under chapter 5-20.5 when the person engages in acts whose performance requires licensure under that chapter;
- (iv) A person licensed as an accountant under chapter 5-3.1 when the person is acting in any capacity for which the person is licensed under those provisions;
- (v) 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 United States or this state to provide services;
- (vi) A person who holds or is owed an obligation secured by a lien on any residence in foreclosure when the person performs services in connection with this obligation or lien of the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance;
- (vii) Any person or entity doing business under any law of this state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons or entities, and any

agent or employee of these persons or entities while engaged in the business of these persons or entities;

(viii) A person licensed as a residential mortgage originator or servicer pursuant to chapter 19-14, when acting under the authority of that license or a foreclosure purchaser as defined in § 5-79-10;

(ix) A nonprofit agency or organization that offers counseling or advice to an owner of a home in foreclosure or loan default if they do not contract for services with for-profit lenders or foreclosure purchasers; and

(x) A judgment creditor of the owner, to the extent that the judgment creditor's claim accrued prior to the personal service of the foreclosure notice required by § 34-27-4, but excluding a person who purchased the claim after such personal service.

(4) "Foreclosure reconveyance" means a transaction involving:

(i) The transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and

(ii) The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess the real property following the completion of the foreclosure proceeding, which interest includes, but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

(5) "Owner" means the record owner of the residential real property in foreclosure at the time the notice of pendency was recorded, or the summons and complaint served.

(6) "Person" means any individual, partnership, corporation, limited liability company, association, or other group, however organized.

(7) "Residence in foreclosure" means residential real property consisting of one to four (4) family dwelling units, one of which the owner occupies as his or her principal place of residence, and against which there is an outstanding notice of pendency of foreclosure, pursuant to § 34-27-4, or against which a summons and complaint has been served under § 34-27-1.

(8) "Service" means and includes, but is not limited to, any of the following activities:

(i) Debt, budget or financial counseling of any type;

(ii) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure;

(iii) Contacting creditors on behalf of an owner of a residence in foreclosure;

(iv) Arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure may cure the owner's default and reinstate his or her obligation pursuant to § 34-23-3;

(v) Arranging or attempting to arrange for any delay or postponements of the time of sale of the residence in foreclosure;

(vi) Advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court; or

(vii) Giving any advise [advice], explanation, or instruction to an owner of a residence in foreclosure, which in any manner relates to the cure of a default in or the

reinstatement of an obligation secured by a lien of the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a residence in foreclosure, pursuant to a power of sale contained in any mortgage.

§ 5-79-2 Rescission of foreclosure consultant contract. – (a) In addition to any other right under law to rescind a contract, an owner has the right to cancel such a contract until midnight of the third (3rd) business day after the day on which the owner signs a contract that complies with § 5-79-3.

(b) Cancellation occurs when the owner gives written notice of cancellation to the foreclosure consultant at the address specified in the contract.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(d) Notice of cancellation given by the owner need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

§ 5-79-3 Contract. – (a) Every contract 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.

(b) The following notice, printed in at least fourteen (14) point boldface type and completed with the name of the foreclosure consultant, must be printed immediately above the statement required by paragraph (c):

"NOTICE REQUIRED BY RHODE ISLAND LAW

(Name or anyone working for him or her CANNOT):

(1) Take any money from you or ask you for money until . . . . (Name) has completely finished doing everything he or she said he or she would do; and

(2) Ask you to sign or have you sign any lien, mortgage or deed."

(c) The contract must be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract, must be dated and signed by the owner, and must contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least ten (10) point boldface type, as follows:

"You, the owner, may cancel this transaction at any time prior to midnight of the third (3rd) business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(d) The contract must contain on the first (1st) page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) The name and address of the foreclosure consultant to which the notice of cancellation is to be mailed; and

(2) The date the owner signed the contract.

(e) The contract must be accompanied by a completed form in duplicate, captioned "notice of cancellation," which must be attached to the contract, must be easily detachable, and must contain in at least ten (10) point type the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

. . . . (Enter date of transaction)

You may cancel this transaction, without any penalty or obligation, until midnight of the third (3rd) business day from the above date.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice to . . . . . (Name of foreclosure consultant) at . . . . . (Address of foreclosure consultant's place of business) NOT LATER THAN MIDNIGHT OF . . . . . (Date)

I hereby cancel this transaction . . . . . (Date)  
. . . . . ; (Owner's signature)"

(f) The foreclosure consultant shall provide the owner with a copy of the contract and the attached notice of cancellation immediately upon execution of the contract.

(g) The three (3) business days during which the owner may cancel the contract shall not begin to run until the foreclosure consultant has complied with this section.

§ 5-79-4 Violations. – (a) It is a violation for a foreclosure consultant to:

(1) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented he or she would perform;

(2) Claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason which exceeds eight percent (8%) per annum of the amount of any loan which the foreclosure consultant may make to the owner;

(3) Take any wage assignment, any lien on any type of real or personal property, or other security to secure the payment of compensation. Any such security is void and unenforceable;

(4) Receive any consideration from any third-party in connection with services rendered to an owner 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 an owner with whom the foreclosure consultant has contracted;

(6) Take any power of attorney from an owner for any purpose, except to inspect documents as provided by law; or

(7) Induce or attempt to induce any owner to enter a contract which does not comply in all respects with § 5-79-3.

§ 5-79-5 Waiver not allowed. – Any waiver by an owner of the provisions of §§ 5-79-1 – 5-79-9 is void and unenforceable as contrary to public policy. Any attempt by a foreclosure consultant to induce an owner to waive the owner's rights is a violation of §§ 5-79-1 – 5-79-9.

§ 5-79-6 Remedies. – (a) Any violation of §§ 5-79-1 – 5-79-9 is considered to be a violation of § 6-13.1-2, and all remedies of § 6-13.1-5.2 are available for such an action. A private cause of action under § 6-13.1-5.2 by a foreclosed homeowner is in the public interest. An owner may bring an action against a foreclosure consultant for any violation of §§ 5-79-1 – 5-79-9. Any judgment against the mortgage foreclosure consultant shall include actual damages, reasonable attorney fees and costs, and appropriate equitable relief.

(b) The court may award punitive damages up to one and one half (1 1/2) times the compensation charged by the foreclosure consultant if the court finds that the foreclosure consultant violated the provisions of subsections 5-79-4(1), (2) or (4), and the foreclosure consultant's conduct was in bad faith.

(c) The rights and remedies provided in paragraph (a) are cumulative to, and not a limitation of, any other rights and remedies provided by law.

(d) Any action brought pursuant to this section must be commenced within four (4) years from the date of the alleged violation.

(e) Notwithstanding any other provision of this section, no action may be brought on the basis of a violation of §§ 5-79-1 – 5-79-9, except by an owner against whom the violation was committed or by the department of attorney general.

§ 5-79-7 Penalty. – Any person who commits any violation described in § 5-79-4 may, upon conviction, be fined not more than ten thousand dollars (\$10,000) or imprisoned for not more than one year, or both. Prosecution or conviction for any violation described in § 5-79-4 will not bar prosecution or conviction for any other offenses. These penalties are cumulative to any other remedies or penalties provided by law.

§ 5-79-8 Provisions severable. – If any provision of §§ 5-79-1 – 5-79-9 or the application of any of these provisions to any person or circumstance is held to be unconstitutional and void, the remainder of §§ 5-79-1 – 5-79-9 remains valid.

§ 5-79-9 Liability. – Any provision in a contract that attempts or purports to require arbitration of any dispute arising under §§ 5-79-1 – 5-79-9 is void at the option of the owner.

Source: <http://webserver.rilin.state.ri.us/Statutes/TITLE5/5-79/INDEX.HTM>

## **Rhode Island General Law Mortgage Foreclosure Purchasers, sec. 5-80.1 - 5-80.9. RI Gen L §§ 55-80.1 - 5-80.9.**

§ 5-80-1 Definitions. – As used for §§ 5-80-1 – 5-80-9:

(a) "Foreclosed homeowner" means an owner of residential real property, including a condominium, that is the primary residence of the owner and whose mortgage on the real property is or was in foreclosure.

(b) "Foreclosure conveyance" means a transaction involving:

(1) The transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and

(2) The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess the real property following the completion of the foreclosure proceeding, which interest includes,

but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

(c) "Foreclosure purchaser" means a person that has acted as the acquirer in more than four (4) foreclosure reconveyances during any twenty-four (24) month period. Foreclosure purchaser also includes a person that has acted in joint venture or joint enterprise with one or more acquirers in more than four (4) foreclosure reconveyances during any twenty-four (24) month period. A federal or state chartered bank, savings bank, thrift, or credit union is not a foreclosure purchaser.

(d) "Resale" means a bona fide market sale of the property subject to the foreclosure reconveyance by the foreclosure purchaser to an unaffiliated third-party.

(e) "Resale price" means the gross sale price of the property on resale.

§ 5-80-2 Contract requirement; form and language. – A foreclosure purchaser shall enter into every foreclosure reconveyance in the form of a written contract. Every contract must be written in letters of a size equal to at least twelve (12) point boldface type, in the same language principally used by the foreclosure purchaser and foreclosed homeowner to negotiate the sale of the residence in foreclosure and must be fully completed and signed and dated by the foreclosed homeowner and foreclosure purchaser before the execution of any instrument of conveyance of the resident [residence] in foreclosure.

§ 5-80-3 Contract terms. – (a) Every contract required by § 5-80-2 must contain the entire agreement of the parties and must include the following terms:

- (1) The name, business address, and the telephone number of the foreclosure purchaser;
- (2) The address of the residence in foreclosure;
- (3) The total consideration to be given by the foreclosure purchaser in connection with or incident to the sale;
- (4) A complete description of the terms of payment or other consideration including, but not limited to, any services of any nature that the foreclosure purchaser represents he or she will perform for the foreclosed homeowner before or after the sale;
- (5) The time at which possession is to be transferred to the foreclosure purchaser;
- (6) A complete description of the terms of any related agreement designed to allow the foreclosed homeowner to remain in the home, such as a rental agreement, repurchase agreement, contract for deed, or lease with option to buy;
- (7) A notice of cancellation as provided in § 5-80-5(b); and
- (8) The following notice in at least fourteen (14) point boldface type, if the contract is printed or in capital letters if the contract is typed, and completed with the name of the foreclosure purchaser, immediately above the statement required by § 5-80-5(a):

"NOTICE REQUIRED BY RHODE ISLAND LAW

Until your right to cancel this contract has ended, . . . . . (Name) or anyone working for . . . . . (Name) CANNOT ask you to sign or have you sign any deed or any other document."

The contract required by this section survives delivery of any instrument of conveyance of the residence in foreclosure, and has no effect on persons other than the parties to the contract.

§ 5-80-4 Contract cancellation. – (a) In addition to any other right of rescission, the foreclosed homeowner has the right to cancel any contract with a foreclosure purchaser until midnight of the fifth (5th) business day following the day on which the foreclosed homeowner signs a contract that complies with §§ 5-80-1 – 5-80-6 or until 8:00 a.m. on the last day of the period during which the foreclosed homeowner has a right of redemption, whichever occurs first.

(b) Cancellation occurs when the foreclosed homeowner delivers, by any means, written notice of cancellation to addresses specified in the contract.

(c) A notice of cancellation given by the foreclosed homeowner need not take the particular form as provided with the contract.

(d) Within ten (10) days following the receipt of a notice of cancellation given in accordance with this section, the foreclosure purchaser shall return without condition any original contract and any other documents signed by the foreclosed homeowner.

§ 5-80-5 Notice of cancellation. – (a) The contract must contain in immediate proximity to the space reserved for the foreclosed homeowner's signature a conspicuous statement in a size equal to at least fourteen (14) point boldface type, if the contract is printed, or in capital letters, if the contract is typed, as follows:

"You may cancel this contract for the sale of your house without any penalty or obligation at anytime before ]]]]]]]] (Date and time of day). See the attached notice of cancellation form for an explanation of this right."

The foreclosure purchaser shall accurately enter the date and time of day on which the cancellation right ends.

