

Foreclosure Protection

This Act requires all transactions between homeowners and foreclosure consultants or equity purchasers be in writing, prohibits consultants who provide advice or assistance from acquiring any interest in the homeowner's property, and calls for a three-day "cooling off" period, during which an equity purchaser may not record any deed or in any way transfer or encumber the homeowner's property.

Submitted as:

Colorado

SB 06-71

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as "The Foreclosure Protection Act."

2

3 Section 2. [*Legislative Findings.*] The [legislature] hereby finds, determines, and declares
4 that home ownership and the accumulation of equity in one's home provide significant social and
5 economic benefits to the state and its citizens. Unfortunately, too many home owners in financial
6 distress, especially the poor, elderly, and financially unsophisticated, are vulnerable to a variety of
7 deceptive or unconscionable business practices designed to dispossess them or otherwise strip the
8 equity from their homes. There is a compelling need to curtail and to prevent the most deceptive
9 and unconscionable of these business practices, to provide each home owner with information
10 necessary to make an informed and intelligent decision regarding transactions with certain
11 foreclosure consultants and equity purchasers, to provide certain minimum requirements for
12 contracts between such parties, including statutory rights to cancel such contracts, and to ensure
13 and foster fair dealing in the sale and purchase of homes in foreclosure. Therefore, it is the intent
14 of the [legislature] that all violations of this Act have a significant public impact and that the
15 terms of this Act be liberally construed to achieve these purposes.

16

17 Section 3. [*Definitions.*] As used in this Act:

18 (1) "associate" means a partner, subsidiary, affiliate, agent, or any other person working in
19 association with a foreclosure consultant or an equity purchaser; except that the term "associate"
20 does not include a person who is excluded from the definition of an "equity purchaser" or a
21 "foreclosure consultant."

22 (2) "equity purchaser" means a person who, in the course of the person's business,
23 vocation, or occupation, acquires title to a residence in foreclosure; except that the term does not
24 include a person who acquires such title:

25 (a) for the purpose of using such property as his or her personal residence for at
26 least [one year];

27 (b) by a deed in lieu of foreclosure to the holder of an evidence of debt, or an
28 associate of the holder of an evidence of debt, of a consensual lien or encumbrance of record if
29 such consensual lien or encumbrance is recorded in the real property records of the [clerk and
30 recorder] of the county where the residence in foreclosure is located prior to the recording of the
31 notice of election and demand for sale required under [insert citation];

32 (c) by a deed from the [public trustee or a county sheriff] as a result of a
33 foreclosure sale conducted pursuant to [insert citation];

34 (d) at a sale of property authorized by statute;

35 (e) by order or judgment of any court;

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

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

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

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

53 (i) stop or postpone a foreclosure sale;

54 (ii) obtain a forbearance from a beneficiary under a deed of trust,
55 mortgage, or other lien;

56 (iii) assist the home owner in exercising a right to cure a default as
57 provided in [insert citation];

58 (iv) obtain an extension of the period within which the home owner
59 may cure a default as provided in [insert citation];

60 (v) obtain a waiver of an acceleration clause contained in an
61 evidence of debt secured by a deed of trust, mortgage, or other lien on a residence in foreclosure
62 or contained in such deed of trust, mortgage, or other lien;

63 (vi) assist the home owner to obtain a loan or advance of funds;

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

69 (viii) in any way delay, hinder, or prevent the foreclosure upon the
70 home owner's residence; or

71 (ix) assist the home owner in obtaining from the beneficiary,
72 mortgagee, or grantee of the lien in foreclosure, or from counsel for such beneficiary, mortgagee,
73 or grantee, the remaining or excess proceeds from the foreclosure sale of the residence in
74 foreclosure.

75 (b) the term "foreclosure consultant" does not include:

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

80 (ii) a holder or servicer of an evidence of debt or the attorney for
81 the holder or servicer of an evidence of debt secured by a deed of trust or other lien on any

82 residence in foreclosure while the person performs services in connection with the evidence of
83 debt, lien, deed of trust, or other lien securing such debt;

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

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

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

94 (B) with respect to any second mortgage or home equity line
95 of credit, the loan is subordinate to and closed simultaneously with a qualified first mortgage loan
96 under sub-paragraph (A) of this subparagraph (iv) or is initially payable on the face of the note
97 or contract to an entity included in subparagraph (iii) of this paragraph (b);

98 (v) a judgment creditor of the home owner, if the judgment is
99 recorded in the real property records of the clerk and recorder of the county where the residence
100 in foreclosure is located and the legal action giving rise to the judgment was commenced before
101 the notice of election and demand for sale required under [insert citation];

102 (vi) a title insurance company or title insurance agent authorized to
103 conduct business in this state, while performing title insurance and settlement services;

104 (vii) a person licensed as a real estate broker or real estate
105 salesperson under [insert citation], while the person engages in any activity for which the person
106 is licensed; or

107 (viii) a nonprofit organization that solely offers counseling or
108 advice to home owners in foreclosure or loan default, unless the organization is an associate of
109 the foreclosure consultant.

