

Mortgage Rescue Concepts

I. Foreclosure Consultants

1. Definition: “Foreclosure consultant” generally is defined as any person who makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:

- (a) Stop or postpone the foreclosure sale.
- (b) Obtain any forbearance from any beneficiary or mortgagee.
- (c) Assist the owner to exercise any right of reinstatement.
- (d) Obtain any extension of the period within which the owner may reinstate his or her obligation.
- (e) Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained that deed of trust or mortgage.
- (f) Assist the owner to obtain a loan or advance of funds.
- (g) Avoid or ameliorate the impairment of the owner’s credit resulting from the recording of a notice of default or the conduct of a foreclosure sale.
- (h) Save the owner’s residence from foreclosure.
- (i) Assist the owner in obtaining from the beneficiary, mortgagee, trustee under a power of sale, or counsel for the beneficiary, mortgagee, or trustee, the remaining proceeds from the foreclosure sale of the owner’s residence.

2. Who is exempt:

- (a) A duly licensed attorney at law acting on behalf of a client;
- (b) A person who holds, services 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, of the obligation or lien did not arise as a result of a pre-foreclosure conveyance; [Acting within the scope of practice.]
- (c) Any bank, trust company, savings and loan association, credit union, consumer service companies licensed under Chapter 725, or insurance company chartered under the laws of this state or the United States or any subsidiary, affiliate, or agency thereof;
- (d) A pre-judgment or post-judgment lien creditor of the homeowner;
- (e) A person licensed as a mortgage banker or mortgage broker while engaged in any activity for which the person is licensed under the pertinent state statute;
- (f) A person licensed as a real estate broker, associate real estate broker, or real estate salesperson, while engaged in any activity for which the person is licensed under the pertinent state statute;
- (g) A nonprofit organization or government entity that offers counseling or advice to homeowners in foreclosure or loan default, if the organization is not directly or indirectly related to and does not contract for services with for-profit lenders, foreclosure consultants, or pre-foreclosure purchasers; or
- (h) A creditors’ committee or trustee participating in a place of reorganization or repayment through a proceeding under the jurisdiction of the United States Bankruptcy Court.

3. General Requirements:

- (a) Provides limits on when, from whom, and how much compensation foreclosure consultants may receive, and generally precludes any advance demand for compensation. For example, the fee is limited to an amount equal to two monthly mortgage payments. [More information needed on customary fees.]
- (b) Generally limited to owner-occupied residential properties consisting of 1 – 4 residential units.
- (c) Requires a writing with delineation regarding font, language, pages, etc.
- (d) Requires a full disclosure of the nature and extent of the foreclosure consulting services.
- (e) May prohibit the Foreclosure Consultant from acquiring interest in residence in foreclosure.
- (f) May limit ability to otherwise contract with the owner. [Simple agreement.]
- (g) Provides for a 3-day right to cancel.
- (h) Provides for a right of repayment after cancellation for any advances with a maximum of 8% interest.
- (i) Precludes allowing the homeowner to waive the statutory rights, e.g. right to cancel.
- (j) May preclude the use of power of attorney to Foreclosure Consultant.
- (k) Allows for potential damages/remedies. Options are:
 - i. UTPA Chapter 646;
 - ii. Agency enforcement;
 - iii. Look at CSD and DCA rules;
 - iv. Private right of action.

II. Home Equity Purchasers

1. Definitions:

- (a) “Foreclosure Purchaser” or “Pre-foreclosure Purchaser” is defined as “any person or any person acting in concert with that person, who acquires title or possession of a deed or other interest in a residence in foreclosure as a result of a pre-foreclosure conveyance, or any person who participates in a joint venture or joint enterprise involving a pre-conference conveyance.”
- (b) “Foreclosure surplus purchaser” generally means any person who acts as the acquirer by assignment, purchase, grant or conveyance of the surplus resulting from a foreclosure sale.

2. Who’s exempt: Same as FC.

3. General Requirements:

- (a) Requires a writing. May require “Notice of Loss of Ownership” or similar document. Restrictions and requirements regarding clear language and disclosures. Generally precludes certain references, e.g. going to “save your house.”
- (b) Provides for a 3-day right to cancel.

(c) Limits the consideration to be paid or payment obligations, and precludes any reconveyance agreements in which the existing liens are not paid. [Amount of limitations still under discussion.]

(d) Provides for Lease-Option restrictions: “Reasonable ability to pay” requirement with presumption that the homeowner has such ability if at 60% of debt-to-income ratio.

(e) Allows for potential damages/remedies. Options are:

- i. UTPA Chapter 646;
- ii. Agency enforcement;
- iii. Look at CSD and DCA rules;
- iv. Private right of action.

(f) Allows for repurchase rights. Options are:

- i. Set specific percentage of FMV; or
- ii. Use unconscionability standard.