(b) The contract must be accompanied by a completed form in duplicate, captioned "notice of cancellation" in a size equal to a twelve (12) point boldface type if the contract is printed, or in capital letters, if the contract is typed, followed by a space in which the foreclosure purchaser shall enter the date on which the foreclosed homeowner executes any contract. This form must be attached to the contract, must be easily detachable, and must contain in type of at least ten (10) points, if the contract is printed or in capital letters if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

..... (Enter date contract signed)

You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before ..... (enter date and time of day)

To cancel this transaction, personally deliver a signed and dated copy of this cancellation notice to ..... (Name of purchaser) at ..... (Street address of purchaser's place of business) NOT LATER THAN (Enter date and time of day) I hereby cancel this transaction ..... (Date)

..... (Seller's signature)"

(c) The foreclosure purchaser shall provide the foreclosed homeowner with a copy of the contract and the attached notice of cancellation at the time the contract is executed by all parties.

(d) The five (5) business days during which the foreclosed homeowner may cancel the contract must not begin to run until all parties to the contract have executed the contract and the foreclosure purchaser has complied with this section.

§ 5-80-6 Waiver. – Any waiver of the provisions of §§ 5-80-1 – 5-80-9 is void and unenforceable as contrary to public policy except a consumer may waive the five (5) day right to cancel provided in § 5-80-4 if the property is subject to a foreclosure sale within the five (5) business days, and the foreclosed homeowner agrees to waive his or her right to cancel in a handwritten statement signed by all parties holding title to the foreclosed property.

§ 5-80-7 Arbitration. – Any provision in a contract that attempts or purports to require arbitration of any dispute arising under §§ 5-80-1 – 5-80-9 is void at the option of the owner.

§ 5-80-8 Prohibited practices. – A foreclosure purchaser shall not:

(1) Enter into, or attempt to enter into, a foreclosure reconveyance with a foreclosed homeowner unless:

(i) The foreclosure purchaser verifies and can demonstrate that the foreclosed homeowner has a reasonable ability to pay for the subsequent conveyance of an interest back to the foreclosed homeowner. In the case of a lease with an option to purchase, payment ability also included the reasonable ability to make the lease payments and purchase the property within the term of the option to purchase. There is a rebuttable presumption that a homeowner is reasonably able to pay for the subsequent conveyance if the owner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed sixty percent (60%) of the owner's monthly gross income. For the purposes of this section, "primary housing expenses" means the sum of payments for regular principal, interest, rent, utilities, hazard 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;

(ii) The foreclosure purchaser and the foreclosed homeowner complete a closing for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed or mortgage from a foreclosed homeowner. For purposes of this section, "closing" means an in-person meeting to complete final documents incident to the sale of the real property or creation of a mortgage on the real property conducted by a closing agent who is not employed by or an affiliate of the foreclosure purchaser;

(iii) The foreclosure purchaser obtains the written consent of the foreclosed homeowner to a grant by the foreclosure purchaser of any interest in the property during such times as the foreclosed homeowner maintains any interest in the property; and

(iv) The foreclosure purchaser complies with the requirements of the federal Home Ownership Equity Protection Act, United States Code, title 15, § 1639, or its implementing regulation, Code of Federal Regulations, title 12, §§ 226.31 – 226.34, for any foreclosure reconveyance in which the foreclosed homeowner obtains a vendee interest in a contract for deed;

(2) Fail to either;



(i) Ensure that title to the subject dwelling has been reconveyed to the foreclosed homeowner; or

(ii) Make a payment to the foreclosed homeowner such that the foreclosed homeowner has received consideration in an amount of at least eighty two percent (82%) of the fair market value of the property within one hundred fifty (150) days of either the eviction or voluntary relinquishment of possession of the dwelling by the foreclosed homeowner. The foreclosure purchaser shall make a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make a payment, including providing written documentation of expenses, within this one hundred fifty (150) day period. The accounting shall be on a form prescribed by the department of attorney general, in consultation with the department of business regulation, without being subject to the rulemaking procedures of chapter 42-35. For purposes of this provision, the following applies:

(A) 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;

(B) The time for determining the fair market value amount shall be determined in the foreclosure reconveyance contract as either at the time of the execution of the foreclosure reconveyance contract or at resale. 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 one hundred twenty (120) days of the eviction or voluntary relinquishment of the property by the foreclosed homeowner. If the contract states that the fair market value shall be determined at the time of resale, and the resale is not completed within one hundred twenty (120) days of the eviction or voluntary relinquishment of the property by the foreclosed homeowner, the fair market value shall be determined by an appraisal conducted during this one hundred twenty (120) day period and payment, if required, shall be made to the homeowner, but the fair market value shall be recalculated as the resale price, on resale and an additional payment amount, if appropriate based on the resale price, shall be made to the foreclosed homeowner within fifteen (15) days of resale, and a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make additional payment, shall be made within fifteen (15) days of resale, including providing written documentation of expenses. The accounting shall be on a form prescribed by the department of attorney general, in consultation with the department of business regulation, without being subject to the rulemaking procedures of chapter 42-35;

(C) "Consideration" shall mean any payment or item of value provided to the foreclosed homeowner, including unpaid rent or contract for deed payments owed by the foreclosed homeowner prior to the date of eviction or voluntary relinquishment of the property, reasonable costs paid to third parties necessary to complete the foreclosure reconveyance transaction, payment of money to satisfy a debt or legal obligation of the foreclosed homeowner, or the reasonable cost of repairs for damage to the dwelling caused by the foreclosed homeowner;

(D) "Consideration" shall not include amounts imputed as a down payment or fee to the foreclosure purchaser, or a person acting in participation with the foreclosure purchaser, incident to a contract for deed, lease, or option to purchase entered into as

part of the foreclosure reconveyance, except for reasonable costs paid to third parties necessary to complete the foreclosure reconveyance;

(3) Enter into repurchase or lease terms as part of the subsequent conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct;

(4) Represent, directly or indirectly, that:

(i) The foreclosure purchaser is acting as an advisor or a consultant, or in any other manner represents that the foreclosure purchaser is acting on behalf of the homeowner;

(ii) The foreclosure purchaser has certification or licensure that the foreclosure purchaser does not have, or that the foreclosure purchaser is not a member of a licensed profession if that is untrue;

(iii) The foreclosure purchaser is assisting the foreclosed homeowner to "save the house" or substantially similar phrase; or

(iv) The foreclosure purchaser is assisting the foreclosed homeowner in preventing a completed foreclosure if the result of the transaction is that the foreclosed homeowner will not complete a redemption of the property;

(5) Make any other statements, directly or by implication, or engage in any other conduct that is false, deceptive, or misleading, or that has the likelihood to cause confusion or misunderstanding, including, but not limited to, statements regarding the value of the residence in foreclosure, the amount of proceeds the foreclosed homeowner will receive after a foreclosure sale, any contract term, or the foreclosed homeowner's rights or obligations incident to or arising out of the foreclosure reconveyance; or

(6) Do any of the following until the time during which the foreclosed homeowner may cancel the transaction has fully elapsed:

(i) Accept from any foreclosed homeowner an execution of, or induce any foreclosed homeowner to execute, any instrument of conveyance of any interest in the residence in foreclosure;

(ii) Record with the records of land evidence in the city or town where such foreclosed property is located any document, including, but not limited to, any instrument of conveyance, signed by the foreclosed homeowner;

(iii) Transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any third-party, provided no grant of any interest or encumbrance is defeated or affected as against a bona fide purchaser or encumbrance for value and without notice of a violation of §§ 5-80-1 – 5-80-9, and knowledge on the part of any such person or entity that the property was "residential real property in foreclosure" does not constitute notice of a violation of §§ 5-80-1 – 5-80-9. This section does not abrogate any duty of inquiry which exists as to rights or interest of persons in possession of the residential real property in foreclosure; or

(iv) Pay the foreclosed homeowner any consideration.

§ 5-80-9 Enforcement. – (a) Remedies. A violation of §§ 5-80-1 – 5-80-8 is considered to be a violation of § 6-13.1-2 and all the remedies of § 6-13.1-5.2 are available for such an action. A private right of action under § 6-13.1-5.2 by a foreclosed homeowner is in the public interest.

(b) Exemplary damages. In a private right of action under § 6-13.1-5.2 for a violation of § 5-80-8, the court may award exemplary damages of any amount. In the event the

court determines that an award of exemplary damages is appropriate, the amount of exemplary damages awarded shall not be less than one and one half (1 1/2) times the foreclosed homeowner's actual damages. Any claim for exemplary damages brought pursuant to this section must be commenced within four (4) years after the date of the alleged violation.

(c) Remedies cumulative. The remedies provided in this section are cumulative and do not restrict any remedy that is otherwise available. The provisions of §§ 5-80-1 – 5-80-9 are not exclusive and are in addition to any other requirements, rights, remedies and penalties provided by law.

(d) Criminal penalty. Any foreclosure purchaser who engages in any practice which would operate as a fraud or deceit upon a foreclosed homeowner may, upon conviction, be fined not more than fifty thousand dollars (\$50,000) or imprisoned not more than one year, or both. Prosecution or conviction for any one of the violations does not bar prosecution or conviction for any other offenses.

(e) Failure of transaction. Failure of the parties to complete the reconveyance transaction, in the absence of additional misconduct, shall not subject a foreclosure purchaser to the criminal penalties under § 5-79-7 or 5-80-9.

(f) Limitation. Notwithstanding any other provisions of this section, no action may be brought on the basis of a violation of §§ 5-80-1 – 5-80-9, except by an owner against whom the violation was committed or by the department of attorney general.

Source: <http://webserver.rilin.state.ri.us/Statutes/TITLE5/5-80/INDEX.HTM>

**Tennessee Code Annotated Foreclosure-Related Rescue Services, sec. 47.18.5401-47.18.5402. Tenn. Code Ann. §§47.18.5401-47.18.5402.**

47-18-5401. Part definitions.

As used in this part, unless the context otherwise requires:

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

(A) Stopping, avoiding or delaying foreclosure proceedings concerning residential real 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 consultant" means a person who directly or indirectly makes a solicitation, representation or offer to a homeowner to provide or perform, in return for payment of money or other valuable consideration, foreclosure-related rescue services; provided, that a foreclosure-rescue consultant shall not include:

(A) A person acting under the express authority or written approval of the United States department of housing and urban development or other department or agency of the United States or this state to provide foreclosure-related rescue services; provided, that the person does not solicit, charge, receive or attempt to collect or secure payment, directly or indirectly, for foreclosure-related rescue services except as expressly authorized by federal law, regulation or rule;

(B) A charitable, not-for-profit agency or organization, as determined by the United States internal revenue service under § 501(c)(3) of the Internal Revenue Code, codified in 26 U.S.C. § 501(c)(3), that offers counseling or advice to an owner of residential real property in foreclosure or loan default if the agency or organization does not contract for foreclosure-related rescue services with a for-profit lender or person facilitating or engaging in foreclosure-rescue transactions, and does not solicit, charge, receive or attempt to collect or secure payment, directly or indirectly, for foreclosure-related services;

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

(D) A state or national bank or its subsidiary, a state or federal savings institution or its subsidiary, a state or federal credit union, an industrial loan and thrift company or a licensed mortgage loan broker or originator; or

(E) An attorney licensed or otherwise authorized to practice law in this state who is providing legal services to a client;

(3) "Foreclosure-rescue transaction" means a transaction that is designed or intended by the parties to stop, avoid or delay foreclosure proceedings against a homeowner's residential real property;

(4) "Homeowner" means any record title owner of residential real property that is the subject of foreclosure proceedings; and

(5) "Residential real property" means improved real property used or occupied or intended to be used or occupied for residential purposes by the owner.

47-18-5402. Marketing of foreclosure-related rescue services -- Agreements and cancellation rights.

(a) In the course of offering or providing foreclosure-related rescue services, no foreclosure-rescue consultant shall:

(1) Engage in any unfair, misleading, or deceptive acts or practices during the course of advertising, marketing, offering, selling or contracting for foreclosure-related services;

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

(3) Solicit, charge, receive or attempt to collect or secure payment, directly or indirectly, for foreclosure-related rescue services before completing or performing all services contained in the agreement for foreclosure-related rescue services;

(4) Induce or attempt to induce any consumer to enter into a contract or agreement that does not fully comply in all respects with this part; or

(5) Fail to accept and honor a consumer's request to cancel and provide any related refunds within ten (10) business days.

