

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.

- (e) The right to cancel may not be conditioned on the repayment of any funds.
- (f) The Foreclosure Consulting Contract shall be accompanied by a completed form titled "HOW TO CANCEL," which shall:
- (1) Be in duplicate;
 - (2) Be on a separate sheet of paper attached to the Foreclosure Consulting Contract;
 - (3) Be easily detachable; and
 - (4) Contain the following statement printed in at least 14 point boldface type:

HOW TO CANCEL

(Date of Contract)

YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY AT ANY TIME.

To cancel, 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 email. Send the fax to _____ and the email to _____.

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 must include interest at 9% per year if requested by the Foreclosure Consultant.

NOTICE OF CANCELLATION

TO: _____ (name of Foreclosure Consultant)

(address of Foreclosure Consultant; include fax and email)

I cancel this contract.

Date: _____

Your (Homeowner's) signature: _____

(g) The Foreclosure Consultant shall provide the Homeowner with a signed and dated copy of the Foreclosure Consulting Contract and the attached How to Cancel form immediately upon execution of the Foreclosure Consulting Contract.

(h) A notice of cancellation need not take the particular form specified in this

subtitle 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 agreement.

C. Foreclosure Consultant Prohibited Actions. 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 9% a year;
- (3) Take any wage assignment, any lien of any type on 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 subsidiary, affiliate, or related entity in which the Foreclosure Consultant or a member of the Foreclosure Consultant's immediate family is a primary member, shareholder or owner, in a Residence in Foreclosure from a Homeowner with whom the Foreclosure Consultant has contracted;
- (6) Take any power of attorney from a Homeowner for any purpose, except to inspect documents as provided by law; or
- (7) Induce or attempt to induce any Homeowner to enter into a Foreclosure Consulting Contract that does not comply in all respects with this subtitle.

SECTION 5. EQUITY CONVEYANCES

A. Equity Conveyance Exemptions.

(1) Except as provided in subsection (2) of this subsection, the provisions of this Title do not apply to:

- (a) A creditors' committee or trustee or debtor in possession in a proceeding under the jurisdiction of the United States Bankruptcy Court;
- (b) A family or living trust in which the Homeowner is the beneficiary or a member of the beneficiary, within the meaning of _____

(2) This subsection does apply to an individual who:

- (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. Equity Conveyance Disclosures and Notices

Subsection 1. Disclosures.

(a) A written Equity Conveyance Contract is required for every Equity Conveyance. An Equity Conveyance Contract shall:

- (1) Be provided to the Homeowner for review at least 24 hours before signing;
- (2) Contain the entire agreement of the parties;
- (3) 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 Equity Purchaser to describe the Equity Purchaser's services and to negotiate the transfer or sale of the real property;
- (4) Be dated and personally signed by the Homeowner and the Equity Purchaser and witnessed and acknowledged by a notary public appointed and commissioned by the State of Oregon;
- (5) Contain on the first page the name and address of the Equity Purchaser (Settlement Service Provider?) to which the notice of cancellation is to be mailed;
- (6) Describe in detail the terms of the Equity Purchase including:
 - (i) The name, business address, telephone number, and facsimile number of the person to whom the deed or title will be transferred;
 - (ii) The address of the Residence in Foreclosure;
 - (iii) The total consideration to be given by the Equity Purchaser and any other party as a result of the transfer;
 - (iv) The time at which title is to be transferred to the Equity Purchaser and the terms of any conveyance;

- (v) 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;
- (vi) A description of any services of any nature that the Equity Purchaser will perform for the Homeowner before or after the sale or transfer;
- (vii) 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
- (viii) An explanation of how any repurchase price or fee associated with any transfer of title or deed back to the Homeowner will be calculated; and,
- (ix) An explanation of the return of a percentage of any net proceeds to the Homeowner if the Homeowner does not exercise the Homeowner's rights to repurchase.

(7) 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:

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 AN ATTORNEY OR COUNSELOR BEFORE SIGNING.

YOU MAY CANCEL THIS CONTRACT WITHIN THREE (3) BUSINESS DAYS.

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

(b) Any provision in an Equity Conveyance 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.

(c) An Equity Conveyance may not be carried out using a power of attorney from the Homeowner.

Subsection 2. Right to Cancel Equity Conveyances.

