

PROTECTION OF HOMEOWNERS IN FORECLOSURE ACT

1. Intent of the legislature was to protect homeowners from foreclosure “rescue” scams
 - A. Phantom Helper – person who agrees to negotiate with lender on homeowner’s behalf for an upfront fee. The fee is paid and the person does nothing.
 - B. Bait and Switch – person induces homeowner to sign a deed so they can “save” the home and promises to deed the property back. The homeowner is now a tenant and evicted in landlord tenant court.
 - C. Lease Buy-Back – person induces homeowner to sign a deed to a “straw investor” with the promise to get the property back. Person refinances and takes out 100% of the equity. Homeowner has new, larger mortgage on the property. In some cases, straw-investor is also scammed.
2. “Foreclosure Consultant”
 - A. Defined as a person who solicits or contacts homeowner in any manner and directly or indirectly offers to help:
 - a. stop or delay a foreclosure sale;
 - b. obtain forbearance from the lender;
 - c. assist homeowner with reinstatement;
 - d. assist homeowner in obtaining a new loan;
 - e. avoid ruining homeowner’s credit;
 - f. “save” the residence from foreclosure;
 - g. purchase or obtain option to purchase property;
 - h. arrange for homeowner to become renter and continuing residing in the home;
 - i. arrange for homeowner to have an option to repurchase the property; OR
 - j. systematically contacts homeowner who is in or close to foreclosure (court records and legal ads).
3. “Foreclosure Consulting Services”
 - A. All of the above, plus:
 1. Contacting creditors on behalf of a homeowner;
 2. Receiving money for the purpose of distributing to creditors;
 3. Arranging or facilitating purchase of homeowner’s equity of redemption; OR
 4. Arranging or facilitating the sale of home, or transfer of legal title, in any form to another party as an alternative to foreclosure.

4. “Foreclosure Reconveyance”
 - A. Transfer of title of home during or incident to proposed foreclosure, either by mortgage, trust, or other encumbrance that allows acquirer to obtain legal or equitable title to all or part of the property; AND
 - B. Subsequent conveyance, or promise of a subsequent conveyance, back to the homeowner in a manner so as to allow the homeowner to remain in the home.
 1. Emergency HB 361 of the 2008 Session of the Maryland General Assembly replaced this term with “foreclosure rescue transaction”
 - a. a transaction in which a residence in default is conveyed by a homeowner who retains legal or equitable interest in all or part of the property and that is intended to delay foreclosure.
 - i. Interest retained includes interest under lease-purchase, option to reacquire.
 2. HB 361 repealed all other provisions of “foreclosure reconveyances” most notably the requirement to pay to the homeowner within 90 days of the resale of the property 82% of the net proceeds received, if sold within 18 months.
5. Law applies to a residence of not more than four single family dwelling units, one of which is occupied by the owner, owner’s spouse or former spouse under a use and possession order, as the individual’s principal place of residence AND against which an order to docket or a petition to foreclose has been filed.
 - A. HB 361 has changed this to include “residences in default”
 1. Residential real property on which the mortgage is at least 60 days in default.
6. Exceptions
 - A. Law does not apply to following, so long as they are performing services as part of their normal business activities:
 1. Attorneys;
 2. Lien holders;
 3. Person doing business as bank, trust company, savings and loan;
 4. Judgment creditor;
 5. Title insurer;
 6. Licensed mortgage broker or lender;
 7. Licensed real estate broker, associate broker, or real estate sales person; or

8. Offer non-profit counseling services for foreclosures.

B. HB 361 amends this to include:

1. Title insurers and mortgage brokers

a. mortgage brokers are exempt if they are dealing with the loan in default, or while acting under the authority of their license and arranging a refinance for the mortgage in default.

b. Real estate brokers and sales persons are exempt only while engaged in a licensed activity that does not violate the law, AND if residence is listed in local MLS and is sold or transferred through a settlement

7. Consulting Services Contracts

A. If acting as a foreclosure consultant or providing a foreclosure consulting service, you must enter into a separate contract with the homeowner.