(b) The written agreement for foreclosure-related rescue services required by subdivision (a)(1) shall be printed in at least 12-point uppercase type and shall be signed by both parties. The agreement shall include the name, physical address, telephone number and electronic mail address of the person providing foreclosure-related rescue services, the exact nature and specific detail of each service to be provided, the total amount and terms of charges to be paid by the homeowner for the services and the date of the agreement. The date of the agreement shall not be earlier than the date the homeowner signed the agreement. The foreclosure-rescue consultant shall give the homeowner a copy of the agreement to review not less than one (1) business day before the homeowner is to sign the agreement.

(c) The homeowner has the right to cancel the written agreement without any penalty or obligation if the homeowner cancels the agreement within three (3) business days after signing the written agreement. The right to cancel may not be waived by the homeowner or limited in any manner by the foreclosure-rescue consultant. If the homeowner cancels the agreement, any payments that have been given to the foreclosure-rescue consultant shall be returned to the homeowner within ten (10) business days after receipt of the notice of cancellation.

(d) An agreement for foreclosure-related rescue services shall contain, immediately above the signature line, a statement in at least 12-point uppercase type that substantially complies with the following:

HOMEOWNER'S RIGHT OF CANCELLATION

(e) The inclusion of the statement in subsection (d) does not prohibit the foreclosure-rescue consultant from giving the homeowner more time in which to cancel the agreement than is set forth in the statement; provided, that all other requirements of this section are met.

(f) The foreclosure-rescue consultant shall give the homeowner a copy of the signed agreement within three (3) hours after the homeowner signs the agreement.

(g) Any contract or agreement for foreclosure-related services that does not contain the provisions set forth in this section shall be void and unenforceable as a matter of law and public policy.

Source: <http://www.lexisnexis.com/hottopics/tncode/>

**Virginia Code, Virginia Consumer Protection Act, sec. § 59.1-199, 59.1.201.1, 59.1.206. Va. Code. §§ 59.1-199, 59.1.201.1, 59.1.206.**

§ 59.1-199. Exclusions.

Nothing in this chapter shall apply to:

A. Any aspect of a consumer transaction which aspect is authorized under laws or regulations of this Commonwealth or the United States, or the formal advisory opinions of any regulatory body or official of this Commonwealth or the United States.

B. Acts done by the publisher, owner, agent or employee of a newspaper, periodical, or radio or television station, or other advertising media such as outdoor advertising and advertising agencies, in the publication or dissemination of an advertisement in violation of §59.1-200, unless it be proved that such person knew that the advertisement was of a character prohibited by § 59.1-200.

C. Those aspects of a consumer transaction which are regulated by the Federal Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.

D. Banks, savings institutions, credit unions, small loan companies, public service corporations, mortgage lenders as defined in § 6.2-1600, broker-dealers as defined in § 13.1-501, gas suppliers as defined in subsection E of § 56-235.8, and insurance companies regulated and supervised by the State Corporation Commission or a comparable federal regulating body.

E. Any aspect of a consumer transaction which is subject to the Landlord and Tenant Act, Chapter 13 (§ 55-217 et seq.) of Title 55 or the Virginia Residential Landlord and Tenant Act, Chapter 13.2 (§ 55-248.2 et seq.) of Title 55, unless the act or practice of a landlord constitutes a misrepresentation or fraudulent act or practice under § 59.1-200.

F. Real estate licensees who are licensed under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

§ 59.1-200.1 Prohibited practices; foreclosure rescue.

A. In addition to the provisions of § 59.1-200, the following fraudulent acts or practices committed by a supplier, as defined in § 59.1-198, in a consumer transaction involving residential real property owned and occupied as the primary dwelling unit of the owner, are prohibited:

1. The supplier of service to avoid or prevent foreclosure charges or receives a fee (i) prior to the full and complete performance of the services it has agreed to perform, if the transaction does not involve the sale or transfer of residential real property, or (ii) prior to the settlement on the sale or transfer of residential real property, if the transaction involves the sale or transfer of such residential real property;

2. The supplier of such services (i) fails to make payments under the mortgage or deed of trust that is a lien on such residential real property as the payments become due,

where the supplier has agreed to do so, regardless of whether the purchaser is obligated on the loan, and (ii) applies rents received from such dwellings for his own use;

3. The supplier of such services represents to the seller of such residential real property that the seller has an option to repurchase such residential real property, after the supplier of such services takes legal or equitable title to such residential real property, unless there is a written contract providing such option to repurchase on terms and at a price stated in such contract; or

4. The supplier advertises or offers such services as are prohibited by this section.

B. This section shall not apply to any mortgage lender or servicer regularly engaged in making or servicing mortgage loans that is subject to the supervisory authority of the State Corporation Commission, a comparable regulatory authority of another state, or a federal banking agency.

C. In connection with any consumer transaction covered by subsection A, any provision in an agreement between the supplier of such services and the owner of such residential real property that requires the owner to submit to mandatory arbitration shall be null and void, and notwithstanding any such provisions, the owner of such residential real property shall have the rights and remedies under this chapter.

§ 59.1-2006. Civil penalties; attorney's fees.

A. In any action brought under this chapter, if the court finds that a person has willfully engaged in an act or practice in violation of § 59.1-200 or 59.1-200.1, the Attorney General, the attorney for the Commonwealth, or the attorney for the county, city, or town may recover for the Literary Fund, upon petition to the court, a civil penalty of not more than \$2,500 per violation. For purposes of this section, prima facie evidence of a willful violation may be shown when the Attorney General, the attorney for the Commonwealth, or the attorney for the county, city, or town notifies the alleged violator by certified mail that an act or practice is a violation of § 59.1-200 or 59.1-200.1, and the alleged violator, after receipt of said notice, continues to engage in the act or practice.

B. Any person who willfully violates the terms of an assurance of voluntary compliance or an injunction issued under § 59.1-203 shall forfeit and pay to the Literary Fund a civil penalty of not more than \$5,000 per violation. For purposes of this section, the circuit court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General, the attorney for the Commonwealth, or the attorney for the county, city, or town may petition for recovery of civil penalties.

C. In any action pursuant to subsection A or B and in addition to any other amount awarded, the Attorney General, the attorney for the Commonwealth, or the attorney for the county, city, or town may recover any applicable civil penalty or penalties, costs, reasonable expenses incurred by the state or local agency in investigating and preparing the case not to exceed \$1,000 per violation, and attorney's fees. Such civil penalty or penalties, costs, reasonable expenses, and attorney's fees shall be paid into the general fund of the Commonwealth or of the county, city, or town which such attorney represented.



D. Nothing in this section shall be construed as limiting the power of the court to punish as contempt the violation of any order issued by the court, or as limiting the power of the court to enter other orders under § 59.1-203 or 59.1-205.

E. The right of trial by jury as provided by law shall be preserved in actions brought under this section.

Source:

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC5901000001700000000000>

**Revised Code of Washington, Distressed Property Conveyances, Chapter 61.34.  
R.C.W. §§61.34.010-61.34.900**

61.34.010: Legislative findings.

The legislature finds that persons are engaging in patterns of conduct which defraud innocent homeowners of their equity interest or other value in residential dwellings under the guise of a purchase of the owner's residence but which is in fact a device to convert the owner's equity interest or other value in the residence to an equity skimmer, who fails to make payments, diverts the equity or other value to the skimmer's benefit, and leaves the innocent homeowner with a resulting financial loss or debt.

The legislature further finds this activity of equity skimming to be contrary to the public policy of this state and therefore establishes the crime of equity skimming to address this form of real estate fraud and abuse.

61.34.020: Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) An "act of equity skimming" occurs when:

(a)(i) A person purchases a dwelling with the representation that the purchaser will pay for the dwelling by assuming the obligation to make payments on existing mortgages, deeds of trust, or real estate contracts secured by and pertaining to the dwelling, or by representing that such obligation will be assumed; and

(ii) The person fails to make payments on such mortgages, deeds of trust, or real estate contracts as the payments become due, within two years subsequent to the purchase; and

(iii) The person diverts value from the dwelling by either (A) applying or authorizing the application of rents from the dwelling for the person's own benefit or use, or (B) obtaining anything of value from the sale or lease with option to purchase of the dwelling for the person's own benefit or use, or (C) removing or obtaining appliances, fixtures, furnishings, or parts of such dwellings or appurtenances for the person's own benefit or use without replacing the removed items with items of equal or greater value; or

(b)(i) The person purchases a dwelling in a transaction in which all or part of the purchase price is financed by the seller and is (A) secured by a lien which is inferior in priority or subordinated to a lien placed on the dwelling by the purchaser, or (B) secured by a lien on other real or personal property, or (C) without any security; and

(ii) The person obtains a superior priority loan which either (A) is secured by a lien on the dwelling which is superior in priority to the lien of the seller, but not including a bona fide assumption by the purchaser of a loan existing prior to the time of purchase, or (B) creating any lien or encumbrance on the dwelling when the seller does not hold a lien on the dwelling; and

(iii) The person fails to make payments or defaults on the superior priority loan within two years subsequent to the purchase; and

(iv) The person diverts value from the dwelling by applying or authorizing any part of the proceeds from such superior priority loan for the person's own benefit or use.

(2) "Distressed home" means either:

(a) A dwelling that is in danger of foreclosure or at risk of loss due to nonpayment of taxes; or

(b) A dwelling that is in danger of foreclosure or that is in the process of being foreclosed due to a default under the terms of a mortgage.

(3) "Distressed home consultant" means a person who:

(a) Solicits or contacts a distressed homeowner in writing, in person, or through any electronic or telecommunications medium and makes a representation or offer to perform any service that the person represents will:

(i) Stop, enjoin, delay, void, set aside, annul, stay, or postpone a foreclosure sale;

(ii) Obtain forbearance from any servicer, beneficiary, or mortgagee;

(iii) Assist the distressed homeowner to exercise a right of reinstatement provided in the loan documents or to refinance a loan that is in foreclosure or is in danger of foreclosure;

(iv) Obtain an extension of the period within which the distressed homeowner may reinstate the distressed homeowner's obligation or extend the deadline to object to a ratification;

(v) Obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed home or contained in the mortgage;

(vi) Assist the distressed homeowner to obtain a loan or advance of funds;

(vii) Save the distressed homeowner's residence from foreclosure;

(viii) Avoid or ameliorate the impairment of the distressed homeowner's credit resulting from the recording of a notice of trustee sale, the filing of a petition to foreclose, or the conduct of a foreclosure sale;

(ix) Cause a contract to purchase an interest in the distressed home to be executed or closed within twenty days of an advertised or docketed foreclosure sale, unless the distressed homeowner is represented in the transaction by an attorney or a person licensed under chapter 18.85 RCW;

(x) Arrange for the distressed homeowner to become a lessee or tenant entitled to continue to reside in the distressed homeowner's residence, unless (A) the continued residence is for a period of no more than twenty days after closing, (B) the purpose of the continued residence is to arrange for and relocate to a new residence, and (C) the distressed homeowner is represented in the transaction by an attorney or a person licensed and subject to chapter 18.85 RCW;

(xi) Arrange for the distressed homeowner to have an option to repurchase the distressed homeowner's residence; or

(xii) Engage in any documentation, grant, conveyance, sale, lease, trust, or gift by which the distressed homeowner clogs the distressed homeowner's equity of redemption in the distressed homeowner's residence; or

(b) Systematically contacts owners of property that court records, newspaper advertisements, or any other source demonstrate are in foreclosure or are in danger of foreclosure.

"Distressed home consultant" does not include: A financial institution; a nonprofit credit counseling service; a licensed attorney, or a person subject to chapter 19.148 RCW; a licensed mortgage broker who, pursuant to lawful activities under chapter 19.146 RCW, procures a nonpurchase mortgage loan for the distressed homeowner from a financial institution; or a person licensed as a real estate broker or salesperson under chapter 18.85 RCW, when rendering real estate brokerage services under chapter 18.86 RCW, regardless of whether the person renders additional services that would otherwise constitute the services of a distressed home consultant, and if the person is not engaged in activities designed to, or represented to, result in a distressed home conveyance.