(a) In addition to any other right under law to cancel or rescind a contract, a Homeowner has the right to cancel an Equity Conveyance Contract at any time before the sooner of (i) midnight of the 3rd business day after the signing by the Homeowner of any document that transfers or conveys, or purports to convey or transfer in any manner, legal or equitable title to a Residence in Foreclosure, or (ii) any foreclosure sale of the Residence in Foreclosure.

(b) Rescission occurs when the Homeowner gives written notice of cancellation to the Foreclosure Consultant or Settlement Agent at the addresses specified in the Equity Conveyance Contract or through any facsimile or electronic mail address identified in the contract or other materials provided to the Homeowner by the Equity Purchaser.

(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) Notice of cancellation need not be in the form provided with the Equity Conveyance Contract and is effective, however expressed, if it indicates the intention of the Homeowner to rescind the equity conveyance.

(e) As part of the cancellation of an Equity Conveyance, the Homeowner shall repay, within 60 days from the date of cancellation, any funds paid or advanced by the Equity Purchaser or anyone working with the Equity Purchaser under the terms of the Equity Conveyance, together with interest calculated at the rate of 9% a year.

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

(g) The Equity Conveyance Contract shall be accompanied by a completed form titled "HOW TO CANCEL," which shall

- (1) Be in duplicate;
- (2) Be on a separate sheet of paper attached to the contract;
- (3) Be easily detachable; and

(4) Contain the following statement in at least 14 point boldface type:

HOW TO CANCEL

**IF YOU DECIDE NOT TO TRANSFER YOUR DEED OR TITLE,
YOU MAY CANCEL THIS CONTRACT.**

**YOU MUST DELIVER THE NOTICE OF CANCELLATION WITHIN
THREE (3) BUSINESS DAYS OF WHEN YOU SIGNED THE
CONTRACT.**

Date of Contract: _____

To cancel, you must deliver a notice of cancellation before midnight

on: _____ (date)

NOTICE OF CANCELLATION

TO: _____ (name of Equity Purchaser
and Settlement Agent)

(address of Equity Purchaser, including facsimile and
electronic mail)

I cancel the contract. Please return all signed documents to me.

Date: _____

Your (Homeowner's) Signature: _____

(h) The Equity Purchaser shall provide the Homeowner with a signed and dated copy of the contract and the How to Cancel form immediately upon execution of the Equity Conveyance Contract.

(i) The time during which the Homeowner may cancel the Equity Conveyance Contract does not begin to run until the Equity Purchaser has complied with each provision of this section.

(j) A notice of cancellation need not take the particular form specified in this subtitle or any form contained in any agreement with the Equity Purchaser and is effective, however expressed, if it indicates the intention of the Homeowner to cancel the Equity Purchase.

(k) Within 10 days after receipt of a notice of cancellation given in accordance with this subtitle, the Equity Purchaser shall return, without condition, any original deed, title, contract, and any other document signed by the Homeowner.

(l) During the 3-day cancellation period, a deed or other document affecting title to the homeowner's residence may not be recorded.

C. Equity Conveyance Prohibited Actions. As part of any Equity Conveyance, an Equity Purchaser may not:

(1) Enter into, or attempt to enter into, an Equity Conveyance with a Homeowner unless:

- (a) The Equity 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 an Equity Conveyance, or, if the Equity 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 repurchase the property within the term of the option to repurchase;
- (b) The Equity Purchaser and the homeowner complete a formal Settlement before any transfer of an interest in the property is effected; and
- (c) The Equity Purchaser complies with the requirements of the federal Home Ownership Equity Protection Act, 15 U.S.C. 1639, and its implementing regulations for any Equity Conveyance in which the homeowner obtains a vendee interest in a contract for deed.

(2) Fail to:

- (a) Ensure that:
 - (i) title to the property has been reconveyed to the Homeowner in a timely manner if this subtitle or the terms of an Equity Conveyance Contract require a reconveyance; or
 - (ii) Make payment to the homeowner within 15 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 an Equity Conveyance be sold within 24 months after entering into a equity purchase contract; and
- (b) Timely record the Memorandum of Option required by Section D of this subsection.

