

MORTGAGE RESCUE FRAUD PROTECTION ACT

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SECTION 1. SHORT TITLE.

This Act shall be called the "Mortgage Rescue Fraud Protection Act."

SECTION 2. DEFINITIONS. In this Act the following words have the meanings indicated:

(a) "Bona Fide Purchaser" means anyone acting in good faith who purchases residential real property from an Equity Purchaser for valuable consideration or provides the Equity 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" shall exclude all intervening Saturdays, Sunday, and state holidays.

(c) "Equity Conveyance" means a transaction involving:

(1) The transfer of title to real property by a homeowner during or incident to a proposed foreclosure proceeding, either by transfer of interest from the homeowner to another party during the foreclosure process that allows the acquirer to obtain legal or equitable title to all or part of the property; and

(2) 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.

[OR alternate definition from New York statute]

(c) "Equity Conveyance" 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.

(d) "Equity Conveyance 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 Rresidence in Fforeclosure; or

(ii) is incident to the sale of a Rresidence in fforeclosure 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 Eequity Sseller to an Eequity Ppurchaser shall include a transaction where an Eequity Sseller receives consideration from the Eequity Ppurchaser, and a transaction involving a transfer of title to the Eequity Ppurchaser where no consideration is provided to the Eequity Sseller.

(e) "Equity Purchaser" means a person who acquires title or possession of a deed or other document to a Residence in Foreclosure as a result of an Equity Conveyance, but does not include a party to a deed in lieu of foreclosure.

[OR alternate definition from New York statute]

(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 (~~in lieu of foreclosure?~~) from a referee trustee in a foreclosure sale conducted pursuant to ORS Chapter 59
_____;

(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 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 do in any manner 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 any right of redemption;
- (4) Obtain any extension of the period within which the owner may reinstate his 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 in any such deed of trust or mortgage;
- (6) Assist the owner in obtaining 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.

(h) "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.

(i) "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 foreclosure;
- (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 foreclosure;

[do subsections 5 – 10 deal with equity conveyance rather than foreclosure consulting?] May qualify as a Foreclosure Consultant but still not be an Equity Purchaser.

- (5) Arranging or facilitating the purchase of a homeowner's equity of redemption or legal or equitable title within 20 days of an advertised or docketed foreclosure sale;
- (6) 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;
- (7) 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;
- (8) Arranging for a homeowner to have an option to repurchase the homeowner's residence after a sale or transfer;
- (9) Arranging for or facilitating a homeowner remaining in the homeowner's residence as a tenant, renter, or lessee; or
- (10) Arranging or facilitating any other grant, conveyance, sale, lease, trust, or gift by which a homeowner clogs the homeowner's equity of redemption in the homeowner's residence.

If, under the foregoing definition, a person also qualifies as an Equity Purchaser, then the laws of this subtitle pertaining to Equity Conveyances shall apply to that Equity Purchaser.

(j) "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.

(k) "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. "Foreclosure Surplus Purchaser" includes a person who acts in joint venture or joint enterprise with one or more acquirers.

(l) "Homeowner" means the record owner of a Residence in Foreclosure.

(m) "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 property.

"Resale" means a bona fide market sale of property subject to an Equity Conveyance by the equity purchaser to an unaffiliated third party.

(n) "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.

(o) "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.

(p) "Resale price" means the gross sale price of a property on resale.

(q) "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, and against which a Notice of Default has been recorded.

(r) "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 Equity Purchaser, during which the Homeowner must be presented with a completed copy of the HUD-1 Settlement Form.

(s) "Settlement Agent" means a settlement service provider that is a duly licensed escrow company, title company, or attorney.

SECTION 3: LICENSING REQUIREMENT

Every person doing business as a Foreclosure Consultant or Equity Purchaser shall register with the Department of Finance and Corporate Securities as a Credit Services Organization as set forth in ORS 646.380 – 646.398 unless exempt under this Act.