(4) "Distressed home consulting transaction" means an agreement between a distressed homeowner and a distressed home consultant in which the distressed home consultant represents or offers to perform any of the services enumerated in subsection (3)(a) of this section.

(5) "Distressed home conveyance" means a transaction in which:

(a) A distressed homeowner transfers an interest in the distressed home to a distressed home purchaser;

(b) The distressed home purchaser allows the distressed homeowner to occupy the distressed home; and

(c) The distressed home purchaser or a person acting in participation with the distressed home purchaser conveys or promises to convey the distressed home to the distressed homeowner, provides the distressed homeowner with an option to purchase the distressed home at a later date, or promises the distressed homeowner an interest in, or portion of, the proceeds of any resale of the distressed home.

(6) "Distressed home purchaser" means any person who acquires an interest in a distressed home under a distressed home conveyance. "Distressed home purchaser" includes a person who acts in joint venture or joint enterprise with one or more distressed home purchasers in a distressed home conveyance. A financial institution is not a distressed home purchaser.

(7) "Distressed homeowner" means an owner of a distressed home.

(8) "Dwelling" means a one-to-four family residence, condominium unit, residential cooperative unit, residential unit in any other type of planned unit development, or manufactured home whether or not title has been eliminated pursuant to RCW 65.20.040.

(9) "Financial institution" means (a) any bank or trust company, mutual savings bank, savings and loan association, credit union, or a lender making federally related mortgage loans, (b) a holder in the business of acquiring federally related mortgage loans as defined in the real estate settlement procedures act (RESPA) (12 U.S.C. Sec. 2602), insurance company, insurance producer, title insurance company, escrow company, or lender subject to auditing by the federal national mortgage association or the federal home loan mortgage corporation, which is organized or doing business pursuant to the laws of any state, federal law, or the laws of a foreign country, if also authorized to conduct business in Washington state pursuant to the laws of this state or federal law, (c) any affiliate or subsidiary of any of the entities listed in (a) or (b) of this subsection, or (d) an employee or agent acting on behalf of any of the entities listed in (a) or (b) of this subsection. "Financial institution" also means a licensee under chapter 31.04 RCW, provided that the licensee does not include a licensed mortgage broker, unless the mortgage broker is engaged in lawful activities under chapter 19.146 RCW and procures a nonpurchase mortgage loan for the distressed homeowner from a financial institution.

(10) "Homeowner" means a person who owns and has occupied a dwelling as his or her primary residence within one hundred eighty days of the latter of conveyance or mutual acceptance of an agreement to convey an interest in the dwelling, whether or

not his or her ownership interest is encumbered by a mortgage, deed of trust, or other lien.

(11) "In danger of foreclosure" means any of the following:

(a) The homeowner has defaulted on the mortgage and, under the terms of the mortgage, the mortgagee has the right to accelerate full payment of the mortgage and repossess, sell, or cause to be sold, the property;

(b) The homeowner is at least thirty days delinquent on any loan that is secured by the property; or

(c) The homeowner has a good faith belief that he or she is likely to default on the mortgage within the upcoming four months due to a lack of funds, and the homeowner has reported this belief to:

(i) The mortgagee;

(ii) A person licensed or required to be licensed under chapter 19.134 RCW;

(iii) A person licensed or required to be licensed under chapter 19.146 RCW;

(iv) A person licensed or required to be licensed under chapter 18.85 RCW;

(v) An attorney-at-law;

(vi) A mortgage counselor or other credit counselor licensed or certified by any federal, state, or local agency; or

(vii) Any other party to a distressed home consulting transaction.

(12) "Mortgage" means a mortgage, mortgage deed, deed of trust, security agreement, or other instrument securing a mortgage loan and constituting a lien on or security interest in housing.

(13) "Nonprofit credit counseling service" means a nonprofit organization described under section 501(c)(3) of the internal revenue code, or similar successor provisions, that is licensed or certified by any federal, state, or local agency.

(14) "Pattern of equity skimming" means engaging in at least three acts of equity skimming within any three-year period, with at least one of the acts occurring after June 9, 1988.

(15) "Person" includes any natural person, corporation, joint stock association, or unincorporated association.

(16) "Resale" means a bona fide market sale of the distressed home subject to the distressed home conveyance by the distressed home purchaser to an unaffiliated third party.

(17) "Resale price" means the gross sale price of the distressed home on resale.

61.34.030: Criminal penalty.

Any person who wilfully engages in a pattern of equity skimming is guilty of a class B felony under RCW 9A.20.021. Equity skimming shall be classified as a level II offense under chapter 9.94A RCW, and each act of equity skimming found beyond a reasonable doubt or admitted by the defendant upon a plea of guilty to be included in the pattern of equity skimming, shall be a separate current offense for the purpose of determining the sentence range for each current offense pursuant to RCW 9.94A.589(1)(a).

61.34.040: Application of consumer protection act — Remedies are cumulative.

(1) In addition to the criminal penalties provided in RCW 61.34.030, the legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair method of competition for the purpose of applying chapter 19.86 RCW.

(2) In a private right of action under chapter 19.86 RCW for a violation of this chapter, the court may double or triple the award of damages pursuant to RCW 19.86.090, subject to the statutory limit. If, however, the court determines that the defendant acted in bad faith, the limit for doubling or tripling the award of damages may be increased, but shall not exceed one hundred thousand dollars. Any claim for damages brought under this chapter must be commenced within four years after the date of the alleged violation.

(3) The remedies provided in this chapter are cumulative and do not restrict any remedy that is otherwise available. The provisions of this chapter are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law. An action under this chapter shall not affect the rights in the distressed home held by a distressed home purchaser for value under this chapter or other applicable law.

61.34.045: Arbitration not required.

(1) Any provision in a contract that attempts or purports to require arbitration of any dispute arising under this chapter is void at the option of the distressed homeowner.

(2) This section applies to any contract entered into on or after June 12, 2008.

61.34.050: Distressed home consulting transaction — Requirements — Notice.

(1) A distressed home consulting transaction must:

(a) Be in writing in at least twelve-point font;

(b) Be in the same language as principally used by the distressed home consultant to describe his or her services to the distressed homeowner. If the agreement is written in a language other than English, the distressed home consultant shall cause the agreement to be translated into English and shall deliver copies of both the original and English language versions to the distressed homeowner at the time of execution and shall keep copies of both versions on file in accordance with subsection (2) of this section. Any ambiguities or inconsistencies between the English language and the original language versions of the written agreement must be strictly construed in favor of the distressed homeowner;

(c) Fully disclose the exact nature of the distressed home consulting services to be provided, including any distressed home conveyance that may be involved and the total amount and terms of any compensation to be received by the distressed home consultant or anyone working in association with the distressed home consultant;

(d) Be dated and signed by the distressed homeowner and the distressed home consultant;

(e) Contain the complete legal name, address, telephone number, fax number, e-mail address, and internet address if any, of the distressed home consultant, and if the distressed home consultant is serving as an agent for any other person, the complete legal name, address, telephone number, fax number, e-mail address, and internet address if any, of the principal; and

(f) Contain the following notice, which must be initialed by the distressed homeowner, in bold face type and in at least fourteen-point font:

**"NOTICE REQUIRED BY WASHINGTON LAW**

**THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME.**

. . . Name of distressed home consultant . . . or anyone working for him or her CANNOT guarantee you that he or she will be able to refinance your home or arrange for you to keep your home. Continue making mortgage payments until refinancing, if applicable, is approved. You should consult with an attorney before signing this contract.



If you sign a promissory note, lien, mortgage, deed of trust, or deed, you could lose your home and be unable to get it back."

(2) At the time of execution, the distressed home consultant shall provide the distressed homeowner with a copy of the written agreement, and the distressed home consultant shall keep a separate copy of the written agreement on file for at least five years following the completion or other termination of the agreement.

(3) This section does not relieve any duty or obligation imposed upon a distressed home consultant by any other law including, but not limited to, the duties of a credit service organization under chapter 19.134 RCW or a person required to be licensed under chapter 19.146 RCW.

#### 61.34.060: Distressed home consultant — Fiduciary duties.

A distressed home consultant has a fiduciary relationship with the distressed homeowner, and each distressed home consultant is subject to all requirements for fiduciaries otherwise applicable under state law. A distressed home consultant's fiduciary duties include, but are not limited to, the following:

(1) To act in the distressed homeowner's best interest and in utmost good faith toward the distressed homeowner, and not compromise a distressed homeowner's right or interest in favor of another's right or interest, including a right or interest of the distressed home consultant;

(2) To disclose to the distressed homeowner all material facts of which the distressed home consultant has knowledge that might reasonably affect the distressed homeowner's rights, interests, or ability to receive the distressed homeowner's intended benefit from the residential mortgage loan;

(3) To use reasonable care in performing his or her duties; and

(4) To provide an accounting to the distressed homeowner for all money and property received from the distressed homeowner.

#### 61.34.070: Waiver of rights.

(1) A person may not induce or attempt to induce a distressed homeowner to waive his or her rights under this chapter.

(2) Any waiver by a homeowner of the provisions of this chapter is void and unenforceable as contrary to public policy.

61.34.080: Distressed home reconveyance — Requirements.

A distressed home purchaser shall enter into a distressed home reconveyance in the form of a written contract. The contract must be written in at least twelve-point boldface type in the same language principally used by the distressed home purchaser and distressed homeowner to negotiate the sale of the distressed home, and must be fully completed, signed, and dated by the distressed homeowner and distressed home purchaser before the execution of any instrument of conveyance of the distressed home.

61.34.090: Distressed home reconveyance — Entire agreement — Terms — Notice.

The contract required in RCW 61.34.080 must contain the entire agreement of the parties and must include the following:

- (1) The name, business address, and telephone number of the distressed home purchaser;
- (2) The address of the distressed home;
- (3) The total consideration to be provided by the distressed home purchaser in connection with or incident to the sale;
- (4) A complete description of the terms of payment or other consideration including, but not limited to, any services of any nature that the distressed home purchaser represents that he or she will perform for the distressed homeowner before or after the sale;
- (5) The time at which possession is to be transferred to the distressed home purchaser;
- (6) A complete description of the terms of any related agreement designed to allow the distressed homeowner to remain in the home, such as a rental agreement, repurchase agreement, or lease with option to buy;
- (7) A complete description of the interest, if any, the distressed homeowner maintains in the proceeds of, or consideration to be paid upon, the resale of the distressed home;
- (8) A notice of cancellation as provided in RCW 61.34.110; and
- (9) The following notice in at least fourteen-point boldface type if the contract is printed, or in capital letters if the contract is typed, and completed with the name of the distressed home purchaser, immediately above the statement required in RCW 61.34.110;

"NOTICE REQUIRED BY WASHINGTON LAW

Until your right to cancel this contract has ended, . . . . . (Name) or anyone working for . . . . . (Name) CANNOT ask you to sign or have you sign any deed or any other document."

The contract required by this section survives delivery of any instrument of conveyance of the distressed home and has no effect on persons other than the parties to the contract.

61.34.100: Distressed homeowner's right to cancel.

(1) In addition to any other right of rescission, a distressed homeowner has the right to cancel any contract with a distressed home purchaser until midnight of the fifth business day following the day on which the distressed homeowner signs a contract that complies with this chapter or until 8:00 a.m. on the last day of the period during which the distressed homeowner has a right of redemption, whichever occurs first.

(2) Cancellation occurs when the distressed homeowner delivers to the distressed home purchaser, by any means, a written notice of cancellation to the address specified in the contract.

(3) A notice of cancellation provided by the distressed homeowner is not required to take the particular form as provided with the contract.

(4) Within ten days following the receipt of a notice of cancellation under this section, the distressed home purchaser shall return without condition any original contract and any other documents signed by the distressed homeowner.

61.34.110: Notice of distressed homeowner's right to cancel.

(1) The contract required in RCW 61.34.080 must contain, in immediate proximity to the space reserved for the distressed homeowner's signature, the following conspicuous statement in at least fourteen-point boldface type if the contract is printed, or in capital letters if the contract is typed:

"You may cancel this contract for the sale of your house without any penalty or obligation at any time before

.....

