

SECTION 1. SHORT TITLE.

This Act shall be called the “Mortgage Rescue Fraud Protection Act.”

SECTION 2. DEFINITIONS.

(a) In this subtitle the following words have the meanings indicated

(b) "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:

- 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 redemption;
- d. Obtain any extension of the period within which the owner may reinstate his 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 in any such deed of trust or mortgage;
- f. Assist the owner in obtaining 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;

(c) "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 or foreclosure reconveyance.

(d) "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;

(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

(e) "Foreclosure purchaser" means a person who acquires title or possession of a deed or other document to a residence in foreclosure as a result of a foreclosure reconveyance.

(f) "Foreclosure reconveyance" 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 or by creation of a mortgage, trust, or other lien or encumbrance 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.

(g) "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.

(g)(1) "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.

(2) "Foreclosure surplus purchaser" includes a person who acts in joint venture or joint enterprise with one or more acquirers.

(h) "Homeowner" means the record owner of a residence in foreclosure.

(i) "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. .

(j) "Business Day" shall exclude all intervening Saturdays, Sundays, state holidays.

SECTION 4. SCOPE OF SUBTITLE.

(a) Except as provided in subsection (b) of this section, this subtitle does not apply to:

- (1) 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;
- (2) 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 a foreclosure reconveyance;
- (3)(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, or insurance companies, or ORS Chapter 725 while the person performs services as a part of the person's normal business activities; and
(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;
- (4) 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;
- (5) A title insurer or producer licensed and authorized to conduct business in the State, while performing title insurance and settlement services in accordance with the person's license;

- (6) 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;
- (8) 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 7](#) of this subtitle;
- (9) A nonprofit 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 foreclosure purchasers, and (b) the organization has been in existence and doing business for at least (5) years; or,
- (10) A creditors' committee or trustee or debtor in possession in a proceeding under the jurisdiction of the United States Bankruptcy Court.

(b) This subtitle does apply to an individual who:

- (1) Is functioning in a position listed under subsection (a) of this section; and

(2) 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.

SECTION 5. RIGHT OF RESCISSION.

(a) In addition to any other right under law to cancel or rescind a contract, a homeowner has the right to:

(1) Rescind a foreclosure consulting contract before the sooner of (i) midnight of the third business day after the day on which the homeowner signs a foreclosure consulting contract or (ii) any foreclosure sale; and

(2) Rescind a foreclosure reconveyance at any time before the sooner of (i) midnight of the 3rd business day after any conveyance or transfer in any manner of legal or equitable title to a residence in foreclosure, or (ii) any foreclosure sale.

(b) Rescission occurs when the homeowner gives written notice of rescission to the foreclosure consultant at the address specified in the contract or through any facsimile or electronic mail address identified in the contract or other materials provided to the homeowner by the foreclosure consultant.

(c) Notice of rescission, if given by mail, is effective when delivered. Notice of rescission, 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 rescission need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to rescind the foreclosure consulting contract or foreclosure reconveyance.

(e) As part of the rescission of a foreclosure consulting contract or foreclosure reconveyance, the homeowner shall repay, within 60 (**0 – 60 days**) days from the date of rescission, any funds paid or advanced by the foreclosure consultant or anyone working with the foreclosure consultant under the terms of the foreclosure consulting contract or foreclosure reconveyance, together with interest calculated at the rate of 8% (**0 – 10%; Legal rate in Oregon is 9%**) a year.

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

SECTION 6. DISCLOSURES.

(a) A 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 disclose the nature and extent of the foreclosure consulting services ("fully disclose the exact services") to be provided, including any foreclosure reconveyance that may be involved, and the total amount and terms of any compensation to be received by the foreclosure consultant or anyone working in association with the foreclosure consultant;
- (4) Be dated and personally signed by the homeowner and the foreclosure consultant; and
- (5) Contain the following notice, which shall be printed 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

..... (Name) or anyone working for him or her CANNOT ask you to sign or have you sign any lien, mortgage, or deed as part of signing this agreement unless the terms of the transfer are specified in this document and you are given a separate explanation of the nature and extent of the transaction.

..... (Name) or anyone working for him or her CANNOT guarantee you that they will be able to refinance your home or arrange for you to keep your home. Continue making mortgage payments until a refinancing, if applicable, is approved.

If a transfer of the deed or title to your property is involved in any way, you may rescind the transfer any time within 3 days after the date you sign the deed or other document of sale or transfer. See the attached Notice of Rescission form for an explanation of this right. As part of any rescission, you must repay, within 60 days, any money spent on your behalf as a result of this agreement, along with interest calculated at the rate of 9% a year.