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

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

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

119 (b) the person in possession of an original evidence of debt together with the
120 proper indorsement or assignment thereof to such person in accordance with [insert citation];

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

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

126 (7) "home owner" means the owner of a residence in foreclosure, including a vendee
127 under a contract for deed to real property, as that term is defined in [insert citation].

128 (8) "residence in foreclosure" means a residence or dwelling as defined in [insert citation]
129 that is occupied as the home owner's principal place of residence and against which any type of
130 foreclosure action has been commenced.

131

Section 4. [*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 of the residence in foreclosure 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:

FORECLOSURE CONSULTING CONTRACT NOTICE

_____ (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.

176 **This is an important legal contract and could result in the loss of your**
177 **home. Contact an attorney or a housing counselor approved by the federal**
178 **Department of Housing and Urban Development before signing.**
179

180
181 (6) A completed form in duplicate, captioned "Notice of Cancellation" shall accompany
182 the foreclosure consulting contract. The notice of cancellation shall:
183 (a) be on a separate sheet of paper attached to the Contract;
184 (b) be easily detachable; and
185 (c) contain the following statement, printed in at least [fourteen-point type]:
186

187
188 FORECLOSURE CONSULTING CONTRACT
189 NOTICE OF CANCELLATION

190 (Date of contract)

191
192 To: (name of foreclosure consultant)
193 (address of foreclosure consultant, including Facsimile and electronic mail)
194

195 I hereby cancel this contract.

196 _____ (date)
197 _____ (home owner's signature)
198

199
200 (7) the foreclosure consultant shall provide to the home owner a signed, dated, and
201 acknowledged copy of the foreclosure consulting contract and the attached notice of cancellation
202 immediately upon execution of the contract.

203 (8) the time during which the home owner may cancel the foreclosure consulting contract
204 does not begin to run until the foreclosure consultant has complied with this section.
205

206 Section 5. [*Foreclosure Consulting Contract Right of Cancellation.*]

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

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

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

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

218 (5) As part of the cancellation of a foreclosure consulting contract, the home owner shall
219 repay, within [sixty days after] the date of cancellation, all funds paid or advanced in good faith
220 prior to the receipt of notice of cancellation by the foreclosure consultant or associate under the
221 terms of the foreclosure consulting contract, together with interest at the prime rate published by

222 the Federal Reserve plus two percentage points, with the total interest rate not to exceed eight
223 percent per year, from the date of expenditure until repaid by the home owner.

224 (6) The right to cancel may not be conditioned on the repayment of any funds.
225

226 Section 6. [*Foreclosure Consulting Contract Waiver of Rights - Void.*]

227 (1) A provision in a foreclosure consulting contract is void as against public policy if the
228 provision attempts or purports to:

229 (a) waive any of the rights specified in [Sections 4 through 10] of this Act or the
230 right to a jury trial;

231 (b) consent to jurisdiction for litigation or choice of law in a state other than this
232 state;

233 (c) consent to venue in a county other than the county in which the property is
234 located; or

235 (d) impose any costs or fees greater than the actual costs and fees.
236

237 Section 7. [*Foreclosure Consulting Contract Prohibited Acts.*]

238 (1) A foreclosure consultant may not:

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

242 (b) claim, demand, charge, collect, or receive any interest or any other
243 compensation for a loan that the foreclosure consultant makes to the home owner that exceeds the
244 prime rate published by the Federal Reserve at the time of any loan plus two percentage points,
245 with the total interest rate not to exceed eight percent per year;

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

248 (d) receive any consideration from a third party in connection with foreclosure
249 consulting services provided to a home owner unless the consideration is first fully disclosed in
250 writing to the home owner;

251 (e) acquire an interest, directly, indirectly, or through an associate, in the real or
252 personal property of a home owner with whom the foreclosure consultant has contracted;