(Date and time of day)

See the attached notice of cancellation form for an explanation of this right."

The distressed home purchaser shall accurately enter the date and time of day on which the cancellation right ends.

(2) The contract must be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION" in twelve-point boldface type if the contract is printed, or in capital letters if the contract is typed, followed by a space in which the distressed home purchaser shall enter the date on which the distressed homeowner executes any contract. This form must be attached to the contract, must be easily detachable, and must contain in at least twelve-point type if the contract is printed, or in capital letters if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....

(Enter date contract signed) You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before

.....

(Enter date and time of day)

To cancel this transaction, personally deliver a signed and dated copy of this cancellation notice to

.....

(Name of purchaser)

at

.....

(Street address of purchaser's place of business)

NOT LATER THAN

.....

(Enter date and time of day)

I hereby cancel this transaction.

.....

(Date)

.....

(Seller's signature)"

(3) The distressed home purchaser shall provide the distressed homeowner with a copy of the contract and the attached notice of cancellation at the time the contract is executed by all parties.

(4) The five-business-day period during which the distressed homeowner may cancel the contract must not begin to run until all parties to the contract have executed the contract and the distressed home purchaser has complied with this section.

61.34.120: Distressed home purchaser — Prohibited practices.

A distressed home purchaser shall not:

(1) Enter into, or attempt to enter into, a distressed home conveyance with a distressed homeowner unless the distressed home purchaser verifies and can demonstrate that the distressed homeowner has a reasonable ability to pay for the subsequent conveyance of an interest back to the distressed homeowner. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to make the lease payments and purchase the property within the term of the option to purchase. An evaluation of a distressed homeowner's reasonable ability to pay includes debt to income ratios, fair market value of the distressed home, and the distressed homeowner's payment and credit history. There is a rebuttable presumption that the distressed home purchaser has not verified a distressed homeowner's reasonable ability to pay if the distressed home purchaser has not obtained documentation of assets, liabilities, and income, other than an undocumented statement, of the distressed homeowner;

(2) Fail to either:

(a) Ensure that title to the distressed home has been reconveyed to the distressed homeowner; or

(b) Make payment to the distressed homeowner so that the distressed homeowner has received consideration in an amount of at least eighty-two percent of the fair market value of the property as of the date of the eviction or voluntary relinquishment of possession of the distressed home by the distressed homeowner. For the purposes of this subsection (2)(b), the following applies:

(i) 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 distressed home;

(ii) "Consideration" means any payment or thing of value provided to the distressed homeowner, including unpaid rent owed by the distressed homeowner before the date of eviction or voluntary relinquishment of the distressed home, reasonable costs paid to independent third parties necessary to complete the distressed home conveyance transaction, the payment of money to satisfy a debt or legal obligation of the distressed homeowner, or the reasonable cost of repairs for damage to the distressed home caused by the distressed homeowner. "Consideration" does not include amounts imputed as a down payment or fee to the distressed home purchaser or a person acting in participation with the distressed home purchaser;

(3) Enter into repurchase or lease terms as part of the distressed home conveyance that are unfair or commercially unreasonable, or engage in any other unfair or deceptive acts or practices;

(4) Represent, directly or indirectly, that (a) the distressed home purchaser is acting as an advisor or consultant, (b) the distressed home purchaser is acting on behalf of or in the interests of the distressed homeowner, or (c) the distressed home purchaser is assisting the distressed homeowner to save the distressed home, buy time, or use other substantially similar language;

(5) Misrepresent the distressed home purchaser's status as to licensure or certification;

(6) Perform any of the following until after the time during which the distressed homeowner may cancel the transaction has expired:

(a) Accept from any distressed homeowner an execution of, or induce any distressed homeowner to execute, any instrument of conveyance of any interest in the distressed home;

(b) Record with the county auditor any document, including any instrument of conveyance, signed by the distressed homeowner; or

(c) Transfer or encumber or purport to transfer or encumber any interest in the distressed home;

(7) Fail to reconvey title to the distressed home when the terms of the distressed home conveyance contract have been fulfilled;

(8) Enter into a distressed home conveyance where any party to the transaction is represented by a power of attorney;

(9) Fail to extinguish or assume all liens encumbering the distressed home immediately following the conveyance of the distressed home;

(10) Fail to close a distressed home conveyance in person before an independent third party who is authorized to conduct real estate closings within the state.

61.34.900: Severability

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Source: <http://apps.leg.wa.gov/RCW/default.aspx?cite=61.34&full=true>

**New Jersey Statutes, Foreclosure Rescue Fraud Prevention Act, sec. 46:10B.53-46:10B.68. N.J.S. §§ 46:10B.53-46:10B.68.**

46:10B-53. Short title.

1. This act shall be known and may be cited as the "Foreclosure Rescue Fraud Prevention Act.

46:10B-54. Definitions relative to certain mortgage foreclosure consultant practices.

2. As used in this act:

"Business day" means any day other than a Saturday, Sunday, or a federal holiday.

"Conventional mortgage rate" means the highest mortgage rate published for the relevant loan product on the website of any generally accepted industry provider of such information, applicable to the week preceding the transaction.

"Distressed property" means residential real property consisting of from one to four dwelling units, at least one of which is occupied by the owner as a primary residence, and which is the subject of a mortgage foreclosure proceeding or whose owner is more than 90 days delinquent on any loan that is secured by the property.

"Distressed property purchaser" means a person who acquires an interest in a distressed property through a distressed property conditional conveyance or a distressed property conveyance, or a person who participates in a joint venture or joint enterprise involving a distressed property conditional conveyance or a distressed property conveyance. The term "distressed property purchaser" does not mean a federally insured financial institution or a person who acquires distressed property through a deed in lieu of foreclosure or a person acting in participation with any person who acquires distressed property through a deed in lieu of foreclosure, provided that person does not promise to convey an interest in fee back to the owner or does not give the owner an option to purchase the property at a later date.

"Distressed property conditional conveyance" means a transaction involving any participation by, or any distressed property service or other service or other assistance provided by, a foreclosure consultant in which an owner transfers an interest in fee, or a beneficial interest created through a trust document, in the distressed property; the acquirer of the property allows the owner to occupy the property; and the acquirer of the property or a person acting in participation with the acquirer of the property conveys or promises to convey an interest in fee back to the owner or gives the owner an option to purchase the property at a later date.

"Distressed property conveyance" means a transaction involving any participation by, or any distressed property service or other service or other assistance provided by, a foreclosure consultant in which an owner transfers an interest in fee in a distressed property.

"Distressed property relief" or "relief" means, in connection with a foreclosure

consultant, any of the following:

- (1) saving the owner's property from foreclosure;
- (2) postponing the foreclosure sale;
- (3) obtaining a forbearance from the mortgagee;
- (4) securing the right to exercise the right to reinstatement;
- (5) obtaining an extension of the period within which the owner may reinstate his or her mortgage obligation;
- (6) obtaining a waiver of an acceleration clause;
- (7) obtaining a modification of a mortgage;
- (8) assisting the owner in obtaining a loan or advance of funds; or
- (9) avoiding the impairment of the owner's credit.

"Distressed property service" or "service" means, without limitation, in connection with a distressed property conditional conveyance or a distressed property conveyance, any of the following:

- (1) debt, budget, or financial counseling of any type;
- (2) receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a mortgage or other lien on a distressed property;
- (3) contacting creditors on behalf of an owner;
- (4) arranging or attempting to arrange for an extension of the period within which the owner may cure the owner's default and reinstate a debt obligation;
- (5) arranging or attempting to arrange for a delay or postponement of the time of sale of the distressed property;
- (6) advising with respect to the filing of any document or assisting in any manner in the preparation of any document for filing with any court; or
- (7) giving advice, explanation, or instruction to an owner that in any manner relates to the cure of a default or forfeiture or to the postponement or avoidance of a sale of the distressed property.



"Foreclosure consultant": (1) means any person, located out-of-State or within the State, who, directly or indirectly, for compensation from an owner, makes any solicitation, representation, or offer to perform, or who performs, any distressed property service that the person represents will in any manner do any of the following in relation to the owner's distressed property:

- (a) prevent or postpone the foreclosure sale of the property;
- (b) obtain any forbearance from any mortgagee;
- (c) assist the owner in exercising any right of reinstatement or right of redemption;
- (d) obtain any extension of the period within which the owner may reinstate the owner's rights with respect to the property;
- (e) obtain any waiver of an acceleration clause contained in any promissory note, contract, or mortgage evidencing or securing a debt in relation to the property;
- (f) assist the owner in obtaining a loan or advance of funds to pay off the promissory note, contract, or mortgage evidencing or securing a debt in relation to the property; or
- (g) avoid or ameliorate the impairment of the owner's credit resulting from default on the promissory note, contract, or mortgage, or the conduct of a foreclosure sale or offer to repair the owner's credit.

(2) shall not include any of the following:

- (a) a housing counseling agency contracted by the United States Department of Housing and Urban Development to provide counseling;
- (b) a person who holds or is owed an obligation secured by a lien on any distressed property in situations in which the person performs services in connection with the obligation or lien, provided the obligation or lien did not arise as the result of, or as part of, a proposed distressed property conditional conveyance or a distressed property conveyance;
- (c) a person licensed to practice law in this State while acting under the authority of that license;
- (d) a nonprofit, charitable entity qualified pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. s.501(c)(3)), which is licensed pursuant to P.L.1979, c.16 (C.17:16G-1 et seq.);
- (e) a municipality which has a tax lien on distressed property;

(f) an assignee or a purchaser of a municipal tax lien from a tax sale;

(g) a sponsor which is certified by the Commissioner of Community Affairs to participate in the "New Jersey Housing Assistance and Recovery Program" established pursuant to sections 8 through 14 of P.L.2008, c.127 (C.55:14K-88 et seq.);

(h) a bank, savings bank, savings and loan association, credit union, or other federally insured financial institution, or insurance company, or affiliate or subsidiary thereof, organized, chartered, licensed, or holding a certificate of authority to do business under the laws of this State or any other state or under the laws of the United States;

(i) a person licensed as a real estate broker, broker-salesperson, or salesperson pursuant to R.S.45:15-1 et seq., while acting under the authority of that license;

(j) a person licensed as a title insurance producer pursuant to the "New Jersey Insurance Producer Licensing Act of 2001," P.L.2001, c.210 (C.17:22A-26 et seq.) while acting under the authority of that license or conducting the business of title insurance pursuant to P.L.1975, c.106 (C.17:46B-1 et seq.);

(k) a mediator licensed pursuant to the Judiciary's Foreclosure Mediation Program; or

(l) a person licensed pursuant to the "New Jersey Residential Mortgage Lending Act," P.L.2009, c.53 (C.17:11C-51 et seq.), while acting under the authority of that license.

"Owner" means an owner of record of title to a distressed property.

"Owner's current verified monthly income" means the monthly average of the owner's most recent six months of wage receipts or pay stubs or if the owner has non-wage income by a verified statement of profit and loss or income from a certified public accountant who has reviewed the owner's income.

"Reasonable ability to pay" means that the owner's current verified monthly income is adequate to service a 30-year fixed rate loan at the conventional mortgage rate together with actual property taxes, homeowner's insurance, condominium or association fees, if applicable, and reasonable and necessary living expenses.

"Reasonable and necessary living expenses" means not less than the average utility costs over the last twelve months, or if that figure is unavailable \$200, and transportation, food, clothing, and other expenses equal to an amount not less than the Collection Financial Standards set forth by the Internal Revenue Service for transportation, food, clothing, and other items and out-of-pocket health care costs.

"Residual income" means an owner's net income available to meet living expenses

after the payment of all ordinary and necessary debt, including payments under an option to purchase back the owner's property transferred in a distressed property conditional conveyance.

#### 46:10B-55. Requirements for licensure of foreclosure consultant.

3. a. A foreclosure consultant shall not conduct any business in this State until the foreclosure consultant:

(1) (a) Obtains a license from the Commissioner of Banking and Insurance by filing an application form to be prescribed by the commissioner by regulation. As to licensure by a business entity, the application shall be accompanied by documentation establishing the business entity, including incorporation documents, if the entity is incorporated.