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

(b) The contract shall contain on the first page, in at least 12 point type size:

- (1) The name and address of the foreclosure consultant to which the notice of cancellation is to be mailed; and
- (2) The date the homeowner signed the contract.

(c)(1) The contract shall be accompanied by a completed form in duplicate, captioned "NOTICE OF RESCISSION".

(2) The Notice of Rescission shall:

- (i) Be on a separate sheet of paper attached to the contract;
- (ii) Be easily detachable; and
- (iii) Contain the following statement printed in at least 15 point type:

"NOTICE OF RESCISSION

(Date of Contract)

You may cancel or rescind this contract, without any penalty, at any time.

If you want to end this contract, mail or deliver a signed and dated copy of this Notice of Rescission, or any other written notice indicating your intent to rescind to (name of foreclosure consultant) at (address of foreclosure consultant, including facsimile and electronic mail).

As part of any rescission, you (the homeowner) must repay any money spent on your behalf as a result of this agreement, within 60 days, along with interest calculated at the rate of 9% a year.

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

NOTICE OF RESCISSION

TO: (name of foreclosure consultant)

(address of foreclosure consultant, including facsimile and electronic mail)

I hereby rescind this contract.

..... (Date)

..... (Homeowner's signature)".

(d) The foreclosure consultant shall provide the homeowner with a signed and dated copy of the contract and the attached Notice of Rescission immediately upon execution of the contract.

(e) The time during which the homeowner may rescind the contract does not begin to run until the foreclosure consultant has complied with this section.

(f) Any provision in a foreclosure consulting contract that attempts or purports to waive any of the rights specified in this title, 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.

SECTION 7. 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 corporation in which the foreclosure consultant or a member of the foreclosure consultant's immediate family is a primary stockholder, 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 8. FORECLOSURE RECONVEYANCES; NOTICES; RIGHT OF RESCISSION; PROHIBITED ACTIONS.

(a) If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of a foreclosure consulting contract, the foreclosure purchaser shall provide the homeowner with a document entitled "Notice of Transfer of Deed or Title".

(b) The document entitled "Notice of Transfer of Deed or Title" shall:

- (1) Contain the entire agreement of the parties;
- (2) Be printed in 12 point type and written in the same language that is used by the homeowner and was used in discussions to describe the foreclosure consultant's or foreclosure purchaser's services or to negotiate the transfer or sale of the property;
- (3) Be dated and personally signed by the homeowner and the foreclosure purchaser and witnessed and acknowledged by a notary public appointed and commissioned by the State;
- (4) Describe in detail the terms of any foreclosure conveyance 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 foreclosure purchaser, the foreclosure consultant, and any other party as a result of the transfer;
 - (iv) The time at which title is to be transferred to the foreclosure 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 foreclosure 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) How any repurchase price or fee associated with any transfer of title or deed back to the homeowner will be calculated.
- (5) 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:

"If you change your mind about transferring ownership of your property, you, the homeowner, may rescind the transfer of the deed or title to your property any time within the next 3 days. As part of any rescission, you must repay, within 60 days, any money spent on your behalf as a result of this agreement, along with interest calculated at the rate of 9% a year.

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

(c)(1) If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of a foreclosure consulting contract, the foreclosure purchaser shall provide the homeowner with a document entitled "NOTICE OF RIGHT TO CANCEL TRANSFER OF DEED OR TITLE".

(2) The NOTICE OF RIGHT TO CANCEL TRANSFER OF DEED OR TITLE shall:

- (i) Be a separate document and not printed on the back of any other document; and
- (ii) Contain the following statement printed in at least 14 point type:

"NOTICE OF RIGHT TO CANCEL TRANSFER OF DEED OR TITLE

(Date)

You may cancel or rescind the transfer of ownership of your property through the transfer of a deed or title within 3 business (5, 7?) days after the date you sign this document.

To rescind this transaction, mail or deliver a signed and dated copy of this Notice, or any other written notice expressing a similar intent to (name of foreclosure consultant) at (address of foreclosure consultant, including facsimile and electronic mail).

As part of any rescission, you (the homeowner) must repay any money spent on your behalf as a result of this agreement, within 60 days, along with interest calculated at the rate of 9% a year (**CONSISTENT WITH FOREGOING**).

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

NOTICE OF RESCISSION

TO: (name of foreclosure consultant)

(address of foreclosure consultant, including facsimile and electronic mail)

I hereby rescind the transfer of deed or title to my property. Please return all executed documents to me.

..... (Date)

..... (Homeowner's signature)".

(d) The foreclosure purchaser shall provide the homeowner with a copy of the Notice of Right to Cancel Transfer of Deed or Title immediately on execution of any document that includes a foreclosure reconveyance.