1. Provide for review before signing

2. Printed in at least 12 point type and written in the same language used to discuss the transaction

3. Dated and notarized signature of homeowner and foreclosure consultant

4. Fully disclose exact services to be provided and amount of compensation received by consultant or anyone working in consultation with the consultant

5. Contain specific language in 14 point boldface type and located near location where homeowner signs that tells homeowner their rights, including right to rescind, and to consult an attorney.

a. Right of Rescission

i. If property is transferred by deed, homeowner has 3 days to rescind. Can also rescind Consulting Services Contract at anytime.

a) Homeowner must repay within 60 days, all money spent on their behalf, along with 8% interest.

b) HB 361 extends period to rescind to 5 days

c) "Notice of Rescission" must be a separate paper attached to contract and contain specific language.

8. Prohibitions

A. Foreclosure consultant cannot:

1. Claim or collect compensation until after each duty specified in

- the contract has been fully performed;
 - 2. Claim or collect any interest or “other compensation” on a loan consultant has made that exceeds 8% per year;
 - 3. Take a wage assignment or lien of any type as security for payment;
 - 4. Receive consideration from any third party, unless disclosed to homeowner;
 - 5. Acquire any interest, directly or indirectly, including members of the foreclosure consultant’s immediate family, in a home from a homeowner with whom the foreclosure consultant has contracted;
 - 6. Acquire power of attorney from the homeowner for any purpose other than to inspect documents; or
 - 7. Convince or attempt to convince homeowner to enter into an agreement that does not comply with the law.
 - a. Includes attempting to induce a waiver of rights. Any waiver is automatically void as a matter of public policy.

- 9. Foreclosure Surplus Acquisitions – rescuer gets the money, homeowner gets the tax burden
 - A. Obtain any equity the homeowner may have after the sale at foreclosure has occurred.
 - 1. Must enter into a written contract with specific language
 - 2. Must be signed BEFORE the statement of account has been referred to the auditor
 - 3. Include all consideration payable to the consultant, including terms of payment
 - 4. Include notice of right to rescind within 10 days after the auditor states the account.
 - 5. Include separate Notice of Rescission

- 10. Enforcement and Penalties
 - A. CRIMINAL – misdemeanor, subject to imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both
 - B. Attorney General may seek injunction
 - C. Court may order “any judgment necessary” to stop or prevent a prohibited practice
 - 1. Restore any money or property acquired by prohibited practice
 - D. CIVIL – homeowner may bring action for damages
 - 1. Includes attorney fees; and
 - 2. Damages times 3 if court finds violation was willful or knowing.

FORECLOSURE OF MORTGAGES AND DEEDS OF TRUST ON RESIDENTIAL PROPERTY

1. Current Law
 - A. Quasi-Judicial
 - B. Authority for sale derived from the mortgage or deed of trust (“power of sale” clause), but court has oversight over the sale process
 1. Order to Docket filed with the court
 - a. Not a hearing
 2. Homeowner sent notice by certified and first-class mail
 - a. No requirement to show notice actually received
 - b. Must be sent not earlier than 30 days and not later than 10 days before sale
 3. Notice of Sale required to be published once week for three weeks before the sale
 4. After sale, a report of sale must be filed within 30 days
 5. After approval, sale ratified
 6. Homeowner can file exceptions to the ratification – usually based on insufficiency of sales price
 - a. Must “shock the conscience of the court”
 7. Before sale, homeowner’s only recourse to challenge the claim of default is to file a motion for injunction
2. Changes based on 2008 General Assembly
 - A. Apply to residential foreclosures only
 - B. Changes in Timing
 1. Cannot file until the later of 90 days after a default or 45 days after notice of intent to foreclose is sent
 - a. Sent via certified mail, return receipt requested and first-class mail
 - b. Copy also sent to Commissioner of Financial Regulation at DLLR
 - c. Must be in a form detailed by Regulations
 - d. Must contain:
 - i. License number of lender and originator;
 - ii. Amount required to cure default; and
 - iii. Any other information Commissioner requires
 - C. Order to Docket must contain
 1. License number of lender and originator
 2. Affidavit stating when default occurred, nature of the default, date notice of intent to foreclose was sent
 3. **HOMEOWNER MUST BE PERSONALLY SERVED**
 - a. Personal service

b. Leaving papers with a resident of suitable age

i. If two good faith efforts to serve are unsuccessful, can:

- a. File affidavit of good faith
- b. Mail copy to last known address, and
- c. Post copy in conspicuous place on the property

D. Right to cure default

1. Homeowner has right up to one business day before sale
2. Upon request and within a reasonable time, homeowner must be given amount and instructions on how to cure



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