(b) The application shall be accompanied by a reasonable fee, as established by the commissioner by regulation.

(c) A person required to be licensed under this act shall file an amendment to their application within 20 days after any change in the information required to be included in the application.

(d) Licenses issued pursuant to this section shall expire biennially and may be renewed upon submission of a renewal application to the department;

(2) obtains a bond from a surety company authorized to do business in the State in a form and an amount to be prescribed by the commissioner by regulation, files the bond with the commissioner, and obtains written approval of the bond from the commissioner;

(3) submits to the commissioner the name, address, fingerprints and written consent for a criminal history record background check to be performed on any officer, director, partner or owner of a controlling interest, or any employee engaged in mortgage foreclosure consulting activities, of the foreclosure consultant. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. This information shall be collected for the purposes of facilitating determinations concerning licensure eligibility for the foreclosure consultant, based upon any findings related to an employee engaged in mortgage foreclosure consultant activities, officer, director, partner or owner. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event an employee engaged in mortgage foreclosure consultant activities, officer, director, partner or owner of the foreclosure consultant, who was the subject of a criminal history record background check pursuant to this section,

is arrested for a crime or offense in this State after the date the background check was performed, whether the foreclosure consultant is a prospective new applicant, or subsequently, a current licensee; and

(4) provides the name and street address of an agent in the State of New Jersey for service of process.

b. The commissioner may refuse to issue or renew, and may revoke, any license:

(1) for failure to comply with, or violation of, the provisions of this act or for any other good cause shown within the meaning and purpose of this act. A refusal or revocation shall not be made except upon reasonable notice to, and opportunity to be heard by, the applicant or licensee; or

(2) upon proof that the applicant or licensee has been convicted of any crime of moral turpitude or any crime relating adversely to the activity regulated by this act. For purposes of this subsection, a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction.

c. A person who is licensed as a foreclosure consultant pursuant to this act shall not be subject to the provisions of P.L.1979, c.16 (C.17:16G-1 et seq.) while acting under the authority of this act.

d. A person shall not present himself to the public as a licensed foreclosure consultant or use the designation "foreclosure consultant," "foreclosure consultant specialist," or similar designation without obtaining a license pursuant to this act.

46:10B-56. Foreclosure consultant contract.

4. a. A foreclosure consultant contract shall be written in plain language and shall fully disclose the exact nature of the foreclosure consultant's services to be performed, the foreclosure consultant's representations, the distressed property relief to be secured, and the total amount and terms of compensation.

b. The following notice, printed in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, and completed with the name of the foreclosure consultant, shall be printed immediately above the statement required by subsection c. of this section:

"NOTICE REQUIRED BY NEW JERSEY LAW

.....(Name) or anyone working for him or her CANNOT:

(1) Take any money from you or ask you for money until .....(Name) has completely finished doing everything he or she said would be done; or

(2) Ask you to sign or have you sign any lien, mortgage, or deed unless all provisions of the "Foreclosure Rescue Fraud Prevention Act," P.L.2011, c.146 (C.46:10B-53 et al.), and any other applicable federal and State laws have been complied with.

(3) Guarantee that they will be able to refinance a loan on your home or arrange for you to keep your home."

c. A foreclosure consultant contract shall be written in the same language as principally used by the foreclosure consultant to describe the consultant's services to be performed and the distressed property relief to be secured for the owner, shall be dated and signed by the owner, and shall contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, as follows:

"You, the owner, may cancel this transaction at any time until after the foreclosure consultant has fully performed every service the foreclosure consultant contracted to perform and has secured the distressed property relief for the owner. See the attached notice of cancellation form for an explanation of this right."

d. A foreclosure consultant contract shall contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) the name and address of the foreclosure consultant to which the notice of cancellation is to be mailed; and

(2) the date the owner signed the contract.

e. A foreclosure consultant contract shall be accompanied by a completed form, captioned "NOTICE OF CANCELLATION" which shall be attached to the contract and easily detachable, and shall contain, in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....

(Enter date of transaction)

You may cancel this transaction, without any penalty or obligation, at any time until after the foreclosure consultant has fully performed every service and has secured the relief for the owner.

To cancel this transaction, mail or deliver a signed and dated copy of this

cancellation notice, or any other written notice to:

.....(Name of foreclosure consultant)  
at .....(Address of foreclosure consultant's place of business)

I hereby cancel this transaction  
on .....(Date) .....(Owner's  
signature)."

f. The foreclosure consultant shall provide the owner with a copy of a foreclosure consultant contract and the attached notice of cancellation in duplicate immediately upon execution of the contract.

g. The foreclosure consultant shall record the contract with the county clerk in the county in which the distressed property is located, within 10 business days of its execution.

46:10B-57. Additional legal rights of owner.

5. a. In addition to any other legal right to rescind a foreclosure consultant contract, an owner has the right to cancel a foreclosure consultant contract at any time until after the foreclosure consultant has fully performed every service the foreclosure consultant contracted to perform and has secured the relief for the owner.

b. Cancellation occurs when the owner delivers by any means, written notice of cancellation to the foreclosure consultant at the address specified in the foreclosure consultant contract. A notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. A notice of cancellation sent by certified mail, return receipt requested, to the address specified in the foreclosure consultant contract, shall be conclusive proof of notice of cancellation.

c. A notice of cancellation given by the owner need not take the particular form as provided with the foreclosure consultant contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

46:10B-58. Violations relative to foreclosure consultants.

6. It is a violation of this act for a foreclosure consultant to:

a. claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed every distressed property service the foreclosure consultant contracted to perform and has secured the distressed property relief for the owner;

b. claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason, in excess of two monthly mortgage payments of principal

and interest, or the most recent quarterly property tax installment on the distressed property, whichever is less;

c. take a wage assignment, a lien of any type on real or personal property, or other security to secure the payment of compensation. Any agreement to take such security is void and unenforceable;

d. receive any consideration from any third party in connection with distressed property services rendered to an owner;

e. acquire any interest, directly or indirectly, or by means of a subsidiary or affiliate in a distressed property from an owner with whom the foreclosure consultant has contracted;

f. accept any power of attorney from an owner for any purpose, except to inspect documents as provided by law; or

g. induce or attempt to induce an owner to enter a contract that does not comply in all respects with sections 4 and 5 of this act.

46:10B-59. Waiver void, unenforceable.

7. a. Any waiver by an owner of the provisions of section 4, 5, or 6 of this act is void and unenforceable as contrary to public policy.

b. Any attempt by a foreclosure consultant to induce an owner to waive the owner's rights is a violation of this act.

46:10B-60. Written contract required for conveyance of distressed property.

8. a. A distressed property purchaser who enters into a distressed property conditional conveyance or a distressed property conveyance shall do so in the form of a written contract. A distressed property conditional conveyance contract and a distressed property conveyance contract shall be written in at least 14-point boldface type, in the same language principally used by the owner to negotiate the sale of the distressed property, shall be fully completed, signed, and dated by the owner and the distressed property purchaser, and shall be witnessed and acknowledged by a notary public, before the owner executes a deed or any other instrument of conveyance of the distressed property.

b. A distressed property conditional conveyance contract and a distressed property conveyance contract shall contain the entire agreement of the parties, be fully assignable, and survive delivery of any deed or any other instrument of conveyance of the distressed property.

c. A distressed property conditional conveyance contract and a distressed

property conveyance contract shall include the following terms, except that a distressed property conveyance contract shall not be required to contain the terms set forth in paragraph (5):

(1) the name, business address, and telephone number of the distressed property purchaser;

(2) the address of the distressed property;

(3) the total consideration to be given by the distressed property purchaser in connection with or incident to the transaction;

(4) a complete description of the terms of payment or other consideration including, but not limited to, any distressed property services of any nature that the distressed property purchaser represents will be performed for the owner before or after the transaction;

(5) a complete description of the terms of any related agreement designed to allow the owner to remain in the dwelling including, but not limited to, a lease agreement, repurchase agreement, contract for deed, or a lease agreement with an option to purchase;

(6) a notice of cancellation as provided in this section;

(7) the following notice in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, and completed with the name of the distressed property purchaser immediately above the statement required by this section:

"NOTICE REQUIRED BY NEW JERSEY LAW

Until your right to cancel this contract has ended, .....(Name) or anyone working for .....(Name) CANNOT ask you to sign or have you sign any deed or any other document. You are urged to have this contract reviewed by an attorney of your choice within 10 business days of signing it."; and

(8) if title to the distressed property will be transferred in the transaction, the following notice in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, and completed with the name of the distressed property purchaser immediately above the statement required by this section:

"NOTICE REQUIRED BY NEW JERSEY LAW

As part of this transaction, you are giving up title to your home."  
46:10B-61. Additional right of rescission, cancellation of contract.



9. a. In addition to any other right of rescission provided by applicable State or federal laws, the owner has the right to cancel a distressed property conditional conveyance contract or a distressed property conveyance contract with a distressed property purchaser until midnight of the 10th business day following the day on which the owner signs the contract, or until the conclusion of a sheriff's sale pursuant to the provisions of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.), whichever occurs first, during which the owner may have an attorney review the contract.

b. Cancellation of the contract occurs when the owner, or an attorney representing the owner, delivers, by any means, written notice of cancellation to the address specified in the contract. Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. Notice by certified mail, return receipt requested, to the address specified in the contract, shall be conclusive proof of notice of cancellation.

c. A notice of cancellation given by the owner, or an attorney representing the owner, need not take the particular form as provided with the contract, and however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

d. Within 10 business days following receipt of a notice of cancellation delivered in accordance with this section, the distressed property purchaser shall return to the owner, without condition, any original contract and any other documents signed by the owner.

e. The 10 business days during which the owner, or an attorney representing the owner, may cancel the contract shall not begin to run until all parties to the contract have executed the contract and the distressed property purchaser has complied with all the requirements of this section.

#### 46:10B-62. Option of cancellation statement in contract.

10. a. A distressed property conditional conveyance contract and a distressed property conveyance contract with a distressed property purchaser shall contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, as follows:

"You may cancel this contract for the conveyance of your house, without any penalty or obligation, at any time before .....(Date and time of day). See the attached notice of cancellation form for an explanation of this right."

The distressed property purchaser shall accurately enter the date and time of day on which the cancellation right ends.

b. A contract with a distressed property purchaser shall be accompanied by a

completed form in duplicate, captioned "NOTICE OF CANCELLATION" in a size equal to a 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, followed by a space in which the distressed property purchaser shall enter the date on which the owner executes any contract. This form shall be attached to the contract, shall be easily detachable, and shall contain in at least 14-point type, if the contract is printed, or in capital letters, if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....

(Enter date contract signed)

You may cancel this contract for the conveyance of your home, without any penalty or obligation, at any time before ..... (enter date and time of day). To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice to ..... (Name of purchaser) at ..... (Street address of purchaser's place of business) NOT LATER THAN ..... (Enter date and time of day).

I hereby cancel this transaction on .....  
(Date) ..... (Owner's signature)."

c. The distressed property purchaser shall provide the owner with a copy of the contract and the attached notice of cancellation in duplicate at the time the contract is executed by all parties.

d. The distressed property purchaser shall record the contract and the attached notice of cancellation with the county clerk in the county in which the distressed property is located within 10 business days of the signing of the contract by both parties.  
46:10B-63. Prohibited actions of distressed property purchaser.