(e) The time during which the homeowner may rescind the contract or transfer does not begin to run until the foreclosure purchaser has complied with this section.

(f) Any provision in a foreclosure consulting contract or other agreement concerning a foreclosure reconveyance that attempts or purports to waive the homeowner's rights under this section, 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.

(g) A foreclosure reconveyance may not be carried out using a power of attorney from the homeowner.

(h) A notice of rescission need not take the particular form specified in this subtitle or any form contained in any agreement with the foreclosure consultant or foreclosure purchaser and is effective, however expressed, if it indicates the intention of the homeowner to rescind the reconveyance agreement.

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

(j) Within 10 days after receipt of a notice of rescission given in accordance with this subtitle, the foreclosure purchaser shall return, without condition, any original deed, title, contract, and any other document signed by the homeowner.

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

SECTION 9. FORECLOSURE RECONVEYANCES; PROHIBITED ACTIONS; PRESUMPTIONS; ACCOUNTING; BONA FIDE PURCHASERS.

(a)(1) In this section the following words have the meanings indicated.

(2) "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.

(3) "Resale" means a bona fide market sale of property subject to a foreclosure reconveyance by the foreclosure purchaser to an unaffiliated third party.

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

(5) "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 foreclosure purchaser, during which the homeowner must be presented with a completed copy of the HUD-1 Settlement Form.

(b) A foreclosure purchaser may not:

(1) Enter into, or attempt to enter into, a foreclosure reconveyance with a homeowner unless:

(i) The foreclosure 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 a foreclosure conveyance, or, if the foreclosure 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;

(ii) The foreclosure purchaser and the homeowner complete a formal settlement before any transfer of an interest in the property is effected; and

(iii) The foreclosure purchaser complies with the requirements of the federal Home Ownership Equity Protection Act, 15 U.S.C. 1639, and its implementing regulations for any foreclosure reconveyance in which the homeowner obtains a vendee interest in a contract for deed;

(2) Fail to:

(i) Ensure that title to the property has been reconveyed to the homeowner in a timely manner if this subtitle or the terms of a foreclosure reconveyance agreement require a reconveyance; or

(ii) Make payment to the homeowner within 90 days of any resale of the property so that the homeowner receives cash payments or consideration in an amount equal to at least 82% (**66% - 90%**) of the net proceeds from any resale of the property should a property subject to a foreclosure reconveyance be sold within 18 (**- 36**) months after entering into a foreclosure reconveyance agreement;

- (3) Enter into repurchase or lease terms as part of the foreclosure conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct;
- (4) Represent, directly or indirectly, that:
- (i) The foreclosure purchaser is acting as an advisor or a consultant, or in any other manner represent that the foreclosure purchaser is acting on behalf of the homeowner;
 - (ii) The foreclosure purchaser has certification or licensure that the foreclosure purchaser does not have;
 - (iii) The foreclosure purchaser is assisting the homeowner to "save the house" or use a substantially similar phrase; or
 - (iv) The foreclosure 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 foreclosure reconveyance; or
- (6) Until the homeowner's right to rescind or 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.

(c) For purposes of subsection (b)(1) of this section, there is a rebuttable presumption that:

- (1) 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% (**v. no presumption**) of the homeowner's monthly gross income; and
- (2) The foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the homeowner of assets, liabilities, and income.

(d)(1) The foreclosure 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 a foreclosure reconveyance agreement, in accordance with (b)(2)(ii) of this section.

(2) The accounting shall be on a form prescribed by the Attorney General in consultation with the Director of the Department of Consumer and Business Services and shall include detailed documentation of expenses and other

consideration paid by the foreclosure purchaser and deducted from the resale price.

(e) A bona fide purchaser for value or bona fide lender for value who enters into a transaction with a homeowner or a foreclosure purchaser when a foreclosure consulting contract is in effect or during the period when a foreclosure reconveyance may be rescinded, without notice of those facts, receives good title to the property, free and clear of the right of the parties to the foreclosure consulting contract or the right of the homeowner to rescind the foreclosure reconveyance.

(f) 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 a foreclosure purchaser.

.SECTION 10. WAIVER OF RIGHTS PROHIBITED.

(a) A person may not induce or attempt to induce a homeowner to waive the homeowner's rights under this subtitle.

(b) Any waiver by a homeowner of the provisions of this subtitle is void and unenforceable as contrary to public policy.

SECTION 11. 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 subtitle 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 title.

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

SECTION 13. PRIVATE ACTIONS.

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

(b) The prevailing party in any action shall be entitled to an award of reasonable attorneys' fees, costs, and expenses.

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

SECTION 14. CRIMINAL PENALTIES.

(a) A person who violates any provision of this subtitle 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.