253 (f) obtain a power of attorney from a home owner for any purpose other than to
254 inspect documents as provided by law; or

255 (g) induce or attempt to induce a home owner to enter into a foreclosure consulting
256 contract that does not comply in all respects with this subpart.
257

258 Section 8. [*Foreclosure Consulting Contract Criminal Penalties.*] A person who violates
259 [Section 7] of this Act is guilty of a [misdemeanor], as defined in [insert citation], and shall be
260 subject to imprisonment in county jail for up to [one year], a fine of up to [twenty-five thousand
261 dollars], or both.
262

263 Section 9. [*Foreclosure Consulting Contract Unconscionability.*]

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

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

270 (b) When it is claimed or appears to the court that a foreclosure consultant contract
271 or any clause of such contract may be unconscionable, the parties shall be afforded a reasonable

272 opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court
273 in making the determination.

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

280

281 Section 10. [*Foreclosure Consulting Contract Language.*] A foreclosure consulting
282 contract, and all notices of cancellation provided for therein, shall be written in English and shall
283 be accompanied by a written translation from English into any other language principally spoken
284 by the home owner, certified by the person making the translation as a true and correct translation
285 of the English version. The translated version shall be presumed to have equal status and
286 credibility as the English version.

287

288 Section 11. [*Equity Purchases: Written Contract Required.*]

289 (1). Every contract shall be written in at least [twelve-point bold-faced type] and fully
290 completed, signed, and dated by the home owner and equity purchaser prior to the execution of
291 any instrument quit-claiming, assigning, transferring, conveying, or encumbering an interest in
292 the residence in foreclosure.

293

294 Section 12. [*Equity Purchases: Written Contract - Contents - Notice.*]

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

297

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

298

(b) the street address and full legal description of the residence in foreclosure;

299

(c) clear and conspicuous disclosure of any financial or legal obligations of the
300 home owner that will be assumed by the equity purchaser. If the equity purchaser will not be
301 assuming any financial or legal obligations of the home owner, the equity purchaser shall provide
302 to the home owner a separate written disclosure that substantially complies with [insert citation].

303

(d) the total consideration to be paid by the equity purchaser in connection with or
304 incident to the acquisition by the equity purchaser of the residence in foreclosure;

305

(e) the terms of payment or other consideration, including, but not limited to, any
306 services of any nature that the equity purchaser represents will be performed for the home owner
307 before or after the sale;

308

(f) the date and time when possession of the residence in foreclosure is to be
309 transferred to the equity purchaser;

310

(g) the terms of any rental agreement or lease;

311

(h) the specifications of any option or right to repurchase the residence in
312 foreclosure, including the specific amounts of any escrow deposit, down payment, purchase price,
313 closing costs, commissions, or other fees or costs;

314

(i) a notice of cancellation as provided in [Section 14] of this Act; and

315

(j) the following notice, in at least [fourteen-point bold-faced type], and completed
316 with the name of the equity purchaser, immediately above the statement required by [Section 14]
317 of this Act.

318

319

EQUITY PURCHASE CONTRACT NOTICE

320

321 **Until your right to cancel this contract has ended, (name) or anyone**
322 **working for _____ (name) cannot ask you to sign or have you sign**
323 **any deed or any other document. The contract required by this section**
324 **survives delivery of any instrument of conveyance of the residence in**
325 **foreclosure, but does not have any effect on people other than the parties to the**
326 **contract or affect title to the residence in foreclosure.**
327

328
329 Section 13. [*Equity Purchase: Right to Cancel Contract.*]

330 (1) In addition to any right of rescission available under state or federal law, the home
331 owner has the right to cancel a contract with an equity purchaser until [12 midnight of the third
332 business day] following the day on which the home owner signs a contract that complies with this
333 section or until [12 noon on the day] before the foreclosure sale of the residence in foreclosure,
334 whichever occurs first.

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

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

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

346
347 Section 14. [*Equity Purchase Contract: Notice of Cancellation.*]

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

351
352
353 **You may cancel this contract for the sale of your house without any penalty or obligation at**
354 **any time before _____ (date and time of day). See the attached notice of**
355 **cancellation form for an explanation of this right.**
356

357
358 (b) The equity purchaser shall accurately specify the date and time of day on
359 which the cancellation right ends.

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

364 (a) be attached to the contract;

365 (b) be easily detachable; and

366 (c) contain the following statement, in at least [ten-point type] if the contract is
367 printed or in [capital letters] if the contract is typed:

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**EQUITY PURCHASE
NOTICE OF CANCELLATION**

_____ (enter date contract signed). You may cancel this contract for the sale of
your house, without any penalty or obligation 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).