11. a. A distressed property purchaser, in the course of a distressed property conditional conveyance, shall not:

(1) enter into, or attempt to enter into, a distressed property conditional conveyance unless the distressed property purchaser verifies and can demonstrate that the owner has a reasonable ability to pay for the subsequent conveyance of a fee interest back to the owner under the terms of any option to purchase and a reasonable ability to make monthly or any other required payments due prior to the subsequent conveyance;

(2) fail to make a payment to the owner at the time the title to the distressed property is conveyed from the owner to the distressed property purchaser, or, if the distressed property purchaser acquires a beneficial interest through a trust, at the time

of the creation of the trust, so that the owner has received consideration in an amount of at least 82% of the property's fair market value, or, in the alternative, fail to make a payment to the owner, in situations in which the owner is unable to purchase the distressed property from the distressed property owner at the time of the expiration of the owner's option to purchase, so that the owner has received consideration in an amount of at least 82% of the property's fair market value;

(3) enter into an option to purchase or lease as part of a distressed property conditional conveyance containing terms that are unfair or commercially unreasonable, or engage in any other unfair conduct;

(4) represent, directly or indirectly, that the distressed property purchaser is acting as an advisor or a consultant, or in any other manner represent that the distressed property purchaser is acting on behalf of the homeowner;

(5) misrepresent the distressed property purchaser's status as to licensure or certification;

(6) do any of the following until after the time during which the owner may cancel the transaction:

(a) accept from the owner an execution of a deed or any other instrument of conveyance of any interest in the distressed property;

(b) induce the owner to execute a deed or any other instrument of conveyance of any interest in the distressed property; or

(c) record with the county recorder of deeds any document signed by the owner, including but not limited to a deed or any other instrument of conveyance;

(7) fail to convey title to the distressed property to the owner under an option to purchase provided for in the distressed property conveyance contract, in situations in which the terms of the conveyance contract have been fulfilled;

(8) enter into a distressed property conditional conveyance if any party to the transaction is represented by way of a power of attorney;

(9) fail to extinguish all liens encumbering the distressed property, immediately following the conveyance of the distressed property, or fail to assume all liability with respect to the lien in foreclosure and prior liens that will not be extinguished by the foreclosure, which assumption shall be accomplished without violations of the terms and conditions of the lien being assumed;

(10) cause the property to be conveyed or encumbered without the knowledge or permission of the owner, or in any way frustrate the ability of the owner to complete the conveyance back to the owner;

(11) fail to have all documents executed as part of a distressed property conditional conveyance also signed by a notary public licensed in the State who is unrelated in any way to the distressed property purchaser or any participant in the distressed property conveyance;

(12) fail to complete a distressed property conditional conveyance in the office of a title insurance producer licensed pursuant to the "New Jersey Insurance Producer Licensing Act of 2001," P.L.2001, c.210 (C.17:22A-26 et seq.), or in the office of an attorney licensed to practice law in this State;

(13) fail to provide to the owner, prior to the time of completion of a distressed property conditional conveyance, a disclosure statement in a form to be designed and prescribed by regulation by the Commissioner of Banking and Insurance, which statement shall require disclosure to the owner of all costs that the owner will incur in connection with the conveyance and any option for the owner to purchase the property, including a schedule of monthly and annual payments, closing costs, and any additional costs and fees related to the conveyance;

(14) claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason from an owner, for services or as consideration for offering or providing any option to purchase to the owner or for otherwise participating in the conveyance transaction, in excess of 3.5% of the purchase price;

(15) in situations in which the distressed property conditional conveyance involves a transfer of an interest in fee from an owner to a distressed property purchaser, fail to record the deed to the purchaser in the county clerk's office in which the property is located, or fail to include a statement on the recorded deed that the deed was obtained through a transaction governed by the "Foreclosure Rescue Fraud Prevention Act";

(16) fail to notify in writing all existing mortgage lien holders of the distressed property purchaser's intent to accept conveyance of an interest in the property from the owner;

(17) fail to fully comply with all terms and conditions contained in the mortgage lien documents, including but not limited to due-on-sale provisions;

(18) fail to satisfy all qualification requirements for assuming the repayment of mortgage; and

(19) enter into an option to purchase or lease as part of a distressed property conditional conveyance in which the agreement fails to provide for a length of time of at least three years within which the owner may exercise his right to purchase back the property.

b. For purposes of paragraph (1) of subsection a. of this section, an evaluation of

"reasonable ability to pay" shall include the owner's debt to income ratio, the owner's residual income, the fair market value of the distressed property, and the owner's credit history. There shall be a rebuttable presumption that the distressed property purchaser has not verified reasonable payment ability if the distressed property purchaser has not obtained documents of assets, liabilities, and income, other than a statement by the owner.

c. For purposes of paragraph (2) of subsection a. of this section: (1) an appraisal at the time that the distressed property is conveyed by a person licensed or certified by an agency of this State or the federal government shall create a rebuttable presumption that the appraisal is an accurate determination of the fair market value of the property; and (2) "consideration" means any payment or thing of value provided to the owner, including reasonable costs paid to independent third parties necessary to complete the distressed property conveyance or payment of money to satisfy a debt or legal obligation of the owner. "Consideration" shall not include amounts imputed as a down payment or fee to the distressed property purchaser, or a person acting in participation with the distressed property purchaser.

d. If an owner fails to make a required payment or otherwise defaults under a distressed property conditional conveyance contract which contains an owner's option to purchase or a promise to convey an interest in fee back to the owner, the distressed property purchaser shall only enforce the forfeiture of the owner's interest under the contract as follows:

(1) for purposes of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.), the distressed property conditional conveyance contract shall be deemed to be a residential mortgage, the distressed property purchaser shall be deemed to be a lender, and the owner shall be deemed to be a debtor; and

(2) the distressed property purchaser may bring an action to enforce the forfeiture of the owner's interest in the property and for recovery of possession of the property by use of the procedures for foreclosure and judicial sale of residential real property available to lenders pursuant to the provisions of the "Fair Foreclosure Act."

e. With respect to the amount of any fee or other consideration provided by an owner to a distressed property purchaser at the time of the execution of an option to purchase, as part of any distressed property conditional conveyance, and as consideration for that agreement:

(1) the entire fee or other consideration shall be provided by the owner at the time of the execution of the option to purchase or lease agreement;

(2) the distressed property purchaser may declare some or all of the fee or other consideration to be non-refundable, regardless of whether the owner exercises his right to purchase back the property from the distressed property purchaser pursuant to the option to purchase or lease agreement, or declare that some or all of the fee or other

consideration shall be applied as credit toward the purchase of the property, if the owner does exercise his right to purchase back the property, so long as this declaration is agreed to by the owner and expressly stated in the agreement; and

(3) the fee or other consideration provided to the distressed property purchaser shall not constitute an equitable ownership interest in the property.

f. With respect to any money provided by the owner to the distressed property purchaser pursuant to any distressed property conditional conveyance, remitted as a monthly credit towards the purchase of the property in excess of any monthly rental obligation established pursuant to any agreement designed to allow the owner to remain in the property, including, but not limited to, a lease agreement between the parties:

(1) the distressed property purchaser may declare some or all of the money to be non-refundable, if the owner does not exercise his right to purchase back the property from the distressed property purchaser pursuant to the option to purchase or lease agreement, so long as this declaration is agreed to by the owner and expressly stated in the agreement;

(2) the money provided to the distressed property purchaser shall not constitute an equitable ownership interest in the property; and

(3) the money shall continue to be the property of the owner and shall be held in trust by the distressed property purchaser for use as a credit towards the purchase of the property, subject to any agreement pursuant to paragraph (1) of this subsection.

g. If the owner exercises his right to purchase back the property from the distressed property purchaser pursuant to the option to purchase agreement: (1) any amount still owed toward the purchase price or other consideration on the property, as set forth in the agreement, following the application of any fee, money, or other consideration agreed to be applied towards the purchase by the distressed property purchaser as credit towards the purchase, shall be the sole responsibility of the owner; and (2) a new deed for the property shall be executed by the distressed property purchaser and filed with the office of the county clerk in the county in which the property resides.

46:10B-64. Requirements for distressed property purchaser.

12. A distressed property purchaser, in the course of a distressed property conveyance, shall not fail to:

a. make a payment to the owner at the time the title to the distressed property is conveyed from the owner to the distressed property purchaser, so that the owner has received consideration, as defined by paragraph (2) of subsection c. of section 11 of this act, in an amount of at least 82% of the property's fair market value;

b. have all documents executed as part of a distressed property conveyance also signed by a notary public licensed in the State who is unrelated in any way to the distressed property purchaser or any participant in the distressed property conveyance;

c. complete a distressed property conveyance in the office of a title insurance producer licensed pursuant to the "New Jersey Insurance Producer Licensing Act of 2001," P.L.2001, c.210 (C.17:22A-26 et seq.), or in the office of an attorney licensed to practice law in the State;

d. provide to the owner, prior to the time of completion of a distressed property conveyance, a disclosure statement in a form to be designed and prescribed by regulation by the Commissioner of Banking and Insurance, which statement shall require disclosure to the owner of all costs and fees that the owner will incur in connection with the conveyance;

e. notify in writing all existing mortgage lien holders of the distressed property purchaser's intent to accept conveyance of an interest in the property from the owner;

f. fully comply with all terms and conditions contained in the mortgage lien documents, including but not limited to due-on-sale provisions; and

g. satisfy all qualification requirements for assuming the repayment of the mortgage.

46:10B-65. Waiver void, unenforceable.

13. Any waiver of the provisions of section 8, 9, 10, 11, or 12 of this act is void and unenforceable as contrary to public policy.

46:10B-66. Powers of commissioner relative to compliance.

14. a. The Commissioner of Banking and Insurance may investigate or examine any foreclosure consultant, or other person as the commissioner deems necessary to determine compliance with this act. For these purposes, the commissioner may examine the books, accounts, records and other documents or matters of any foreclosure consultant or other person. Each foreclosure consultant shall be subject to an examination by the commissioner, not more than once in any 12-month period, unless the commissioner has reason to believe that the foreclosure consultant is not complying with the provisions of this act, or is not transacting business in accordance with law, in which case the commissioner may conduct an examination at any time. The commissioner shall have the power to compel by subpoena the production of all relevant books, accounts, records and other documents and materials relative to an examination or investigation.

b. The commissioner or the commissioner's designee shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents,

papers, books, accounts, records and other evidence before him in any matter over which he has jurisdiction pursuant to this act, and to administer oaths and affirmations to any person.

c. If any person shall refuse to obey a subpoena, or to give testimony or to produce evidence as required thereby, the commissioner may apply ex parte to any court having jurisdiction over that person for an order compelling the appearance of the witness before the commissioner to give testimony or to produce evidence as required thereby, or both.

d. A foreclosure consultant shall have its financial records audited annually by a certified public accountant, which audit shall be filed with the commissioner. The commissioner shall conduct at least one examination of the financial records of every foreclosure consultant licensed in the State every two years.

46:10B-67. Violations, penalties; degree of crime.

15. a. Any person who violates any provision of this act shall, in addition to any other penalty provided by law, be liable to a penalty of not more than \$10,000 for the first offense, and not more than \$20,000 for the second and each subsequent offense, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

b. A person who violates any provision of this act is guilty of a crime of the third degree. A person who violates any provision of this act in connection with a pattern of foreclosure rescue fraud or a conspiracy or endeavor to engage in a pattern of foreclosure rescue fraud is guilty of a crime of the second degree.

c. Any distressed property conditional conveyance involving the transfer of an interest in fee or a beneficial interest created through a trust document, in a distressed property, and involving the acquirer of the property allowing the owner to occupy the property, which is made in violation of any provision of this act, is voidable and the transfer may be rescinded by the owner within two years of the date of the transfer, provided that the right, title or interest in the property of a bona fide purchaser or mortgagee for value shall not be affected thereby. Nothing herein shall limit the right of an owner to recover damages from a distressed property purchaser.

d. An owner may bring an action in Superior Court against a foreclosure consultant or a distressed property purchaser for any violation of this act, for treble damages, attorney's fees, costs of suit and appropriate equitable relief. In an action under this subsection, the owner may:

(1) cause a notice of lis pendens to be filed in the office of the county clerk in the county in which the property is located, pursuant to N.J.S.2A:15-6 et seq.; and

(2) introduce or provide as evidence in the action, any contemporaneous oral



agreements or representations made to the owner by any party to a foreclosure consultant contract, distressed property conditional conveyance contract, or distressed property conveyance contract signed by the owner.

e. The remedies and rights provided for in this act are not exclusive, but cumulative, and all other remedies or rights provided by State or federal law, including, but not limited to, those brought under the doctrine of equitable mortgage or pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.) are specifically preserved. Nothing in this act shall be construed to limit the application of the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.).

f. If the Commissioner of Banking and Insurance determines that there has been any substantial violation of this act by a professional licensed under a licensing board in this State, the commissioner shall provide a written notice describing the violation to the licensing board having jurisdiction over the profession, for such action as the board deems appropriate.