[need to discuss]

SECTION 4: FORECLOSURE CONSULTANTS

A. Exemptions.

(1) Except as provided in subsection (2) of this subsection, the provisions of this Title pertaining to Foreclosure Consultants does not apply to:

- (a) 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;
- (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 an Equity Conveyance;
- (c) (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, insurance companies, or ORS Chapter 725, while the person performs services as a part of the person's normal business activities; and **[ADD SCOPE OF LICENSE?]**
(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;
- (d) A judgment creditor of the homeowner, if the judgment creditor's claim accrued before the written notice of trustee's sale required by ORS Chapter 86 is sent;
- (e) A title insurer or producer authorized to conduct business in the State, while performing title insurance and settlement services in accordance with the person's license;
- (f) A person licensed as a mortgage broker or mortgage lender under the Oregon Mortgage Lenders Law, ORS Chapter 59, while acting under the authority and scope of that license;
- (g) A person holding a real estate, property management, or escrow license under ORS Chapter 696, while the person engages in any activity for which the person is licensed under those provisions so long as any conveyance or transfer of deed, title, or establishment of equitable interest is done through a settlement as defined in Section 2(k) of this Act;
- (h) A tax exempt organization that offers counseling or advice to homeowners in foreclosure or loan default, if (a) the organization is not directly or indirectly related to and does not contract for services with for-profit lenders or equity purchasers, and (b) the organization has been in existence and doing business for at least five years; or
- (i) A creditors' committee or trustee or debtor in possession in a proceeding under the jurisdiction of the United States Bankruptcy Court; or
- (j) A family or living trust in which the Homeowner is the beneficiary or a member of the beneficiary.

(2) This subtitle does apply to an individual who: [who or what is this intended to apply to?] Equity Purchasers, I believe. Perhaps this is where to include a reference to the fact that a person who qualifies as an Equity Purchaser should not be deemed just a Foreclosure Consultant.

- (a) Is functioning in a position listed under subsection (1) of this section; and
- (b) Is engaging in activities or providing services designed or intended to transfer title to a Residence in Foreclosure directly or indirectly to that individual, or an agent or affiliate of that individual.

B. Foreclosure Consultant Disclosures and Right to Cancel

Subsection 1. Disclosures

(a) A Foreclosure Consulting Contract is required for any Foreclosure Consulting Services. The Foreclosure Consulting Contract shall:

- (1) Be provided to the homeowner for review at least 24 hours 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 describe the nature and extent of the Foreclosure Consulting Services to be provided;
- (4) Disclose the total amount and terms of any compensation to be received by the Foreclosure Consultant or anyone working in association with the Foreclosure Consultant;
- (5) Be dated and personally signed by the Homeowner and the Foreclosure Consultant;
- (6) Contain on the first page the name and address of the Foreclosure Consultant to which the notice of cancellation is to be mailed; and
- (7) Contain the following notice 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 OREGON LAW

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. YOU SHOULD CONTACT AN ATTORNEY OR COUNSELOR BEFORE SIGNING.

YOU MAY CANCEL THIS CONTRACT AT ANY TIME.

If you cancel, you must repay any money spent on your behalf under this contract. You have 60 days to pay back the money and it may include interest at 9% per year.

_____ (Name) or anyone working for him or her CANNOT ask you to sign or have you sign any lien, mortgage, or deed that transfers any interest in your home or property to the Foreclosure Consultant or his or her Associate.

_____ (Name) or anyone working for him or her CANNOT guarantee 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.

(b) Any provision in a Foreclosure Consulting Contract that attempts or purports to waive any of the rights specified in this subtitle, consent to jurisdiction for litigation or choice of law in a state other than Oregon, 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.

Subsection 2. Right to Cancel Foreclosure Consulting Contract

(a) In addition to any other right under law to cancel or rescind a contract, a Homeowner has the right to cancel a Foreclosure Consulting Contract at any time.

(b) Cancellation occurs when the Homeowner gives written notice of cancellation to the Foreclosure Consultant at the address specified in the Foreclosure Consulting Contract or through any facsimile or electronic mail address identified in the Foreclosure Consulting Contract.

(c) Notice of cancellation, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid. Notice of cancellation, if given by email or facsimile, is effective when the transmission is made if proof of such transmission is provided; otherwise, notice shall be effective when received by the recipient.

(d) As part of the cancellation of a foreclosure consulting contract, the Homeowner shall repay, within 60 days from the date of cancellation, 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 9% a year.