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

(4) Represent, directly or indirectly, that:

- (a) The Equity Purchaser is acting as an advisor or a consultant, or in any other manner represent that the Equity Purchaser is acting on behalf of the Homeowner;
- (b) The Equity Purchaser has certification or licensure that the Equity Purchaser does not have;

- (c) The Equity Purchaser is assisting the Homeowner to "save the house" or use a substantially similar phrase; or
- (d) The Equity 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;

(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 the value of the Residence in Foreclosure, the amount of proceeds the Homeowner will receive after a foreclosure sale, any contract term, or the Homeowner's rights or obligations incident to or arising out of the Equity Conveyance; or

- (6) Until the Homeowner's right to cancel 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 foreclosure to any third party.

D. Equity Conveyance Presumptions; Accounting; Bona Fide Purchasers; Recording of Memorandum

(1) For purposes of subsection C(1)(a) -of this ~~subsection~~Section 5, there is a rebuttable presumption that:

- (a) 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
- (b) The Equity Purchaser has not verified reasonable payment ability if the Equity Purchaser has not obtained documents other than a statement by the Homeowner of assets, liabilities, and income.

(2) Accounting

- (a) The Equity Purchaser shall make a detailed accounting of the basis for the amount of a payment made to the Homeowner of a property resold within 18 months after entering into an Equity Conveyance Agreement, in accordance with subsection C(2)(a) _____ of this Ssection 5.
- (b) The accounting shall be on a form prescribed by the Director of the Department of Consumer and Business Services and shall include detailed documentation of expenses and other consideration paid by the Equity Purchaser and deducted from the resale price.

(3) A bona fide purchaser for value or bona fide lender for value who enters into

a transaction with a Homeowner or an Equity Purchaser during the period when an Equity Conveyance may be rescinded, without notice of the existence of the Equity Conveyance Contract, receives good title to the property, free and clear of the right of the parties to the Equity Conveyance Contract or the right of the Homeowner to cancel the Equity Conveyance.

(4) This subtitle 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 an Equity Purchaser.

(5) Concurrently with any Equity Conveyance, the Equity Purchaser shall cause to be recorded with the county recorder in which the property is located, a Memorandum of Agreement in form and content similar to the following, which shall be signed and notarized by both the Equity Purchaser and the Homeowner:

MEMORANDUM OF OPTION AGREEMENT

DATED: _____

SELLER/OPTIONEE: _____

PURCHASER/OPTIONOR: _____

EXPIRATION DATE: _____, unless
otherwise extended by written agreement between the parties.

PROPERTY ADDRESS: _____

LEGAL DESCRIPTION: _____

TRUE AND ACTUAL CONSIDERATION IS: _____

SELLER/OPTIONEE: _____ **OPTIONEE/PURCHASER:** _____

~~(INSERT FORM)~~

SECTION 6. ACTIONS BY ATTORNEY GENERAL.

(A) The Attorney General may seek an injunction to prohibit a person who has engaged or is engaging in a violation of this Act from engaging or continuing to engage in the violation.

(B) 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 Act.

(C) In any action brought by the Attorney General under this Act, the Attorney General is entitled to recover the costs of the action for the use of the State.

SECTION 7. PRIVATE ACTIONS.

(a) In addition to any action by the Attorney General authorized under this Act 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 Act.

(b) A Homeowner who brings any action under this Act and who is awarded damages may also seek and the court may award, reasonable attorneys' fees, costs, and expenses. Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this Act was filed in bad faith or for purposes of harassment, the court may award to the prevailing party attorney's fees reasonable in relation to the work expended in responding in the action.

(c) If the court finds that the defendant willfully or knowingly violated this Act, the court may award damages equal to three times the amount of actual damages.

SECTION 8. CRIMINAL PENALTIES.

A person who willfully violates any provision of this Act is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$10,000 or both.

SECTION 9. EQUITABLE MORTGAGE; REBUTTABLE PRESUMPTION.

- A. Nothing in this Act shall be construed to preclude any claim by a homeowner that an Equity Conveyance should be construed as an equitable mortgage or to preclude any legal or equitable claim by a homeowner against an Equity Purchaser on an equitable mortgage claim.
- B. For purposes of this Section 9, there is a rebuttable presumption that an Equity Conveyance is not an equitable mortgage if the Equity Purchaser has complied with all the material provisions of this subtitle pertaining to equity purchases. (TBD)-[NEED TO DISCUSS]
- C. There is a rebuttable presumption that an Equity Conveyance is an equitable mortgage if the Equity Purchaser has not complied with all of the material provisions of this Act pertaining to Equity Conveyances. [-NEED TO DISCUSS]