46:10B-68. Enforcement, regulations.

16. The Commissioner of Banking and Insurance shall enforce the provisions of this act, and may promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the purposes of the act.

Source: <http://law.onecle.com/new-jersey/46-property/index.html>

**North Carolina General Statutes, Foreclosure Rescue Scams, Section §§ 75.120-75.122. NC. Gen. Stat. §§ 75.120-75.122.**

**75-120. Definitions.**

The following definitions shall apply in this Article:

(1) Default. Whenever a property owner is more than 60 days delinquent on any loan or debt that is secured by the property, including real estate taxes.

(2) Exempt transaction. A foreclosure rescue transaction in which the transferee is any of the following:

a. A member of the transferor's immediate family as defined in G.S. 53-244-030(13).

b. A state, federal, or local government agency or organization.

c. A bank, savings institution, or credit union, including operating subsidiaries and affiliates, organized under the laws of the United States or any state.

d. A mortgage lender or mortgage servicer licensed by the Commissioner of Banks under Article 19B of Chapter 53 of the General Statutes.

(3) Foreclosure rescue transaction. A transfer of residential real property, including a manufactured home that is permanently attached to the real property, which includes all of the following features:

a. The real property is the principal residence of the transferor.

b. The transferor is in default or legal proceedings have been initiated to foreclose on the transferor's property.

c. The transferee, an agent of the transferee, or others acting in concert with the transferee make representations that the transfer of the residential property will enable the transferor to prevent, postpone, or reverse the effect of foreclosure and to remain in the residence.

d. The transferor retains an interest in the property conveyed, including a tenancy interest, an interest under a lease-purchase agreement, an option to reacquire the property, or any other legal, equitable, or possessory interest in the property conveyed.

(4) Property. Real property upon which there is located one or more single-family dwellings, including an individual condominium unit, cooperative unit, manufactured home, or mobile home. (2010-164, s. 2.)

**75-121. Foreclosure rescue transactions prohibited; exceptions; violation.**

(a) It is unlawful for a person or entity other than the transferor to engage in, promise to engage in, arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue transaction for financial gain or with the expectation of financial gain, unless prior to or at the time of transfer, the transferee pays the transferor at least fifty percent (50%) of the fair market value of the property as determined by a licensed appraiser. An appraisal to determine the fair market value of the property must be performed no more than 90 days prior to the transfer. The appraisal shall be delivered to the transferor no more than three days after the appraisal is performed and no less than seven days prior to the transfer of the property. This section does not apply to exempt transactions.

(b) Every contract to effectuate a foreclosure rescue transaction in which the transferee pays at least 50% of the fair market value of the property, shall be in writing,

shall be signed and acknowledged by all parties to it, and shall contain all the terms to which the parties have agreed. The contract shall contain at least all of the following:

- (1) The names and addresses of all parties to the contract.
- (2) The legal description of the property being transferred.
- (3) Any financial obligation of the transferor that will be assumed by the transferee.
- (4) The total amount to be paid by the transferee in connection with the transaction.
- (5) The fair market value of the property as determined by a licensed appraiser.
- (6) A description of the interest in the property retained by the transferor as provided in G.S. 75-120(3)d.
- (7) The terms of the transferor's right to any future possessory or ownership interest in the property. (2010-164, s. 2.)

#### 75-122. Remedies.

A violation of G.S. 75-121 is an unfair trade practice under G.S. 75-1.1. A homeowner may bring an action for the recovery of damages, to void a prohibited foreclosure rescue transaction, as well as for declaratory or equitable relief for a violation of this Article. The provisions of this section shall not be enforceable against a bona fide purchaser for value. The rights and remedies provided herein are cumulative to, and not a limitation of, any other rights and remedies provided by law or equity. Nothing in this Chapter shall be construed to subject an individual homeowner selling his or her primary residence to liability under G.S. 75-1.1. (2010-164, s. 2; 2010-97, s. 15(a).)

Source: <http://law.justia.com/codes/north-carolina/2012/chapter-75/article-5a>

**Texas Code, Regulation of Certain Residential Foreclosure Consulting Services  
Sec. 21.001- 21.151. T.C. §§ 21.001- 21.151.**

Sec. 21.001. DEFINITIONS. (a) In this chapter:

(1) "Foreclosure consultant" means a person who makes a solicitation, representation, or offer to a homeowner to perform for compensation, or who for compensation performs, a service that the person represents will do any of the following:

(A) prevent or postpone a foreclosure sale;

(B) obtain a forbearance from:

(i) a mortgagee;

(ii) a beneficiary of a deed of trust; or

(iii) another person who holds a lien secured by the residence in foreclosure;

(C) assist the homeowner:

(i) to cure the default giving rise to the foreclosure action; or

(ii) to exercise the right of reinstatement of the homeowner's obligation secured by the residence in foreclosure;

(D) obtain an extension of the period within which the homeowner may reinstate the homeowner's obligation secured by the residence in foreclosure;

(E) obtain a waiver of an acceleration clause contained in a promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained in the deed of trust or mortgage;

(F) assist the homeowner to obtain a loan or advance of funds to prevent foreclosure;

(G) avoid or ameliorate the impairment of the homeowner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale;

(H) save the homeowner's residence from foreclosure; or

(I) assist the homeowner in obtaining excess proceeds from a foreclosure sale of the homeowner's residence.

(2) "Homeowner" means a person that holds record title to a residence in foreclosure at the time the foreclosure action has been commenced.

(3) "Mortgage servicer" has the meaning assigned by Section 51.0001, Property Code.

(4) "Residence in foreclosure" means residential real property consisting of not more than four single-family dwelling units, at least one of which is occupied as the property owner's principal place of residence, and against which a foreclosure action has been commenced.

(b) For purposes of Subsections (a)(2) and (4), a foreclosure action has been commenced if:

(1) notice of sale has been filed under Section 51.002(b), Property Code; or

(2) a judicial foreclosure action has been commenced.

Sec. 21.002. EXCEPTION FROM APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter does not apply to the following persons that perform foreclosure consulting services:

(1) an attorney admitted to practice in this state who performs those services in relation to the attorney's attorney-client relationship with a homeowner or the beneficiary of the lien being foreclosed;

- (2) a person that holds or is owed an obligation secured by a lien on a residence in foreclosure if the person performs those services in connection with the obligation or lien;
  - (3) a mortgage servicer of an obligation secured by a lien on a residence in foreclosure if the servicer performs those services in connection with the obligation or lien;
  - (4) a person that regulates banks, trust companies, savings and loan associations, credit unions, or insurance companies under the laws of this state or the United States if the person performs those services as part of the person's normal business activities;
  - (5) an affiliate of a person described by Subdivision (4) if the affiliate performs those services as part of the affiliate's normal business activities;
  - (6) a judgment creditor of the homeowner of the residence in foreclosure, if:
    - (A) the legal action giving rise to the judgment was commenced before the notice of default required under Section 5.064, 5.066, or 51.002(d), Property Code; and
    - (B) the judgment is recorded in the real property records of the clerk of the county where the residence in foreclosure is located;
  - (7) a licensed title insurer, title insurance agent, or escrow officer authorized to transact business in this state if the person is performing those services in conjunction with title insurance or settlement services;
  - (8) a licensed real estate broker or real estate salesperson if the person is engaging in an activity for which the person is licensed;
  - (9) a person licensed or registered under Chapter 156, Finance Code, if the person is engaging in an activity for which the person is licensed or registered under that chapter;
  - (10) a person licensed or registered under Chapter 157, Finance Code, if the person is engaging in an activity for which the person is licensed or registered under that chapter;
  - (11) a nonprofit organization that provides solely counseling or advice to homeowners who have a residence in foreclosure or have defaulted on their home loans, unless the organization is an associate of the foreclosure consultant;
  - (12) a depository institution, as defined by Section 31.002, Finance Code, subject to regulation or supervision by a state or federal regulatory agency; or
  - (13) an affiliate or subsidiary of a depository institution described by Subdivision (12).
- (b) This chapter applies to a person described by Subsection (a) if the person is providing foreclosure consulting services to a homeowner designed or intended to transfer title, directly or indirectly, to a residence in foreclosure to that person or the person's associate, unless the person is a mortgagee or mortgage servicer that negotiates with or accepts from the mortgagor a deed in lieu of foreclosure for the benefit of the mortgagee.

Sec. 21.003. CONFLICT WITH OTHER LAW. To the extent of a conflict between this chapter and Chapter 393, Finance Code, this chapter controls.

## SUBCHAPTER B. CONTRACT FOR SERVICES

Sec. 21.051. FORM AND TERMS OF CONTRACT. Each contract for the purchase of the services of a foreclosure consultant by a homeowner of a residence in foreclosure must be in writing, dated, and signed by each homeowner and the foreclosure consultant.

Sec. 21.052. REQUIRED DISCLOSURE. Before entering into a contract with a homeowner of a residence in foreclosure for the purchase of the services of a foreclosure consultant, the foreclosure consultant shall provide the homeowner written notice stating the following, in at least 14-point boldfaced type:  
NOTICE REQUIRED BY TEXAS LAW

\_\_\_\_\_ (Name) or an associate of \_\_\_\_\_ (Name) cannot ask you to sign or have you sign any document that transfers any interest in your home or property to \_\_\_\_\_ (Name) or \_\_\_\_\_ (Name's) associate.

\_\_\_\_\_ (Name) or \_\_\_\_\_ (Name's) associate cannot guarantee you that they will be able to refinance your home or arrange for you to keep your home.

You may, at any time, cancel or rescind this contract, without penalty of any kind.

If you want to cancel this contract, mail or deliver a signed and dated copy of this notice of cancellation or rescission, or any other written notice, indicating your intent to cancel or rescind to \_\_\_\_\_ (Name and address of foreclosure consultant) at \_\_\_\_\_ (Address of foreclosure consultant, including facsimile and electronic mail address).

As part of any cancellation or rescission, you (the homeowner) must repay any money spent on your behalf by \_\_\_\_\_ (Name of foreclosure consultant) prior to receipt of this notice and as a result of this agreement, within 60 days, along with interest calculated at the rate of eight percent per year.

#### SUBCHAPTER C. LIMITATIONS, PROHIBITIONS, AND DUTIES REGARDING SERVICES

##### Sec. 21.101. RESTRICTIONS ON CHARGE OR RECEIPT OF CONSIDERATION.

A foreclosure consultant may not:

- (1) charge or receive compensation until the foreclosure consultant has fully performed each service the foreclosure consultant has contracted to perform or has represented the foreclosure consultant can or will perform unless the foreclosure consultant has obtained a surety bond or established and maintained a surety account for each location at which the foreclosure consultant conducts business in the manner that Subchapter E, Chapter 393, Finance Code, provides for credit services organizations;  
or
- (2) receive any consideration from a third party in connection with foreclosure consulting services provided to the homeowner of a residence in foreclosure unless the consideration is fully disclosed in writing to the homeowner.

Sec. 21.102. PROHIBITED CONDUCT. A foreclosure consultant may not:

- (1) take any power of attorney from a homeowner for any purpose other than to inspect documents;

- (2) for purposes of securing payment of compensation, acquire an interest, directly or indirectly, in the real or personal property of the homeowner of a residence in foreclosure with whom the foreclosure consultant has contracted to perform services; or
- (3) take an assignment of wages to secure payment of compensation.

Sec. 21.103. RETENTION OF RECORDS. (a) A foreclosure consultant shall keep each record and document, including the foreclosure consultant contract, related to foreclosure consulting services performed on behalf of a homeowner.

(b) A foreclosure consultant shall retain the records described by Subsection (a) until at least the third anniversary of the day the foreclosure consultant contract entered into by the consultant and the homeowner was terminated or concluded.

#### SUBCHAPTER D. ENFORCEMENT

Sec. 21.151. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this chapter is a Class C misdemeanor.

Source: <http://law.justia.com/codes/texas/2011/business-and-commerce-code/title-2/chapter-21>