380 I hereby cancel this transaction _____ (date)
381 _____ (seller's signature)
382

383
384 (3) The equity purchaser shall provide the home owner with a copy of the contract and the
385 attached notice of cancellation.

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

388
389 Section 15. [*Options Through Reconveyances.*]

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

394 (a) the reconveyance contract complies in all respects with [Section 12] of this
395 Act;

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

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

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

411 (e) the price the home owner must pay to exercise the option to repurchase the
412 residence in foreclosure is not unconscionable.

413 (2) Without limitation on available claims under [Section 19] of this Act, a repurchase
414 price exceeding [twenty-five percent] of the price at which the equity purchaser acquired the
415 residence in foreclosure creates a rebuttable presumption that the reconveyance contract is
416 unconscionable. The acquisition price paid by the equity purchaser may include any actual costs
417 incurred by the equity purchaser in acquiring the residence in foreclosure.
418

419 Section 16. [*Waiver of Rights in Contracts Between Equity Purchasers and Home Owners*
420 - *Void.*]

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

423 (a) waive any of the rights specified in [Sections 11 through 20] of this Act this or
424 the right to a jury trial;

425 (b) consent to jurisdiction for litigation or choice of law in a state other than this
426 state;

427 (c) consent to venue in a county other than the county in which the property is
428 located; or

429 (d) impose any costs or fees greater than the actual costs and fees.

430

431 Section 17. [*Prohibited Conduct of Equity Purchasers.*]

432 (1) The contract provisions required by [Sections 11 to 14] of this Act shall be provided
433 and completed in conformity with such sections by the equity purchaser.

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

436 (a) accept from a home owner an execution of, or induce a home owner to execute,
437 an instrument of conveyance of any interest in the residence in foreclosure;

438 (b) record with the county recorder any document, including, but not limited to,
439 the contract or any lease, lien, or instrument of conveyance, that has been signed by the home
440 owner;

441 (c) transfer or encumber or purport to transfer or encumber an interest in the
442 residence in foreclosure to a third party; or

443 (d) pay the home owner any consideration.

444 (3) Within [ten days] following receipt of a notice of cancellation given in accordance
445 with [Sections 13 and 14] of this Act, the equity purchaser shall return without condition the
446 original contract and any other documents signed by the home owner.

447 (4) An equity purchaser shall make no untrue or misleading statements of material fact
448 regarding the value of the residence in foreclosure, the amount of proceeds the home owner will
449 receive after a foreclosure sale, any contract term, the home owner's rights or obligations incident
450 to or arising out of the sale transaction, the nature of any document that the equity purchaser
451 induces the home owner to sign, or any other untrue or misleading statement concerning the sale
452 of the residence in foreclosure to the equity purchaser.

453

454 Section 18. [*Criminal Penalties.*] A person who violates [Section 17 (2) or (3)] of this Act
455 or who intentionally violates [Section 17 (4)] of this Act is guilty of a [misdemeanor], as defined
456 in [insert citation], and shall be subject to imprisonment in county jail for up to [one year], a fine
457 of up to [twenty-five thousand dollars], or both.

458

459 Section 19. [*Unconscionable Behavior of Equity Purchasers.*]

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

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

466 (b) When it is claimed or appears to the court that the contract or any clause
467 thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present

468 evidence as to its commercial setting, purpose, and effect, to aid the court in making the
469 determination.

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

476

477 Section 20. [*Language of Equity Purchase Contracts.*] Any contract, rental agreement,
478 lease, option or right to repurchase, and any notice, conveyance, lien, encumbrance, consent, or
479 other document or instrument signed by a home owner, shall be written in [English] and shall be
480 accompanied by a written translation from [English] into any other language principally spoken
481 by the home owner, certified by the person making the translation as a true and correct translation
482 of the [English] version. The translated version shall be presumed to have equal status and
483 credibility as the [English] version.

484

485 Section 21. [*Deceptive Trade Practices.*] A person engages in a deceptive trade practice
486 when, in the course of such person's business, vocation, or occupation, such person violates any
487 provision of this Act.

488

489 Section 22. [*Severability.*] [Insert severability clause.]

490

491 Section 23. [*Repealer.*] [Insert repealer clause.]

492

493 Section 24. [*Effective Date.*] [Insert effective date.]